

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

**CIVIL MISCELLANEOUS APPEAL NO.498 OF 2015
AND
WRIT PETITION NO. 25443 OF 2016**

C O M M O N J U D G M E N T
(Per Hon'ble Sri Justice Sanjay Kumar)

Civil Miscellaneous Appeal No.498 of 2015, under Order 43 Rule 1 CPC, arises out of the order dated 29.01.2015 passed by the learned II Additional Chief Judge, (FAC) Chief Judge, City Civil Court, Hyderabad, in I.A.No.412 of 2012 in O.S.No.65 of 2012. By the said order, the trial Court granted an interim injunction restraining the defendants in the suit from interfering with the peaceful possession of the plaintiffs over the suit schedule property. Aggrieved thereby, defendants 2 to 6 in the suit, the revenue officials of the State, filed this appeal.

Writ Petition No.25443 of 2016 was filed by the plaintiffs in the aforestated O.S.No.65 of 2012 aggrieved by the action of the police and revenue officials of the State of Telangana in causing obstruction to their alleged rights of ownership and possession over the suit schedule property in O.S.No.65 of 2012. They sought a direction to the authorities not to interfere with their possessory rights.

Heard the learned Special Government Pleader attached to the office of the learned Advocate General, State of Telangana, for the appellants in CMA No.498 of 2015, and the respondents in W.P.No.25443 of 2016, and Sri D.Prakash Reddy, learned senior counsel representing Sri Harender Pershad, learned counsel for the respondents in CMA No.498 of 2015, and Sri Mohd.Adnan, learned counsel for the petitioners in W.P.No.25443 of 2016.

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

O.S.No.65 of 2012 was filed for a declaration that the plaintiffs were the owners and possessors of the suit schedule property; a declaration that the sale deed validated on 25.02.2008 pertaining to the suit schedule property was null and void and to consequently direct its cancellation along with the layout regularization proceedings dated 30.08.2011 issued by the Commissioner, Greater Hyderabad Municipal Corporation; and to grant a perpetual injunction restraining the defendants from alienating and transferring the suit schedule property in favour of any third party. The suit schedule property was described as the house bearing Municipal No.8-2-269/2, admeasuring 742 square yards situated at Road No.2, Banjara Hills, Hyderabad, in T.S.No.3/1, Layout No.13 of 1965 and Sy.No.129/11.

The claim of the plaintiffs was that the suit schedule property originally belonged to Ramulu and Narayana, who owned Ac.10.00 each in Sy.No.129/11, Shaikpet Village, known as Banjara Hills, Road No.2, Hyderabad. T.V.Ramachandraiah purchased this total extent of Ac.20.00 from them under registered sale deeds in the year 1964 and plotted the land into 49 plots under sanctioned Layout Plan No.13 of 1965 of the Municipal Corporation of Hyderabad. Plot No.1 in the said layout was purchased by one Mohd.Hasan Khan under registered sale deed No.2994 of 1966. The plot was then transferred by Mohd.Hasan Khan in favour of the first plaintiff, his niece, by way of a gift settlement with possession on 28.02.1974. Mohd.Hasan Khan confirmed the gift in favour of the first plaintiff under document dated 06.01.1975. The first plaintiff gifted the suit plot to her husband Mohd.Ibrahim Shareef on 02.04.2000 and put

him in physical possession. She also executed registered gift settlement deed No.3373 of 2006 dated 14.02.2006 in his favour. Mohd.Ibrahim Shareef died on 05.04.2011 and thereupon the plaintiffs, being his widow and daughters, succeeded to the property.

The plaintiffs alleged that the revenue officials had come to the suit plot in March, 2006 seeking to take measurements asserting that it was Government property. O.S.No.1056 of 2006 was thereupon filed by Mohd.Ibrahim Shareef before the learned IV Senior Civil Judge, City Civil Court, Hyderabad, for a perpetual injunction against the State but it was dismissed. A.S.No.6 of 2011 was filed by Mohd.Ibrahim Shareef before the learned Chief Judge, City Civil Court, Hyderabad, and after his death, the plaintiffs were brought on record in the said appeal. While so, on 30.10.2011, G.Kondal Reddy, the first defendant, came to the suit plot along with labourers and tried to demolish some structures. A similar attempt was made by him again on 31.12.2011 with the help of revenue officials. The first defendant claimed ownership as well as layout regularization of the suit plot and after making enquiries, the plaintiffs obtained copies of his documents. The unregistered sale deed relied upon by the first defendant, allegedly executed by Mohd. Hassan Khan, was denied. The plaintiffs therefore filed the suit seeking the reliefs set out *supra*.

