

THE HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1630 of 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order dated 11.03.2016 passed in C.M.A.No.3 of 2015 on the file of the Court of Additional District Judge, Narsapur, West Godavari District wherein and whereby the order dated 19.02.2015 in I.A.No.1309 of 2014 in O.S.No.250 of 2014 on the file of Senior Civil Judge Court, Narsapur was set aside.

2. The petitioners herein are the plaintiffs and the respondents herein are defendants. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in this civil revision petition.

3. Heard the learned counsel for both the parties.

4. The contention of the learned counsel for the petitioners is three fold: (1) The appellate Court set aside the order of the trial Court in I.A. No.1309 of 2014 on erroneous grounds; (2) The findings recorded by the appellate Court in C.M.A.No.3 of 2015 are contrary to the recitals of the documents available on record; and (3) The order in C.M.A.No.3 of 2015 is not sustainable either on facts or in law. *Per contra*, learned counsel for the respondents submitted that the trial Court failed to consider the scope of Order XXXIX Rules 1 and 2 CPC and granted interim injunction in favour of the petitioners. The appellate Court rightly considered the scope of Order XXXIX Rules 1 and 2 CPC and allowed the appeal and there is no illegality or irregularity in the order dated 11.03.2016 in C.M.A.No.3 of 2015, therefore it is a fit case to dismiss the revision.

5. The facts leading to filing of the present revision petition are briefly as follows: The petitioners have filed O.S.No.250 of 2014 on the

file of the Senior Civil Judge, Narsapur against the respondents for declaration of title and perpetual injunction in respect of three items of Zeroyti dry land viz., Ac.1.00, Ac.0.40 cents and Ac.0.91 cents out of Acs.3.99 cents in R.S.No.629/ 2 of Rustumbada village, Narsapur Mandal, West Godavari District. Along with the suit, the petitioners have filed I.A.No.1309 of 2014 seeking temporary injunction. Initially the trial Court granted *ad interim* injunction in favour of the petitioners. The respondents have filed counter opposing granting of *ad interim* injunction. The trial Court, after affording reasonable opportunity to both the parties, allowed I.A.No.1309 of 2014 on 19.02.2015. Feeling aggrieved by the order dated 19.02.2015 in I.A.No.1309 of 2014, the respondents have filed C.M.A.No.3 of 2015 on the file of the Additional Senior Civil Judge Court, Narsapur. The appellate Court, after affording reasonable opportunity to both the parties, allowed C.M.A.No.3 of 2015 on 11.03.2016 setting aside the order dated 19.02.2015 in I.A. No.1309 of 2014. Hence, the present revision.

6. It is the case of the petitioners that the marriage of Bandela Mohan was performed with the first petitioner on 29.05.1980. Out of the lawful wedlock, Bandela Mohan and the first petitioner were blessed with three children, i.e., petitioner Nos.2, 3 and 4. Bandela Mohan purchased the plaint schedule property under registered sale deeds dated 08.09.1988 and 11.11.1988 (Exs.P9, P10 and P11). The suit schedule property is a coconut garden in a total extent of Ac.2.31 cents situated in Rustumbada village, Narsapur Mandal, West Godavari District. Bandela Mohan died on 23.04.2014 at Antervedipalem. The revenue authorities issued a pattadar pass book and title deed in favour of Bandela Mohan (Exs.P12 and P13) in respect of suit schedule property. It is the case of the first respondent that Bandela Mohan married her on

08.09.1995 in a church. Ex.P1 is the marriage certificate. It is the further case of the first respondent that the said Mohan executed an unregistered Will in her favour on 22.12.2013 bequeathing the suit schedule property. The first respondent executed a General Power of Attorney in favour of respondent Nos.2 to 5 on 10.10.2014.

7. Before considering to the facts of the case, it is not out of place to refer the case law on which learned counsel for the respondents is placing reliance (1) *Kashi Math Samsthan v. Shrimad Sudhindra Thirtha Swamy*¹ wherein Paragraph No.16 reads as follows:

“16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court.”

