

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.3705 OF 2016

ORDER:

Heard both sides.

2. Perused the impugned dismissal order in C.M.A.No.30 of 2015, dated 20.06.2016, against the order in I.A.No.1029 of 2014, dated 22.04.2015, dismissing the application for temporary injunction restraining the respondents 1 to 4 among the six respondents from executing the preliminary decree dated 18.12.2013 of O.S.No.3571 of 2004, pending disposal of the suit O.S.No.1700 of 2014.

3. The contention of the plaintiff/petitioner for the temporary injunction vis-à-vis the unsuccessful appellant before the lower appellate court and revision petitioner herein is that he purchased the plaint schedule property consisting of 203 square yards situated at Jahanuma bearing D.No.19-3-525/10/A, within the boundaries described in the plaint schedule from the two brothers by name Sk.Malik Akther and Sk.Malik Akbar, sons of Sk.Malik Jaffar. Among the six defendants of the suit O.S.No.3571 of 2004, the defendants 3 to 6 are no other than two wives, daughter and son of late 1st defendant (died pending suit) Sk.Malik Akther and the 2nd defendant Akbar is his brother.

4. The decree in O.S.No.3571 of 2004, dated 18.12.2013 from the operative portion of the judgment covered by the issue No.3 of the result reads preliminarily decreeing the suit with costs that a preliminary decree of partition passed directing division of the suit schedule property (supra) into nine equal shares and allotting two such shares to each of the 1st plaintiff and defendants 1 and 2 respectively and one such share each to the plaintiffs 2 to 4 respectively. The defendants 3 to 6 are thereby entitled to 2/9th share that had fallen to the share of the late 1st defendant being his legal heirs. The claim of the plaintiff herein is as purchaser from defendants 1 and 2 and it is the say that the purchase is prior to the date of filing of O.S.No.3571 of 2004 suit, in July 2004, under unregistered sale deed to be treated or construed as possessory sale agreement to enforce. There was never any suit for specific performance admittedly filed so far, but for in possession pursuant to the so-called unregistered sale transaction, at best, to claim adverse possession against the persons, who sold and those persons entitled if any. However, within no lapse of months once the suit in O.S.No.3571 of 2004 filed and that was preliminarily decreed for the plaintiffs entitlement to so far 1st plaintiff 2/9 and plaintiffs 2 to 4 put together each 1/9 comes to 5/9 under the specific performance if at all to enforce or otherwise to claim adverse possession from the persons who alienated other than the plaintiffs in the suit for partition is to seek for equities for

the remaining 4/9th share ultimately leave about subject to the result of the present suit *lis* of O.S.No.17 of 2014 if entitled to ultimately set aside the entire decree and judgment of O.S.No.3571 of 2004.

5. It is for these reasons once lower court hold that there is no prima facie case, much less, balance of convenience for the suit on contest in dismissing the temporary injunction application of the plaintiff pending disposal of the suit claim in O.S.No.17 of 2014 for this Court while sitting in revision there is nothing to interfere, but for to say, none of the observations of the learned trial judge or of the lower appellate court in dismissing the temporary injunction, including the observations herein will prejudice the independent rights of the plaintiff in the suit O.S.No.1700 of 2014 ultimately to decide on own merits. Subject to that even the defendants herein as plaintiffs 1 to 4 at best can work out the preliminary decree for passing of a final decree for division and separation of their respective 2/9th + 3/9th shares, which is subject to the ultimate result of the suit.

6. With these observations and for no such bar for their working out, the revision is disposed of by directing the trial court to take up the suit and dispose of preferably within six months. The final decree proceedings in the suit in O.S.No.3571 of 2004, no doubt, shall go on but for passing of final decree if any in the meantime.

7. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

24.11.2017
SS

