

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

CIVIL MISCELLANEOUS APPEAL Nos.828 AND 855 OF 2016

COMMON JUDGMENT
(Per Hon'ble Sri Justice Sanjay Kumar)

These two appeals under Order 43 Rule 1 CPC arise out of the order dated 22.08.2016 passed by the learned VII Additional District Judge (Fast Track Court), Visakhapatnam, in I.A.No.519 of 2016 in O.S.No.95 of 2016. The said I.A. was filed by the plaintiff in the suit under Order 39 Rules 1 and 2 CPC seeking an injunction restraining defendants 1 to 8 from interfering with the suit schedule property by making constructions and, thereafter, by alienating the same to third parties pending disposal of the suit.

By the order under appeal, the trial Court granted an injunction as prayed for. Aggrieved thereby, defendants 1, 5 and 8 filed C.M.A.No.828 of 2016, while defendants 2, 3, 4, 6 and 7 preferred C.M.A.No.855 of 2016.

Heard Sri P.Prabhakar Rao and Sri Subba Rao Korrapati, learned counsel appearing for the appellants, and Sri Ravi Cheemalapati, learned counsel for the first respondent.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.95 of 2016 was filed by the plaintiff seeking a declaration that defendants 9 to 11 and he were the absolute owners of the suit schedule property; a permanent injunction restraining the defendants 1 to 8 from interfering with the peaceful possession and enjoyment of the plaintiff and defendants 9 to 11 over the suit schedule property; to notify the registered sale deed dated 10.03.2004, registered partition deeds dated 25.05.2015, 16.09.2015

and development agreement dated 15.10.2015 as not valid in the eye of law; and for costs. The suit schedule property was shown as an extent of 449.50 square yards in the Visakhapatnam Urban Development Authority (VUDA) approved Layout Plan No.14 of 1996 in Survey No.140/8P of Chinamushidivada Village, Pendurthy Mandal, Visakhapatnam District.

The suit claim of the plaintiff was as under:

The plaintiff, defendant 9 and the father of defendants 10 and 11, late Sadhu Rao, were brothers, being the sons of late Marisa Suryanarayana. Late Marisa Suryanarayana was the absolute owner of the land admeasuring Ac.1.10 cents in various survey numbers of Chinamushidivada Village, including the extent admeasuring Ac.0.16 cents in Survey No.140/8 of the village. Late Marisa Suryanarayana along with the plaintiff and defendant 9 executed a registered General Power of Attorney (GPA) vide Document No.53 of 1992 dated 23.03.1992 in favour of Yalamarthy Venkata Krishna Rao, who was also given similar authority by the adjoining land owners, viz., Gantla Demudu and others, and pursuant thereto, the GPA holder developed the entire land into a layout which was approved by the VUDA under L.P.No.14 of 1996. The plaintiff and his family members sold away the plots that fell to their shares in the said layout but the suit schedule property was left unsold, being an odd bit. The plaintiff claimed that the said bit of the land remained in the possession and enjoyment of his family members but defendants 1 to 7 started interfering with their possession over the same. The plaintiff claimed that upon his enquiries, he came to know that defendants 1 to 5 had obtained registered sale deed bearing document No.1070 of 2004 dated 10.03.2004 from one Adabala Demudu and Adabala Ramu in

relation to a total extent of 710 square yards and the suit schedule property admeasuring 449.5 square yards was shown in the said sale deed as item No.1. The plaintiff alleged that the defendants had created registered partition deeds bearing document Nos.2757 of 2015 dated 25.05.2015 and 4870 of 2015 dated 16.09.2015. He further alleged that defendants 1 to 7 had executed a registered Development Agreement-cum-General Power of Attorney bearing document No.5277 of 2015 dated 15.10.2015 in favour of defendant 8, a construction firm. The plaintiff asserted that the defendants had no right or title over the suit schedule property and were trying to knock away the same as it was very useful to them for constructing apartments, as the suit schedule property was a corner site adjoining their land, abutting two roads. The plaintiff therefore claimed that he would be put to irreparable loss and injury unless an injunction was granted in his favour restraining defendants 1 to 8 from interfering with the suit schedule property by making constructions and, thereafter, alienating the same to third parties. Significantly, the plaintiff admitted that defendants 9 to 11, who were allegedly co-owners along with him, did not choose to come forward to join him in fighting this litigation and were therefore shown as defendants.