The Tahsildar, Shaikpet Mandal, the sixth defendant, filed a written statement, wherein he stated as under:

Late Mohd. Ibrahim Shareef filed O.S.No.1056 of 2006 before the learned IV Senior Civil Judge, City Civil Court, Hyderabad, claiming that the suit property existed in Sy.No.129/11/Paiki. After the dismissal of the suit, an appeal was filed by him, but during its pendency, he expired and the present plaintiffs got impleaded as his

legal representatives. The Tahsildar stated that there was collusion between the plaintiffs and the first defendant and that neither of them was in possession of the property or had title thereto. He denied the sequence of events as narrated by the plaintiffs and asserted that the plot purchased by Mohd.Hasan Khan from T.V.Ramachandraiah in the year 1966 did not correlate to the suit schedule property. According to him, the total extent of land in T.S.No.3/1 was 8,868 square metres and after deducting the area covered by allotments and encroachments, an extent of 373 square metres was still left in the possession of the Government. He pointed out that there was no consistency as regards the extent of the plot claimed by the plaintiffs and asserted that the plaintiffs were claiming Government land in T.S.No.3/1 which correlated to Sy.No.403/P of Shaikpet Mandal. He asserted that the Government alone had title and possession over the suit schedule property and that the plaintiffs and the first defendant had no right over the same.

The trial Court referred to the fact that when the State filed Land Grabbing Case No.24 of 1991 before the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982, against Anand Prabhat Co-operative Housing Society, Hyderabad, and others, alleging that they had grabbed Government land in an extent of 1616 square metres in Sy.No.403/Part, the same was contested by the other side claiming that the land in question was situated in Sy.No.129/11/Paiki. The stand of the State was that Sy.No.129/11/Paiki did not exist. However, L.G.C.No.24 of 1991 was dismissed, *vide* judgment dated 29.12.1995, holding that Sy.No.129/11/Paiki existed but observing that the judgment would not preclude the State from instituting fresh proceedings against the

society and its members if sufficient grounds exist. When O.S.No.1615 of 1979 was filed by Anand Prabhat Co-operative Housing Society, Hyderabad, before the learned VII Assistant Judge, City Civil Court, Hyderabad, for a perpetual injunction restraining the District Collector, Hyderabad, and others from interfering with its possession, the same was dismissed by judgment dated 19.09.1991. Aggrieved thereby, the society filed A.S.No.209 of 1991 before the learned V Additional Chief Judge, City Civil Court, Hyderabad. Basing on the findings in L.G.C.No.24 of 1991, A.S.No.209 of 1991 was allowed holding that Sy.No.129/11/Paiki was in existence and that the society and its predecessors-in-title were in possession of the land in question since 1930. S.A.No.689 of 1998 filed by the State against the said judgment was dismissed by this Court.

Thereafter, the State again filed L.G.C.No.167 of 1999 against Anand Prabhat Co-operative Housing Society and its members seeking a declaration that they were grabbers of the land in question and for recovery of its possession. W.P.No.16097 of 2000 was thereupon filed by the society before this Court seeking a declaration that L.G.C.No.167 of 1999 was hit by the principle of *res judicata* in view of the judgment in L.G.C.No.24 of 1991. By order dated 11.02.2000, this Court allowed the writ petition. Aggrieved thereby, the State preferred Civil Appeal No.3607 of 2003 before the Supreme Court and the same was allowed, by order dated 21.04.2003, remanding the matter to the Special Court with a direction to decide the plea of *res judicata* as a preliminary issue. By order dated 02.03.2005, the Special Court dismissed the L.G.C. Aggrieved thereby, the State preferred W.P.No.15174 of 2005 before this Court. By order dated 26.11.2010, a Division Bench of this Court dismissed

the said W.P. affirming that Sy.No.129/11/Paiki was very much in existence; that the land claimed by the society and its members was located therein and did not fall in Sy.No.403/Part. The judgment in W.P.No.15174 of 2005 attained finality upon the State's Special Leave to Appeal (Civil) No.14990 of 2011 being dismissed by the Supreme Court, *vide* order dated 23.09.2011.