(2) *Yashoda Super Speciality Hospitals v. Yashoda Medicare and Research Centre (P) Ltd.*² wherein paragraph Nos.14, 15 and 16 read thus:

“14. Grant or refusal of injunction is guided by three well established principles viz.,(1) if the plaintiff has made out a *prima facie* case, (2) if the balance of convenience is in his favour i.e., it would be greater inconvenience to the plaintiff if the injunction is not granted than the inconvenience which the defendant or persons claiming through him would be put to and (3) if the temporary injunction is granted, plaintiff suffers irreparable injury.

15. Temporary injunction is explained in sub-section (1) of Section 37 of the Specific Relief Act, 1963 which reads temporary injunctions are such as are to continue until a specified time, or until the further order of the Court and they may be granted at

¹ (2010) 1 SCC 689

² 2010(6) ALT 466

any stage of a suit, and are regulated by Civil Procedure Code. It has to be remembered that a suit for injunction is equitable remedy and the primary requirement for grant of equitable relief is, a person who claims the remedy must come before the Court with clean hands. He must show equity and entitlement under the equity, the relief as sought. Fairness and good faith are two important things required for obtaining any equitable relief.

16. With regard to *prima facie* case, it is a case to be made out by proper and sufficient material. The court must be satisfied that there is a serious question to be tried at the hearing and that on the facts before it, there is a probability that the plaintiff is entitled to relief. The material available to the Court at the hearing of the application, must satisfy that the success at the trial is probable and impending danger must be eminent and impressive. By probability is meant the likelihood of anything to be true, deduced from its conformity to our knowledge, observation and experience.”

(3) *Ramaola alias Easthar Bhagyavathi v. Jacob Nava Maniraja*³ wherein it was held that unless the petitioners establish their claim to suit properties, *prima facie*, by filing necessary documents, no interim relief of injunction can be granted.

8. It is not in dispute that the first petitioner is the legally wedded wife of Bandela Mohan and petitioner Nos.2 to 4 are children of Mohan and the first petitioner. It is also not in dispute that the suit schedule property was purchased by Mohan under three different registered sale deeds referred supra. The revenue authorities also granted pattadar pass book and title deed in favour of Bandela Mohan (Exs.P12 and P13) in respect of suit schedule property. As per the contention of the first respondent, Bandela Mohan gave divorce to the first petitioner in the presence of elders and the same was reduced into writing. Admittedly, the first respondent did not produce the alleged divorce letter before the trial Court. It is not the case of the first respondent that Bandela Mohan had obtained divorce in a Court of law. Having admitted the factum of marriage between the first petitioner and Bandela Mohan, *prima facie*, the first respondent has to establish the dissolution of

³ 2013 (1) ALT 87 (D.B.)

marriage between them in accordance with law. Unless and until the contrary is proved, for all practical purposes, the first petitioner will be treated as legally wedded wife of Bandela Mohan and petitioner Nos.2 to 4 are children of late Mohan. Having regard to the facts and circumstances of the case, this Court is unable to accede to the contention of the learned counsel for the first respondent that the first petitioner is the divorced wife of Bandela Mohan.

9. Learned counsel for the respondents strenuously submitted that the trial Court has not considered Exs.R1 to R6. Ex.R1 is the marriage certificate, Ex.R2 is the Household card, Ex.R3 is the photograph, Ex.R4 is the voter identity card, Ex.R5 is the Aadhar Card and Ex.R6 is the Family Members Certificate. Respondents have placed much reliance on these documents to establish that the first respondent is the wife of Bandela Mohan. As observed earlier, unless and until the marriage between the first petitioner and late Bandela Mohan is dissolved by the competent Court, *prima facie* no reliance can be placed on these documents.

10. The other contention of the learned counsel for the respondents is that Bandela Mohan executed a Will dated 22.12.2013 in favour of the first respondent. It is the case of the respondents that the first respondent handed over the will to the Station House Officer, Narsapur Town in connection with Crime No.201 of 2014. In order to appreciate the contention of the respondents, this Court carefully scanned Ex.R7 which is the notice given to R1's counsel by the Inspector of Police. It is not mentioned in Ex.R7 that the alleged Will was handed over to Sub-Inspector of Police, Narsapur I Town. It is not in dispute that the alleged Will dated 22.12.2013 was not produced either before the trial Court or the appellate Court. In view of the pendency of the suit, this Court is

not inclined to express any opinion touching the validity or otherwise of the Will dated 22.12.2013. No material is placed before the trial Court *prima facie* to prove execution of Will by Bandela Mohan in favour of the first respondent.

