

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No. 548 of 2014

JUDGMENT:

This appeal is arising out of an order passed in an interlocutory application filed by the petitioner for grant of temporary injunction, against the respondents, which was dismissed. The petitioner is the plaintiff who has filed a suit O.S.No.18 of 2014 on the file of III Additional District Judge, Fast Track Court, Ananthapuramu, for declaration of title and delivery of vacant position of the schedule property, and for permanent injunction against the respondents-defendants. In the said suit, the petitioner filed I.A.No.80 of 2014 for temporary injunction against the respondents, and the same was dismissed by the trial Court.

2. The case of the petitioners is that the suit schedule property belonged to their father. Their father was murdered on 16.09.1978. The petitioners elder brother Rahim was taking care of the prosecution of the murder case on behalf of the petitioners. The petitioners have executed a general power of attorney in favor of Rahim to deal with their properties for prosecuting the case. Subsequently, the petitioners lost confidence in Rahim and have canceled the GPA. Subsequently, Rahim died on 13.04.1988. After the demise of Rahim, his wife and children have created Gift Deeds and also trying to construct a building without obtaining permission from municipality. Therefore, the petitioners have filed the present application to restrain them from making further construction in the schedule property.

3. The case of the respondents is that the GPA was not canceled because they lost confidence in Rahim, but the purpose for which the GPA was made, was fulfilled. It is the further case of respondents that during the lifetime of Rahim, he separated from the joint family in the year 1974, and the petition schedule property and some other properties were allotted to him, but in that regard there were no written documents to that effect and, therefore, in the general power of attorney all the properties were included. It is also stated that the brothers of Rahim have sold away their properties and compelled Rahim to pay some amounts to them and, therefore, on the advice of elders, he gave Rs.1 lakh to his brothers and executed Gift Deeds in favor of his sisters. All the brothers have executed the said registered gifted deeds. On 27.02.1988, a document was executed confirming the right of Rahim in the suit schedule property. The respondents have obtained approval for construction of the building, dated 7.6.2013, and they have completed the construction of the building. The petition schedule property has been gifted to the first respondent, and in turn the same was gifted to 2nd respondent and all the documents were acted upon, and the defendants have been in possession and enjoyment of the property as the rightful owners.

4. Heard the rival submissions and considered.

5. The petitioners have filed an interlocutory application I.A.No.80 of 2014 under Order XXXIX Rule 1 and 2 for grant of temporary injunction

and to restrain the respondents from making further constructions in the schedule property. The interlocutory application was dismissed. Aggrieved by the impugned order this civil miscellaneous appeal has been filed by the petitioners.

6. The contention of the petitioners is that the trial court had made certain observations in the injunction petition, with regard to the admissibility of the document in dispute, and sought for setting aside those findings.

7. The contention of the respondents, however, is that the construction of the building has been completed in the schedule property and, therefore, the interlocutory application filed for grant of injunction has become infructuous. It is the further contention of the respondents that the trial court has given a clear and categorical finding in the last paragraph of the impugned order that no party shall take advantage of the findings in the order at any stage during the suit proceedings and the observations made in the order are confined only to the interlocutory application. It is further submitted that the trial court has given a finding with regard to the document only in respect of for the interlocutory application, and since the construction has been completed, nothing survives in this application and, therefore, sought for dismissal of this application.

8. Considering the rival contentions of the parties, as it is not disputed by the learned counsel for petitioner that the construction has

been completed in the suit schedule property, nothing remains in this application for consideration. As rightly pointed out by the learned counsel for respondent that the trial court has made an observation in its order that no party shall take advantage of the findings of the court in the impugned order at any stage during suit proceedings, with regard to the admissibility of the document, there is no adverse finding which affect the rights of the petitioner. However the petitioner is given liberty to raise his contentions in the suit with regard to the document in dispute i.e. Ex.B2 dated 27.02.1988. The observation of the trial court in respect of this document is that it was an unregistered family settlement deed and it was also marked as Ex.B2 in the interlocutory application. A perusal of the impugned order reveals that though the trial Court has marked the unregistered family settlement deed as Ex.B2 in the interlocutory application, however, in view of the clear finding that the document was considered and marked only for the purpose of interlocutory application, and that the findings in the interlocutory application will not have any bearing on the suit, the parties are given liberty to agitate the same before the trial Court by producing their evidence during trial of the suit. The apprehension of the learned counsel for petitioners that the observations made by the trial Court in the interlocutory application may have adverse bearing on the suit has been clarified by the trial Court itself. The petitioners, however, are given liberty to prove the nature of the document Ex.B2 as it has been marked in the interlocutory application. In the light of the findings of

the trial court with regard to document, in the interlocutory application, the trial Court is directed to decide the nature of the document by considering the evidence by the parties and receive the document in the evidence.

9. Accordingly, the Civil Miscellaneous Appeal is disposed of. No order as to costs. Miscellaneous petitions, if any pending, shall stand closed.

01st November, 2017

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GUDISEVA SHYAM PRASAD, J



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