

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.254 of 2017

JUDGMENT:

The appellants are the defendants in partition suit O.S.No.220 of 2015 and respondents in injunction petition not to alienate sought in I.A.No.596 of 2015 on the file of Senior Civil Judge, Nalgonda. Impugning the order granting injunction restraining the respondents from alienating the plaint A schedule properties consisting of 7 items total Ac.18-19 $\frac{1}{4}$ gts of Dorepally village and plaint B schedule property consisting of 1 item of two mulgies and residential house at Sri Ram Nagar, Nalgonda Town, the present CMA is maintained.

2. In O.S.No.220 of 2015, the plaintiff sought $\frac{1}{6}$ th share saying defendant Nos.1 to 5 each entitled to $\frac{1}{6}$ th share and that they all members of the joint family. The 7th defendant is the husband of the 4th defendant and 8th defendant even no way concerned with the family of plaintiff and defendant Nos.1 to 7. It is the further say that 1st defendant is their family manager and plaintiff working as Government employee for past 20 years and took the responsibility of performing marriages of defendant Nos.2 to 5 by spending amounts by contributing his salary earnings all these years and defendant No.1 is managing the family affairs, purchased viz., item No.1 Ac.2.00 gts in S.No.40/U1 in his name, another Ac.2-00 gts item No.2 in S.No.40/U1 in the name of 7th defendant, also purchased Ac.5-13 gts in S.No.40/1 item No.3 in the name of 4th defendant, also purchased Ac.1-35 gts in S.No.41/1 item No.4 also in the name of 4th defendant, also purchased Ac.2-25 $\frac{1}{4}$ gts in S.No.37/1 item

No.5 also in the name of 4th defendant, also purchased Ac.2-13 gts in S.No.37A2/1 item No.6 in the name of 6th defendant and also purchased Ac.2-13 gts in S.No.37E item No.7 in the name of 3rd defendant and also acquired a residential house with two mulgies in plaint B schedule property having constructed that stands in his name and all these are joint family properties for which plaintiff also contributed along with the 1st defendant even purchased in the name of one or other of the family members and thereby they all i.e., plaintiff and defendant Nos.1 to 5 are entitled to 1/6th share each in the properties and the same is liable for partition and for their non-cooperation in constraining to file suit to pass preliminary decree from the cause of action alleged therefrom demands for partition and non-cooperation with the averments and by saying the defendants pending suit are trying to alienate the properties in the name of 3rd parties, which may creep in third party interest and complications thereby necessary to grant temporary injunction restraining from alienation pending disposal of the suit sought the temporary injunction in I.A.No.596 of 2015 supra.

3. The counter filed in opposing the injunction petition by the defendants is with the say that none of the properties are part and parcel of joint family and they filed their written statement which is to be read as part of the counter and the petition for injunction not to alienate is not maintainable and it is liable to be dismissed and the written statement averments is with the contest of them that the suit is liable to be dismissed in limini for none of the properties are partible and the plaintiff came to the Court by suppression of material facts, but for relationship

between the parties, the other averments are baseless and unsustainable. The plaintiff was educated with the earnings of the 1st defendant by spending huge amounts including for his engineering course after polytechnic by educating at Hyderabad. The plaintiff contributed his salary for the family development and for the marriages of defendant Nos.2 to 5 or for purchase of properties are untrue and these are the exclusive properties of respective defendants and D.7 is unnecessarily made as party to the suit. Neither plaintiff nor other defendants can lay any claim over the respective properties of the 1st defendant or other respective defendants and the suit for partition is misconceived for plaintiff not entitled to any relief. The 1st defendant was doing kirana business and it is his hard earned money in purchasing all the properties and in construction of the house and the shops and thereby sought for dismissal of the petition.

4. The impugned order of the lower Court dated 24.11.2016 speaks that the counter of the respondents is in the saying that none of the suit properties are part and parcel of the joint family and plaintiff cannot seek injunction against the defendants/respondents. It is observed that rights over the properties pending suit in the injunction petition cannot be decided and till the nature of properties is decided in the suit, it is appropriate to preserve the property otherwise the respondents will alienate the properties which may lead to multiplicity of proceedings and thereby it is just to grant injunction. It is said order impugned in CMA with contentions that the impugned order is outcome of non-application of mind and non consideration of several contentions raised in the written

statement to read as part of counter and by not referring to the same and there is neither prima facie nor balance of convenience in favour of plaintiff much less he will suffer irreparable injury for there are joint family or partible properties, thereby sought for setting aside the orders of the lower Court granting injunction by allowing the appeal.

5. Learned counsel for the respondent/plaintiff to the CMA supported the order of the lower Court.

6. Heard and perused the material on record.

7. From the plaint and written statement averments with reference to the counter and injunction petition with no documents filed by the plaintiff for showing any of the items are the properties acquired in the name of the plaintiff and there is nothing even showing any property is a joint family property inherited by the 1st defendant's father, for the plaintiff to claim with three or more than three generations much less sufficiency of nucleus for the acquisition, merely because the plaintiff asked the lower Court could not have been granted the injunction without considering the existence of prima facie case besides balance of convenience in whose favour it lies among plaintiff and defendants respectively and whether plaintiff suffer any irreparable loss or injury from any granting of the relief rather than not granting; for the 3 prerequisites that to be made out and thereby the order of the lower Court is unsustainable.

8. Accordingly and in the result, the Civil Miscellaneous Appeal is allowed and the order of the lower Court in granting

injunction not to alienate the plaint schedule properties is set aside and it is made clear that none of the observations made in that order granting injunction by lower Court or the allowing of the appeal by setting aside the same by this Court will influence the mind of the trial Court in deciding the suit on own merits. It is also made clear by virtue of this order that any alienation made by any of the defendants in favour of any third parties, it will not prejudice or effect in any manner any of the right of the plaintiff to claim partition and separate possession if otherwise entitled, but for to workout any equities in the event of deciding the suit on own merits and in the event of plaintiff's success on such merits.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 15.12.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

