

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CIVIL REVISION PETITION No.1654 OF 2011**

**ORDER:**

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 06.04.2011 in C.M.A.No.44 of 2010 on the file of the Court of the III-Additional District Judge, Warangal, wherein and whereby reversing the order dated 20.04.2010 in I.A.No.722 of 2009 in O.S.No.614 of 2009 on the file of the Court of the Principal Senior Civil Judge at Warangal.

2. The contention of the learned counsel for the petitioner is three fold: (1) the appellate Court has not considered the scope of judgment and decree in O.S.No.1282 of 2006 and allowed the C.M.A. on erroneous grounds; (2) the appellate Court has not given a specific finding that the respondent is in possession of the property as on the date of filing of the suit; and (3) the order passed by the appellate Court is not sustainable either on facts or in law.

3. *Per contra*, the learned counsel for the respondent submitted that the trial Court has not considered the scope of Ex.P.1 – gift deed dated 27.07.2009 and vacated the interim injunction on erroneous grounds. She further submitted that the appellate Court has given cogent and valid reasons to its findings; therefore, it is not a fit case to interfere with the same.

4. The facts leading to filing of the present revision are briefly as follows:

The respondent herein filed O.S.No.614 of 2009 on the file of the Court of the Principal Senior Civil Judge at Warangal against the petitioner for perpetual injunction in respect of the suit schedule property. Along with the suit, the respondent filed I.A.No.722 of 2009 seeking ad-interim injunction. The trial Court initially granted ad-interim injunction in favour of the respondent on 08.10.2009. In the trial Court, on behalf of the petitioner, Exs.R.1 to R.5 were marked. On behalf of the respondent, Exs.P.1 to P.12 were marked. After having a thoughtful consideration to the material available on record, the trial Court dismissed the said I.A. on 20.04.2010. Feeling aggrieved by the order of the trial Court, the respondent herein filed C.M.A.No.44 of 2010 on the file of the Court of the III-Additional District Judge, Warangal. The appellate Court allowed the said C.M.A. on 06.04.2011. Hence, the present revision.

5. It is the case of the respondent that originally the property belongs to one Kondaiah from whom her father-in-law purchased. It is the further case of the respondent that her husband Salendra Kumaraswamy executed a gift deed in respect of suit schedule property in her favour on 04.08.2009. It is the case of the petitioner that he purchased the property under an agreement of sale dated 24.12.1987.

7. It is not in dispute that the petitioner herein filed O.S.No.1282 of 2006 against the husband of the respondent in respect of the suit schedule property. After full-fledged trial, the

trial Court granted perpetual injunction in favour of the petitioner herein and against the husband of the respondent. Neither the husband of the respondent, after his death, nor the respondent herein preferred any appeal challenging the judgment and decree in O.S.No.1282 of 2006. After the death of her husband, the respondent filed O.S.No.614 of 2009 against the petitioner seeking perpetual injunction. Except the northern boundary, remaining three boundaries are one and the same in O.S.No.1282 of 2006 and O.S.No.614 of 2009. This clearly indicates that the subject matter involved in O.S.No.1282 of 2006 and the present suit is one and the same. The appellate Court granted the injunction in favour of the respondent on the sole ground that a criminal case is registered against the petitioner in respect of the subject matter. Admittedly, the respondent has not filed F.I.R copy before the trial Court. Mere addressing of a letter by the Gram Panchayat to the Sub-Inspector of Police by itself is not a valid ground to grant interim injunction in favour of the respondent. It is needless to say that a person, who approaches the Court seeking relief of interim injunction, must come to the Court with clean hands. Establishment of *prima facie* case, balance of convenience in favour of the petitioner and irreparable loss likely to be caused to the petitioner is *sine qua non* to grant an interim injunction. The respondent *prima facie* failed to establish that she was in possession of the property as on the date of filing of the suit. Balance of convenience is also not in favour of the respondent. If injunction is granted in favour of the respondent, the same may cause untold hardship and prejudice to the petitioner. As observed earlier, there is no interim injunction in favour of

respondent, except for a period of four months, during pendency of I.A.No.722 of 2009 or C.M.A.No.44 of 2010. The findings recorded by the appellate Court are not sustainable either on facts or in law. The appellate Court failed to consider that the respondent herein approached the Court by suppressing the *factum* of granting perpetual injunction in favour of petitioner against the husband of the respondent in O.S.No.1282 of 2006. This clearly indicates that the respondent has not approached the Court with clean hands.

8. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the order dated 06.04.2011 in C.M.A.No.44 of 2010 on the file of the Court of the III-Additional District Judge, Warangal.

9. Accordingly, the Civil Revision Petition is allowed setting aside the order dated 06.04.2011 in C.M.A.No.44 of 2010 on the file of the Court of the III-Additional District Judge, Warangal. Consequently, I.A.No.722 of 2009 in O.S.No.614 of 2009 on the file of the Court of the Principal Senior Civil Judge at Warangal stands dismissed. There shall be no order as to costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

**T.SUNIL CHOWDARY, J**

Date: 10.03.2017  
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