

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE M.S.K.JAISWAL

C.M.A.No.638 of 2017

Date:13.7.2017

Between.

Kakumanu Naga Vijaya Lakshmi,
W/o Late Narasimha Rao and three others.

..... Appellants

And.

Kakumanu Sudharshan Rao,
S/o Subrahmanya Gupta and
four others.

..... Respondents

Counsel for the appellants. Mr. Challa Srinivasa Reddy

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Civil Miscellaneous Appeal is filed, with a delay of 32 days, against order, dated 30.9.2015, in I.A.No.1024 of 2015 in O.S.No.299 of 2015 on the file of the learned IV Additional District Judge, Guntur. However, since the appeal is numbered, we are inclined to dispose of the same at the admission stage.

We have heard Mr. Challa Srinivasa Reddy, learned counsel for the appellants, and perused the record.

For convenience, the parties will hereinafter be referred to as they are arrayed in the afore-mentioned suit.

The plaintiffs filed the afore-mentioned suit for partition of the suit schedule properties in two equal shares and allotment of one such share to them. It is their pleaded case that one Kakumanu Narasimha Rao and defendant No.1 are brothers; that both of them started living jointly and did partnership businesses in the name and style of M/s Om Sri Venkateswara Agencies, M/s Om Sri Venkateswara Traders and M/s Om Narasimha Traders; that plaintiff No.1 is the wife and plaintiff Nos.2 to 4 are the children of the said Kakumanu Narasimha Rao; that out of the income derived from the joint family businesses, the suit schedule properties were purchased jointly in the names of the members of the joint family with an understanding that both the brothers shall have equal rights in

all the joint family properties; and that as the defendants failed to allot their share to them after the demise of Kakumanu Narasimha Rao, they have filed the said suit. Along with the said suit, the plaintiffs have filed I.A.No.1024 of 2015 for appointment of a Receiver for taking possession of the suit schedule properties, collecting rents and depositing the lease amounts to the credit of the said suit.

It is averred in the affidavit, filed in support of the said application, that since August, 2011, defendant No.1 has not been paying their share of rents, interest and dividends to the plaintiffs; that in May, 2013, the plaintiffs demanded for partition of the suit schedule properties and settlement of accounts; and that as their request was not acceded to, they demanded dissolution of the partnership firms and settlement of accounts.

In paragraph-7 thereof, the plaintiffs have averred as under:

“We came know that the respondents/defendants are making hectic attempts to create fictitious documents in favour of others detrimental to our interests in the petition/suit schedule property. If he is allowed to do so, we will be put to irreparable loss and it may result in multiplicity of litigation. The respondents/defendants are going to change the physical features of the petition/suit schedule properties to cause loss to the properties and cause

hurdles to us. *Prima facie* case and balance of convenience is in our favour and if the Hon'ble Court is not pleased to pass interim urgent orders, we will sustain irreparable loss, which cannot be calculated in terms of money. If the Hon'ble Court passes interim orders in our favour, no loss will be caused to the respondents."

The defendants filed a counter-affidavit, wherein they have *inter alia* questioned the entitlement of the plaintiffs to maintain the said suit. They have further averred that they have got exclusive rights over the suit schedule properties; that apprehension of execution of documents by them in respect of the suit schedule properties alone cannot be made a ground for granting the relief of appointment of a Receiver.

Having regard to the respective pleadings of the parties, the Court below has dismissed the said application. While doing so, the Court below has placed reliance on the judgment of the Madras High Court in *Krishnaswamy Chetti Vs. Tangavelu Chetti*¹, whereunder five principles were laid down governing the appointment of a Receiver.

On the facts of the present case, we are of the opinion that the plaintiffs have not made out a case for appointment of a Receiver for, they have not satisfied the principles laid down in

¹ AIR 1945 Madras 430

Krishnaswamy Chetti (supra) otherwise called “pancha sutras”, which are as follows:

- “(1) It is a matter of resting in the discretion of the court for the purpose of protecting the rights of all parties and subject matter.
- (2) The court should not appoint Receiver except upon the proof by the plaintiff that *prima facie* he has excellent chances of success in the suit.
- (3) Plaintiff must show some emergency or damage or loss demanding action. He must be clear about his own rights.
- (4) Order will not be so, where it has the effect of depriving the defendants of a de facto possession, since that may cause irreparable wrong.
- (5) The court should look to the conduct of the party, who makes an application. He must come to court with clean hands.”

The plaintiffs’ apprehension that some fictitious documents may be created by the defendants or that the physical features of the suit schedule properties may be altered cannot constitute the grounds for appointment of a Receiver. If the plaintiffs entertain genuine apprehension either with respect to creation of the documents or alteration of the physical features of the suit schedule properties, they are free to avail appropriate interim relief by filing separate applications for such purposes before the lower Court.

For the afore-mentioned reasons, we do not find any merit in the Civil Miscellaneous Appeal and the same is, accordingly dismissed.

As a sequel to dismissal of the appeal, CMAMP.No.1050 of 2017 is dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

05th July 2017
DR