The trial Court, having taken note of the finality that attached to the finding that Sy.No.129/11/Paiki existed and that the land claimed by Anand Prabhat Co-operative Housing Society, Hyderabad, was situated therein and not in Sy.No.403/Part of Shaikpet Village, opined that the contrary finding rendered in the judgment delivered in O.S.No.1056 of 2006 that Sy.No.129/11/Paiki did not exist had no value. Reliance was also placed by the trial Court upon the documentary evidence in relation to the transactions of T.V.Ramachandraiah and the other alleged predecessors-in-title of the plaintiffs. Holding that the plaintiffs were in continuous possession of the suit schedule property after the death of Mohd.Ibrahim Shareef and were paying property tax to the Municipal Corporation of Hyderabad apart from electricity and water consumption charges to the concerned departments, the trial Court granted an interim injunction as prayed for.

The learned Special Government Pleader would contend that the trial Court was wholly carried away by the final finding as to the existence of Sy.No.129/11/Paiki in Shaikpet Village and completely overlooked the fact that the predecessor-in-title of the plaintiffs, Mohd.Ibrahim Shareef, failed in O.S.No.1056 of 2006, not only on that ground but also because he could not establish his possession over the very same suit schedule property. Learned Special

Government Pleader would further contend that as the plaintiffs' appeal in A.S.No.6 of 2011 was still pending consideration before the appellate Court, they could not again seek the relief of a temporary injunction in the present suit. He would also point out that the prayer in the suit did not cover such an injunction and the relief of such a temporary injunction was beyond the scope of the suit.

Learned Special Government Pleader would contend that there is still no clarity as to the identity of the plot claimed by the plaintiffs inasmuch as the boundaries of the said plot, claimed under various documents, did not even tally. He would point out that the boundaries mentioned in the sale deed executed by T.V.Ramachandraiah in favour of Mohd.Hasan Khan are wholly different from those mentioned in the gift deed executed by Mohd.Hasan Khan in favour of the first plaintiff. Similarly, the gift deed executed by the first plaintiff in favour of her husband, Mohd.Ibrahim Shareef, sets out boundaries which do not tally with those mentioned in the gift deed under which she claimed. He would further point out that the documents relied upon by the plaintiffs indicated that the property claimed by them was situated in Road No.3 and not in Road No.2. He would assert that the suit schedule property is a Government land which was given to the Registration Department for construction of its office under panchanama dated 01.07.2011 and that the plaintiffs had no right to seek any interim injunction at this stage, as they could not even identify their land, let alone prove their possession over the same. He would point out that the present I.A. was filed in 2012, wherein the State filed its counter in February, 2012, and the injunction was granted only in January, 2015, which was wholly uncalled for at that belated stage.

Per contra, Sri D.Prakash Reddy, learned senior counsel, would assert that in the light of the final finding that the land which was dealt with by T.V.Ramachandraiah and was plotted under L.P.No.13 of 1965 was in Sy.No.129/11/Paiki and not in Sy.No.403/Part as claimed by the Government, the State could not again seek to raise that issue. He would further state that the plaintiffs claim under the Anand Prabhat Co-operative Housing Society, and therefore, the findings rendered in its favour would enure to their benefit also. He would further argue that the issue of the boundaries not tallying had not been raised before the trial Court and would strive to explain the discrepancies by stating that a road was laid after execution of one document which led to discrepancies in the boundaries in the next document. He would assert that there was significant lapse of time between executions of the documents relied upon by the plaintiffs and, therefore, these discrepancies were not of importance.

In reply, the learned Special Government Pleader would again assert that it is not open to the plaintiffs to seek a temporary injunction owing to the pendency of their appeal against the dismissal of the injunction suit, O.S.No.1056 of 2006.

