

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[Special Original Jurisdiction]

THURSDAY THE SIXTH DAY OF APRIL
TWO THOUSAND AND SEVENTEEN

PRESENT

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO

CIVIL MISCELLANEOUS APPEAL NO. 1042 OF 2016

Between:

Malan Bee & Ors.

...

Appellants/Respondents
[Defendants]

V/s.

M/s. Jayabheri Properties & Services
Private Limited,
Rep. by its Director, Sri Ram Mohan Maganti,
Jaybheri Enclave, Gachibowli,
Ranga Reddy district, Telangana State &
Ors.

...

Respondents/Petitioners
[Plaintiffs]

Counsel for the Appellants : Sri E. Madan Mohan Rao

Counsel for the Respondents : Sri E. Ajay Reddy

The court made the following : [Judgment follows]

**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO**

CIVIL MISCELLANEOUS APPEAL NO. 1042 OF 2016

JUDGMENT: [O R A L] :

[Per the Hon'ble Sri Justice Suresh Kumar Kait]

This Civil Miscellaneous Appeal is filed against the order and decree dated 18/10/2016 passed in I.A.No. 383 of 2016 in OS.No. 445 of 2016 by the XV-Additional District Judge, Ranga Reddy district at Kukkatpally, allowing the application filed by the petitioners/plaintiffs under Order-39, Rule-1 and 2 read with section 151 of CPC seeking temporary injunction restraining the respondents/defendants, their henchmen, agents and any other persons claiming through or acting under them from interfering with peaceful possession and enjoyment of petitioners schedule property.

2. The appellants are defendants before the court below.

The respondents/plaintiffs filed I.A.No. 383 of 2016 in OS.No. 445 of 2016 under Order-39, Rule 1 and 2 read with section 151 of CPC seeking temporary injunction restraining the respondents/defendants, their henchmen, agents and any other persons claiming through or acting under them from interfering with peaceful possession and enjoyment of petitioners schedule property.

3. The present appeal is filed on the ground that lower court ought to have seen that the land claimed by the petitioners bearing land in survey No. 105, admeasuring Acs:10-25 guntas out of Ac: 13-25 guntas. Survey No. 105 is different from the land belonging to the appellants/respondents 1 to 5 purchased by their father in the year 1982 from the original owners Birkat Narayana and another gifted to the appellants under the gift of confirmation dated 15/5/1990. The

lower court ought to have seen that the respondents/plaintiffs have not placed any proceedings with reference to the boundaries in the plait allotted to them under G.O.Ms.No. 1408, dated 27/09/2006 while the proceedings clearly demonstrate about the different persons names and the petitioners having claimed to have sold the land, have no interest in the suit schedule property, as such, could not have maintained the suit and injunction petition before the lower court.

4. Sri E. Madan Mohan Rao, learned counsel appearing on behalf of the appellants submits that the lower court extracting the contentions, no prima facie title is found with reference to the plaint schedule properties, simply stating that there were disputes with regard to Ac:3-00 of land between the appellants father and the land sold by them under an agreement of sale-cum-General Power of Attorney dated

20/09/2001 which subsequently cancelled by them which is the subject matter of OS.No. 353 of 2006 on the file of the Court of III-Additional Chief Judge, City Civil Court, Hyderabad, is nothing to do with reference to the plaintiffs and the respondents/appellants before the court below as the present suit filed by the respondents/plaintiffs is of a suit of injunction with reference to their documents over the plaint schedule properties and came to wrong conclusion in granting injunction.

5. Learned counsel for the appellants further submits that the lower court ought to have seen that the alleged agreement of sale-cum-General Power of Attorney did not establish a prima facie case, which has legality to stand before the court of law being unenforceable without reference to the plaint schedule property in view of the allotment pleaded by them under G.O.Ms.No. 455 of 2002, ought not to have granted

injunction. The alleged purchasers from one Ahmed are contesting the suits against the appellants/respondents before the various forums i.e., OS.No. 353 of 2005 on the file of III-Additional Chief Judge, City Civil Court, Hyderabad, OS.No. 350 of 2006 on the file of II-Additional Senior Civil Judge, Ranga Reddy district. In fact the appellants have filed injunction suit, OS.No. 1433 of 2016 and appellants had filed CMA.No. 64 of 2016 before the Court of VIII-Additional District Judge, Ranga Reddy and in the said suit, after contest, an injunction was granted in favour of the appellants in respect of Ac:3-00 of the suit schedule property in survey No. 105 in favour of the appellants which has not been appreciated by the lower court. However, the lower court has passed the impugned order.