Defendant 8 filed a counter contesting the injunction petition, wherein it stated as under:

Marisa Suryanarayana and G.Demudu owned an extent of Ac.1.56 cents in Survey Nos.139/2, 9, 13; 140/5, 8, 7H; 141/1, 2, 9; and 139/5. A GPA was executed in favour of Yalamarthi Venkata Krishna Rao authorizing him to deal with the said lands, including the extent of Ac.0.15 cents in Survey No.140/8 belonging to Marisa Suryanarayana. It was admitted that pursuant to this authority,

layouts were sanctioned by the VUDA in favour of the GPA Holder under L.P.Nos.13 of 1998 and 14 of 1996. Plot No.28, admeasuring 167 square yards in Survey No.140/8, was stated to have been sold by the GPA Holder to one Pilla Subba Rao through registered sale deed bearing document No.113 of 1999 dated 29.12.1998 and Plot No.18, admeasuring 389 square yards in Survey No.140/8, was sold to one Chetti Simhachalam under registered sale deed bearing document No.451 of 1999. After these sales of 556 square yards from the extent of Ac.0.15 cents in Survey No.140/8, the remaining land therein was stated to have been forfeited in the formation of roads on the northern and western sides. Defendant 8 therefore asserted that no land, as claimed by the plaintiff, was left in Survey No.140/8 thereafter. Reference was also made to the partition effected amongst the heirs of Marisa Suryanarayana after his death, under registered partition deed bearing document No.3347 of 2012. Defendant 8 asserted that in the said partition deed, to which the plaintiff was also a party, it was categorically recorded that except for the properties partitioned thereunder, there were no other properties left for partition. Defendant 8 pointed out that the suit schedule property did not find mention in the said partition deed and therefore, the present claim of the plaintiff was untenable. According to defendant 8, defendants 1 to 5 purchased an extent of 710 square yards comprising two bits – 449.50 and 260.50 square yards in Survey Nos.140/6 and 141/2 from Adabala Demudu and Adabala Ramu vide registered sale deed bearing document No.1070 of 2004. Defendant 8 further stated that the plaintiff, with a view to make a wrongful claim over this land, filed the suit by obtaining the endorsement dated 23.05.2015 from the Tahsildar, Pendurthy

Mandal, by conversion of the survey numbers so as to support his suit claim. Defendant 8 therefore prayed for dismissal of the injunction petition.

Perusal of the order under appeal reflects that the trial Court, having extracted the pleadings and documentary evidence and having culled out the legal position at great length by referring to case law, resorted to a rather cursory examination of the factual position in the backdrop of the legal requirements for granting an injunction. The trial Court seems to have misdirected itself in examining the connotations of a *prima facie* case, balance of convenience and irreparable loss and injury, the conditions precedent for grant of a temporary injunction. This is evident from the fact that the trial Court concluded that there must be a *bonafide* contention between the parties to go for trial involving a serious question or controversy to constitute a *prima facie* case. This conclusion was drawn by the trial Court despite referring to **YASHODA SUPER SPECIALITY HOSPITAL V/s. YASHODA MEDICARE AND RESEARCH CENTRE (P) LIMITED¹**, wherein this Court clearly spelt out the legal position to the effect that the plaintiff must not only satisfy the Court that there is a serious question to be tried but also that, on facts, there is a strong probability that he is entitled to relief.

In the present case, there were significant factors which weighed against the plaintiff when it came to demonstrating a *prima facie* case. As per the plaintiff himself, his father owned only Ac.0.16 cents in Survey No.140/8. It is not in dispute that the sale deeds executed by Yalamarathi Venkata Krishna Rao, the GPA Holder, in relation to the plots made in Survey No.140/8 of Chinamushidivada

¹ 2010 (6) ALT 466

Village covered an extent of 556 square yards. After deducting this extent from the extent of Ac.0.16 cents (724.40 square yards), the balance that would be left is only 218.40 square yards. Therefore, even if the claim of the plaintiff that the land purchased in Survey No.140/6 under Ex.P2 was actually the land in Survey No.140/8, there is no correlation between the extents sold and the land left thereafter as claimed by the plaintiff. In any event, the suit bit admeasuring 449.50 square yards could not have been left out of the total extent of Ac.0.16 cents in Survey No.140/8 of the village which belonged to late Marisa Suryanarayana. Another factor which seriously weighs against the plaintiff is the registered partition deed dated 28.07.2012 executed by and between the plaintiff and the other heirs of late Marisa Suryanarayana, wherein they specifically recorded that except for the properties partitioned thereunder, there were no other properties left to be shared by them and no mention was made therein of the suit schedule property.