Having given our earnest consideration to the order under appeal and the aforestated submissions, we are of the opinion that two separate issues have erroneously been clubbed together to consider the entitlement of the plaintiffs to a temporary injunction pending the suit. In so far as the transactions relating to Anand Prabhat Co-operative Housing Society in Layout Plan No.13 of 1965 situated in Sy.No.129/11/Paiki are concerned, the issue has attained finality to the effect that the land claimed by the said society is not part of Sy.No.403/Part claimed by the Government. However, the

crucial question is whether the plaintiffs have independently established their title and possession over one of the plots in the said layout, and more particularly, Plot No.1. Significantly, they do not claim under the said society and no material is placed on record in proof of their being members of the said society. The original document of title under which they claim is the registered sale deed No.2994 of 1966 dated 09.12.1966 executed by T.V.Ramachandraiah in favour of Mohd.Hasan Khan. This document records the boundaries of the said plot as under:

North : Open land;

South: Plot No.2;

East : Road No.2 measuring 12.5 metres width;

West : Open land;

This description of the boundaries tallies with those of Plot No.1 in the Revised Layout Plan No.13 of 1965 placed before us. However, the plaint schedule indicates the boundaries of the suit plot claimed by the plaintiffs as under:

North : Neighbours property;

South: Road;

East : Neighbours property having Municipal No.
8-2-269/A/3;

West : Neighbours property having Municipal No.
8-2-269/A/5;

Leaving aside the discrepancies in description of the boundaries in the various documents under which the plaintiffs claim, we find no clarity as to the identity of the suit plot, which is claimed by them as Plot No.1 in Layout No.13 of 1965, when the suit schedule is compared with the layout plan. The confusion in this regard gets further compounded when the boundaries of Plot No.1 in Layout Plan No.13 of 1965 are compared with those set out in the registered gift deed No.3373 of 2006 executed by the first plaintiff in

favour of her husband Mohd.Ibrahim Shareef. Road No.3 shown in the layout plan is shown as Road No.2 therein and there is no correlation between Plot No.1 shown in the layout plan and the plot allegedly gifted under the said document. The approach road to the plot shown in the layout plan is also reduced drastically from 12.5 metres width to 20 feet width. The documents of possession relied upon by the plaintiffs, being electricity bills, water bills and property tax payment receipts, are insufficient to correlate them with what is now claimed as Plot No.1 in Layout Plan No.13 of 1965. The identity and location of the suit plot claimed by the plaintiffs is therefore far from clear at this stage.

That apart, this Court finds merit in the submission of the learned Special Government Pleader that when the plaintiffs' predecessor-in-title, Mohd.Ibrahim Shareef, failed in his endeavour to secure a perpetual injunction against the State in relation to the very same suit schedule property on the ground that he could not establish his possession and the appeal arising therefrom is presently pending and is being prosecuted by the plaintiffs, they cannot independently seek to secure a temporary injunction in a subsequent suit filed for various declarations and for an injunction against alienation. Accepting that Layout Plan No.13 of 1965 was plotted in Sy.No.129/11/Paiki, this Court is not in a position to link up and correlate the same with the suit schedule plot which is claimed as being part and parcel of the said layout plan. The plaintiffs therefore failed to cross the initial hurdle of establishing a *prima facie* case in terms of their being in possession of the property claimed by them in the suit. To begin with, there is no clarity as to the identity and location of the said property and the finding rendered against

Mohd.Ibrahim Shareef, the predecessor-in-title of the plaintiffs, in O.S.No.1056 of 2006 to the effect that he failed to establish his possession over the same still stands as on date.

Given these facts, this Court is of the opinion that the trial Court erred in solely relying upon the findings rendered in relation to Layout Plan No.13 of 1965 in the context of the society without examining as to whether the plaintiffs further established their claim that the suit property was Plot No.1 in the said layout plan and that they had possession over the same.

We therefore set aside the order under appeal. Needless to state, observations made in this order shall not be binding on the trial Court at the time of adjudication of the issues arising in the suit.

The Civil Miscellaneous Appeal is accordingly allowed.

In the light of the order passed in the Civil Miscellaneous Appeal as aforesaid, no further orders are required to be passed in Writ Petition No.25443 of 2016 which was filed by the plaintiffs in the suit relying upon the interim injunction granted in their favour. The Writ Petition is accordingly dismissed.

Pending miscellaneous petitions, if any, in both the cases, shall stand closed in the light of this final order. In the circumstances, there shall be no order as to costs.

SANJAY KUMAR, J

M.S.K.JAISWAL, J

27th JANUARY, 2017

PGS