6. On the other hand, the case of the respondents/plaintiffs is that the respondent No.1 is a company

and respondents 2 to 4 are the Directors of the company and originally one Birkat Narayana and Birkat Hemaji, who are pre-decessors-in-title of the petitioners were absolute owners and possessors of large extent of land in various survey numbers including the land in survey No. 105, admeasuring Ac:13-25 guntas situated at Nanakramguda village, Serilingampally Mandal, Ranga Reddy district. The said Birkat Narayana and others have alienated, conveyed and transferred part of land admeasuring Ac:10-25 guntas out of said Ac:13-25 guntas in survey No.105 in favour of one G.Satyanarayana through an un-registered sale transaction dated 21/04/1981 and subsequently the same was confirmed by the said vendors by way of executing another document dated 22/7/1987 along with map therein and the un-registered sale transaction are valid under the provisions of A.P. Rights in Land and Pattedar Passbooks Act, 1971 subject to obtaining regularization

proceedings from the authorities under Section 5 of the said Act and the said G.Satyanarayana submitted an application for regularization and validation of said un-registered sale transaction under Section 5-A of the Act, 1971 and consequently the Mandal Revenue Officer after due enquiries as per the provision passed orders on 11/10/1993 in proceedings No. C/1228/89 declaring that the said un-registered sale deed i.e., regularized and validated and that further required stamp duty and registration charges were collected and certificate was issued under Form 13-B and Form-13-C in favour of said G.Satyanarayana and direction was given for recording the same in the revenue records. Accordingly, the name of G.Satyanarayana was recorded as pattedar and possessor and consequently the name of G.Satyanarayana was shown as pattear and possessor in pahanies patrikas from the year 1995 onwards and out of land in survey No. 105, the land

admeasuring Ac:10-25 guntas of said G.Satyanarayana was demarcated in the map attached to the said sale deed dated 22/7/1987 and the remaining land admeasuring Ac:3-00 gts., in survey No.105 is falling towards south-west corner of the total land in survey No.105.

7. The further case of the respondents/plaintiffs before the court below is that the above named G.Satyanarayana in turn alienated, conveyed and transferred the said land admeasuring Ac: 10-25 guntas in survey No. 105, through an agreement of sale-cum-General Power of Attorney bearing document No.17147 of 2005 in respect of land admeasuring Acs:5-25 guntas in favour of the petitioners and that subsequently, the petitioners have obtained sale deed in their names through sale deed dated 31/3/2006 bearing document No. 8991 of 2006 in respect of Ac:5-00 guntas and document No. 8990 of 2006 in respect of Ac:5-25 guntas and as such the

petitioners/plaintiffs have acquired ownership over the total extent of Ac:10-25 guntas in survey No.105, which is petition schedule property and since their purchase, the petitioners are in possession and enjoyment of the same and as large extent of land was held by the original owners was declared as surplus land under the provisions of Urban Land [Ceiling and Regulation] Act, 1976 vide orders dated 18/2/1999 in Proceedings No. H-2/9033, 9034, 10549 and 12091/76 and further the sketch map attached to the said proceedings clearly indicates the extent of retainable land and the excess land in survey No. 105 and as such, the petitioners herein obtained the allotment of the excess land out of the total land held by them in survey No. 105 and in pursuance of the same, the Government of AP had also issued G.O.Ms.No. 1408 dated 27/09/2006 in favour of the petitioners under policy guidelines issued under G.O.Ms.No.1408, dated 27/09/2006 and policy

guidelines issued under G.O.Ms.No. 455 of 2002 and thus the total land admeasuring Ac:10-25 guntas held by the petitioners in survey No. 105 is free from the Urban Land [Ceiling and Regulation] Act and Rules.