Though Sri Ravi Cheemalapati, learned counsel, would attempt to argue about the alleged weaknesses in the defendants' case, it is trite law that the plaintiff must succeed on the strength of his own case and cannot seek to do so by poking holes in the case set up by the defence. That apart, the suit plaint proceeds on the premise that the suit schedule property is part and parcel of L.P.No.14 of 1996. However, Sri Ravi Cheemalapati, learned counsel, would assert that it forms part of L.P.No.13 of 1998 and that both the L.P.s may be read together. It is however relevant to note that no mention was made in the plaint about L.P.No.13 of 1998 and the case put up by the plaintiff proceeds only on the assumption that the suit plot forms part of L.P.No.14 of 1996 alone. It is therefore manifest that there is

no clarity even in the mind of the plaintiff as to where exactly this plot would lie in the context of the VUDA approved layout plans.

Thus, as matters stand, the plaintiff is not in a position to even identify and locate the land precisely, be it in terms of the survey number or the layout plan. Perusal of the layout plans in relation to L.P.Nos.13 of 1998 and 14 of 1996 further confound the issue. The suit schedule property is not shown therein as an odd bit. In L.P.No.14 of 1996, the land shown with diagonal stripes is stated to be land to be disposed to the other party. The suit schedule property is also marked with similar diagonal stripes. There is no clear indication as to whether the suit schedule property falls in L.P.No.14 of 1996 or L.P.No.13 of 1998.

To compound these weaknesses in the plaintiff's case, refusal by the alleged co-owners, defendants 9 to 11, to join him in this litigation further dilutes his claim. It is also to be noticed that the plaintiff's claim in relation to the suit property would only be to the extent of a one-third share thereof - about 150 square yards.

The trial Court surmised that to decide the injunction petition the question that fell for consideration was as to who had better title. The question of title may incidentally be gone into at the stage of deciding an injunction petition but that, by itself, cannot be the deciding factor. The trial Court necessarily had to examine as to who was in possession of the suit schedule property and then decide as to whether the balance of convenience tilted in favour of that party so as to prevent irreparable loss and injury being caused to it. In this regard, the trial Court completely ignored a crucial admission made by the plaintiff. The concluding portion of the order under appeal reflects that the plaintiff contended before the trial Court that the

defendants had started construction of a basement in the suit schedule property. This admission clearly disclosed that the plaintiff was no longer in possession, even if he had been in possession earlier. Once the plaintiff stood divested of his possession as patently admitted by him, the question of granting an injunction restraining the defendants from interfering with the alleged possession of the plaintiff did not arise. This aspect of the matter seems to have completely lost the attention of the trial Court.

In the light of the aforestated discrepancies in the plaintiff's own case, the question would arise as to whether he was in a position to seek an injunction against the defendants restraining them from proceeding with construction activity pending disposal of the suit. As pointed out by the Supreme Court in **COLGATE PALMOLIVE (INDIA) LTD. V/s. HINDUSTAN LEVER LTD.**², relying upon the observations of Lord Diplock in **AMERICAN CYANAMID CO. V/s. ETHICON LTD.**³, if damages would be an adequate remedy and the defendant is in a financial position to pay the same, no interlocutory injunction should normally be granted, howsoever strong the plaintiff's claim appears to be at that stage. In the present case, the plaintiff failed to cross the preliminary threshold of making out a *prima facie* case owing to the weaknesses in his own claim as pointed out *supra*. This being the situation, the trial Court was not justified in granting an injunction in his favour completely overlooking the crucial shortcomings in his case.

Both the appeals are accordingly allowed setting aside the order dated 22.08.2016 passed by the learned VII Additional District Judge (Fast Track Court), Visakhapatnam, in I.A.No.519 of 2016 in

² (1999) 7 SCC 1

³ (1975) 1 All ER 504

O.S.No.95 of 2016. Needless to state, the observations made above are only for the limited purpose of disposing of these appeals and shall not influence the trial Court while deciding the issues that arise for consideration in the suit.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

U. DURGA PRASAD RAO, J

27th JANUARY, 2017

PGS