11. As rightly pointed out by the learned counsel for the respondents, it is the duty of the petitioners to prove *prima facie* case and balance of convenience is in their favour and irreparable loss likely to be caused to them if no injunction is granted. It is a settled principle of law that the petitioners being class-1 legal heirs of late Mohan are entitled to succeed his property in ordinary course. To prove *prima facie* possession, the petitioners mainly placed reliance on the partition deed dated 12.09.2014 (Ex.P5). Learned counsel for the respondents submitted that the first respondent is not a party to Ex.P5; therefore, much weight cannot be attached to it. While deciding the interlocutory applications, the Court can place *prima facie* reliance on the documents produced by the parties to the proceedings. The recitals of Ex.P5 *prima facie* reveal that the petitioners have been in possession and enjoyment of the suit schedule property. The petitioners gave a publication (Ex.P7) dated 20.07.2014 stating that they became the absolute owners of the suit schedule property after the death of Bandela Mohan. For one reason or the other, the first respondent did not issue befitting reply to it. The Court can place *prima facie* reliance on Ex.P7. As per the recitals of Ex.P7 the petitioners have been in possession and enjoyment of the suit schedule property in pursuance of the partition deed. Ex.P14 is the Aadhar Card of Bandela Mohan and Ex.P15 is the Voter Identity Card. No doubt both parties have filed voter identity cards. Therefore, this Court is not inclined to express any opinion on these documents in this revision petition. The first respondent has taken a specific plea in

the counter that the petitioners have forcibly taken away Bandela Mohan to Antervedipalem village on 30.12.2013. It is an admitted fact that the said Mohan died on 23.04.2014 at Antervedipalem. The first respondent did not produce any document to establish that the petitioners have forcibly taken away Bandela Mohan to Antervedipalem on 30.12.2013. The time gap between alleged execution of the Will and taking away of Bandela Mohan from the alleged custody of the first respondent is only eight days. All these aspects clearly go to prove that the balance of convenience is also in favour of the petitioners.

12. While deciding the petitions filed under Order XXXIX Rules 1 and 2 CPC, the Court can take into consideration the probabilities of the case. As observed earlier, the first petitioner is the wife, petitioner Nos.2 to 4 are the children of late Mohan. The first respondent executed a General Power of Attorney in favour of respondent Nos.2 to 5 on 10.10.2014. The possibility of dispossessing the petitioners from the suit schedule property by respondent Nos.2 to 5, by taking advantage of alleged General Power of Attorney dated 10.10.2014 cannot be ruled out completely. If the respondent Nos.2 to 5 are allowed to deal with the suit schedule property in any manner, it may cause irreparable loss to the petitioners, which cannot be compensated in terms of money. During pendency of the suit if the petitioners were dispossessed, it may cause untold hardship to them. If no injunction is granted in favour of the petitioners, it may cause irreparable loss and injury to them. In such circumstances, legally they are entitled to succeed the properties of Bandela Mohan unless and until the contrary is proved.

13. The trial Court considered all these aspects in right perspective and granted *ad interim* injunction in favour of the petitioners initially and made absolute subsequently. The appellate Court simply extracted

some paragraphs of the order of the trial Court, the provisions of Section 101, 102 and 103 of Indian Evidence Act and set aside the order of the trial Court dated 19.02.2015 on a premise that there is illegality in the order. The appellate Court has not specifically stated the illegality committed by the trial Court. No specific finding was given by the appellate Court that the trial Court wrongly placed reliance on a particular document produced by the petitioners. The appellate Court has not assigned reasons much less cogent and valid reasons while setting aside the orders of the trial Court. I am fully agreeing with the findings recorded by the trial Court. The findings recorded by the appellate Court are not sustainable either on facts or in law and liable to be set aside.

14. In the result, the Civil Revision Petition is allowed setting aside the order dated 11.03.2016 in C.M.A.No.3 of 2015 on the file of the Additional District Judge, Narsapur. Consequently, the order dated 19.02.2015 in I.A.No.1309 of 2014 in O.S.No.250 of 2014 stands allowed. The observations if any made in this revision petition are only for disposal of this revision petition only. Miscellaneous Petitions, if any pending in this civil revision petition, shall stand closed.

T.SUNIL CHOWDARY, J

6th February 2017.
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