8. Learned counsel appearing on behalf of the respondents/plaintiffs submits that the original land owners; Birkat Narayana and another have alienated, conveyed and transferred the remaining extent of Ac:3-00 guntas in survey No.105 along with other extent of land admeasuring Ac:1-00 guntas in survey No. 107 in favour of Syed Ahmed i.e., father of the respondents through an un-registered sale transaction dated 12/02/1982, as such, consequently the name of the said Syed Ahmed was shown as pattedar and possessor in respect of land admeasuring Ac:3-00 guntas in survey No. 105 and land admeasuring Ac:1-00 guntas in survey No. 107 and the said Syed Ahmed obtained 5-A proceedings from the then Tahsildar,

Serilingampally Mandal and also obtained 13-B and 13-C proceedings vide Proceedings No. ROR/924/89, dated 20/06/1996 and consequently the name of said Syed Ahmed was shown as pattedar and possessor in respect of the land admeasuring Ac:3-00 in survey No. 105 and land admeasuring Ac:1-00 guntas in survey No. 107. The said Syed Ahmed conveyed the said property along with his son, Syed Sardar and later by others sons in favour of B. Vijaya Jhansi and subsequently ratified the said document through agreement of sale-cum-General Power of Attorney, dated 20/09/2001 bearing document No. 7249 of 2001 in favour of B.Vijaya Jhansi, who in turn alienated the same to different persons under different sale deeds and the said Syed Ahmed left with no land in his hands from out of survey No. 105 and the learned counsel for the petitioners further submits that the respondents filed the suit in OS.No. 353 of 2005 on the file of

the Court of III-Additional Chief Judge, City Civil Court, Hyderabad against Syed Ahmed Ali and others for partition and separate possession of the said land admeasuring Ac:3-00 guntas in survey No. 105 among themselves and in the said suit it was stated that the land admeasuring Ac:4-00 in survey No. 105 and 107 of Nanakramguda village was acquired by the respondents by virtue of an oral gift from their father on 21/3/1990 and further alleged that their father executed a memorandum of gift on 15/3/1990 in their favour and further alleged that since the date of said gift, they were in possession of the said land admeasuring Ac:3-00 in survey No. 105 and the said suit is still pending.

9. Learned counsel for the respondents further submits that the appellants illegally mis-represented all the facts and obtained proceedings from ULC authorities stating that the land claimed by them are falling under retainable land and obtained

clearance certificate vide Memo. No. H/A6/1403/NOC/2013

dated 10/6/2014 and the respondents are not having ownership or possession over the petition schedule property.

Learned counsel further submits that except the said certificate, there is no other proof to show the location of the property, as

such, the petitioners made application to ULC to withdraw the

said memo. The ultimate purchasers of the land admeasuring

Ac:3-00 in survey No. 105 belonging to the father of the

respondents have filed a suit, OS.No. 350 of 2006 on the file

of the Court of II-Additional Senior Civil Judge, Ranga Reddy

district against the said Syed Ahmed Ali and others including

the respondents for grant of perpetual injunction and also filed

an application in I.A.No. 396 of 2006 for grant of temporary

injunction restraining them from interfering with the possession

of the said property and after due enquiry having held that the

petitioners are in possession of the property, temporary

injunction was granted restraining the said Syed Ahmed and others including the appellants herein.

10. We have gone through the impugned order. It is not in dispute that the appellants are in possession of Ac:3-00 of land in survey No. 105 of Nanakramguda village, Serilingampally Mandal, Ranga Reddy district and the respondents/plaintiffs are in possession of Ac:10-25 guntas. Both the lands mentioned above are vacant land and both are claiming their possession on the respective lands. The grievance of the appellants herein is that Ac:3-00 of land in which the petitioners are in possession, the respondents/plaintiffs are also claiming possession over the said land. Whereas the case of the respondents/plaintiffs is that the appellants are land grabbers and wanted to grab the land of respondents/plaintiffs. Therefore, by various petitions filed before different courts they wanted to grab the property.

11. We have noted that the respondents/plaintiffs filed petition under Order-39, Rule 1 and 2 of CPC read with section 151 of CPC seeking temporary injunction restraining the appellants/defendants from interfering with the peaceful possession and enjoyment of the respondents/plaintiffs over the petition schedule property or any part thereof. The court below after taking into consideration the rival contentions has framed the issue that “ whether the respondents/plaintiffs are entitled for temporary injunction restraining the appellants herein from interfering with the peaceful possession and enjoyment of the respondents/appellants from interfering with the peaceful possession and enjoyment of the respondents herein over the petition schedule property as prayed for ? ”

12. After considering the rival contentions, the court below has observed that whether the said documents can be taken into consideration or not can all be looked into at the

time of trial. The respondents/plaintiffs claimed their ownership and possession basing on the sale-cum-GPA dated 06/10/2005 executed by G.Satyanarayana and others which is relating to the extent of Ac:5-00 and Ac:5-25 guntas in survey No. 105 out of total extent of Ac: 13-25 gtas in survey No. 105 of Serilingampally village, Ranga Reddy district within the following bounds.

Land admeasuring Ac:5-25 guntas bounded by :

North : Part of survey No. 105
South : Survey No. 105
East : Survey No. 105 and 107
West : Survey No. 105 [P] and 115.

Land admeasuring Acs:5-25 guntas bounded by :

North : Survey No. 145
South : Survey No. 105 [P]
East : Survey No. 104
West : Survey No. 115

13. The respondents/plaintiffs further claim ownership and possession on subsequent sale deed in pursuance of the said agreements of sale-cum-GPA i.e., 31/03/2003 executed by G.Satyanarayana and others in favour of the petitioners vide

document No. 8991 of 2006 in relation to Ac:5-00 and document No. 8990 of 2006 in relation to Ac:5-25 guntas and the certified copies of which have been filed in the court to establish the conveyance of the petition schedule land which is total to the extent of Ac:10-25 guntas [Ac : 5-00 gts + Ac: 5-25 guntas] which has been sold to the respondents herein and they had purchased the same and that since the date of said purchase they are in possession of the petition schedule property. The agreement of sale made by Birkat Narayana and others, who are actual owners and possessors and predecessors-in-title of the respondents/plaintiffs sold the property to G.Satyanarayana and later the said G.Satyanarayana along with Birkat Narayana and others sold the property to the respondents/plaintiffs, as such, the respondents/plaintiffs have established that the petition schedule property which has been purchased by them has been sold by the original owners; Birkat

Narayana and others and the pahani for the year 1977-78 and subsequent pahanies 2006-07 and then 2015 establishes that G.Satyanarayana was the absolute owner and possessor of the land to an extent of Acs: 10-25 guntas in survey No. 105 and in the said pahanies, the name of Syed Ahmed is shown as pattedar and possessor in relation to AC : 3-00 in survey No. 105.

14. In view of the facts recorded above, the court below has opined that the said Syed Ahmed has no concern with Ac : 10-25 gts of land which originally belong to Birkat Narayana and others and later who conveyed the same to the respondents/plaintiffs along with G.Satyanarayana and the fact that Syed Ahmed, the father of the appellants was shown in relation to Ac : 3-00 of land in survey No. 105 as owners and possessor shows that Syed Ahmed purchased property from the original owners Birkat Narayana and others. In addition to

above, the court below has recorded that the suits referred to in the petition i.e., OS.No. 350 of 2006 on the file of the Court of II-Additional Junior Civil Judge, Ranga Reddy and OS.No. 1433 of 2015 on the file of the Court of I-Additional Senior Civil Judge, Ranga Reddy district in the petition not related to the facts of the case, has assailed by the appellants before the court below but the same was not accepted by the respondents/plaintiffs, as they are parties to the said proceedings in I.A.No. 863 of 2015 in OS.No. 1433 of 2015 and the appellants who filed the said petition, I.A.No. 863 of 2015 in relation to Ac : 3-00 in survey No. 105 has been dismissed and cannot be sustained at this stage when the respondents/plaintiffs seek injunction against the appellants.

15. In view of the above discussion and submission of the counsel for the parties, we are of the considered opinion that the court below has rightly directed the appellants not to

interfere with the peaceful possession and enjoyment of the respondents/plaintiffs over the plaint schedule property. We find no illegality or perversity in the order dated 18/10/2016 passed in I.A.No. 383 of 2016 in OS.No. 445 of 2016. Finding no merit in this Civil Miscellaneous Appeal and consequently, the Civil Miscellaneous Appeal is dismissed with costs throughout.

16. As a sequel, miscellaneous petitions if any, pending in this Civil Miscellaneous Appeal shall stand closed.



JUSTICE SURESH KUMAR KAIT.

JUSTICE U. DURGA PRASAD RAO.

06/04/2017
I s L

CMA.No. 1042 of 2016 – SKK,J. & UDPR, J.
Per the Hon'ble Sri Justice Suresh Kumar Kait

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO.

CIVIL MISCELLANEOUS APPEAL NO. 1042 OF 2016

[Per the Hon'ble Sri Justice Suresh Kumar Kait]

[DISMISSED]



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