

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Miscellaneous Appeal No.943 of 2016

JUDGMENT:

The unsuccessful defendants preferred this appeal, under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908, assailing the judgment and decretal orders, dated 28.10.2016, of the learned Judge, Family Court-cum-VIII Additional District Judge, Medak at Sangareddy, passed in I.A.No.551 of 2016 in O.S.No.95 of 2016 filed by the sole plaintiff/respondent herein under Order XXXIX Rules 1 and 2 read with Section 151 of the Code requesting to grant a temporary injunction restraining the defendants, their relatives, family members, men, labourers, others and persons claiming through them from removing the bund of the plaint schedule property and in any way interfering with the plaintiff's enjoyment over the plaint schedule property.

2. I have heard the submissions of *Sri M.Rajamallu Reddy*, learned counsel appearing for the appellants/defendants ('defendants', hereinafter), and of *Sri O.Manohar Reddy*, learned senior counsel representing Sri Md. Ghouse Pasha, learned counsel appearing for the respondent/plaintiff, ('plaintiff', hereinafter). I have perused the material record.

3. The case of the plaintiff in support of the request for grant of temporary injunction, in brief, is as follows:

The plaintiff is the absolute owner, title holder and possessor of agricultural land bearing Sy.No.815/ A, AA, E part admeasuring Ac.0.20 guntas; and Ac.1.25 guntas bearing Sy.No.815/ A, AA, E part totally admeasuring Ac.2.05 guntas, both situated at Kandi village, Sangareddy Mandal, Medak District, more fully described in the schedule annexed to the plaint. The plaintiff purchased the said property from its original owner, Janpala Jaggareddy through his registered GPA holder, C.Venkatrami Reddy, by virtue of registered sale deed bearing document No.8373 of 2001 and is continuing in peaceful

possession and enjoyment of the plaint schedule land from the date of the said purchase. The plaintiff is raising seasonal crops in the suit lands. Since one year, the plaintiff is not raising any crops, as the said land is abutting the National Highway No.65. After purchase of the suit land, the plaintiff did not make an application to the revenue authorities for mutation of the property in his name. Therefore, on 24.05.2016, he applied to the Tahasildar for mutation of the suit lands in his name. The said application; vide application No.MU021600797044, dated 09.06.2016, submitted through Mee Seva is pending consideration. The defendants 1 and 2 are not having any manner of right, title or interest and are trying to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property. Pursuant to their *mala fide* intention, on 15.06.2016, they came with some unsocial elements to the suit land and tried to interfere with the plaintiff's peaceful possession and enjoyment of the same and tried to remove the bund. However, with the help of the adjacent land owners, the plaintiff resisted the illegal acts and attempts of the defendants 1 and 2 and their men. While leaving the suit land, the defendants threatened the plaintiff by saying that they will dispossess the plaintiff from the suit land one day or the other. The plaintiff apprehends that the defendants with a fraudulent intention may come again and dispossess him from the suit schedule land by illegal means. Hence, he filed the suit and the subject application for temporary injunction. If injunction is not granted, he would suffer serious and irreparable loss.

4. The case of the defendants, in the counter, in brief, is this:

The material allegations in the plaint and the affidavit filed in support of the petition are all false. The document relied upon by the plaintiff is a fake document and it was not executed by the original owners. The plaintiff is having knowledge of the earlier proceedings including the criminal case filed against Chidanand, Manik Reddy, S.A.Pahman and the plaintiff. The original owner C.Venkat Ram Reddy filed before the learned Judicial Magistrate of First

Class, at Sangareddy, a case in Crime No.18 of 2002 for the offences punishable under Sections 419, 420, 462 and 120-B IPC and the matter was referred by the learned Magistrate to the police concerned. Thus, the plaintiff is aware of the fact that a criminal case was registered against her also. The investigating officer has taken appropriate steps for sending the disputed signatures and admitted signatures of the owner to a handwriting expert and the Investigating Officer indeed received a report from the handwriting expert stating that the signatures, which are disputed, are not tallying with the admitted signatures. He filed a charge sheet and C.C.No.954 of 2003 was taken on file by the learned Additional Judicial First Class Magistrate, Sangareddy. The plaintiff made attempts to obtain anticipatory bail. Thus, her document is a fake document and not a genuine document. The plaintiff, having kept quiet since 2002 onwards, filed the present suit on the instigation and support of some land grabbers. The real facts are suppressed by the plaintiff. In the criminal case, the learned Judicial Magistrate of First Class, Sangareddy, convicted all the accused. The suit is a speculative suit and is filed to grab the property by trespassing into the property, which belongs to the *bona fide* purchasers. The original owners, Janpala Jaggareddy and others, executed a GPA in favour of C.Venkat Ram Reddy and it was duly registered as Document No.147/ 88 in the office of the Sub Registrar, Sangareddy. The said Venkat Ram Reddy had also obtained a GPA from Janpala Pedda Laxma Reddy, vide Document No.10/ 89, dated 12.01.1989. The said C.Venkat Ram Reddy as a GPA holder of the above persons sold the property in favour of Ameer Baig and others through registered sale deed dated 15.12.1998 and subsequently, the document was released after its registration as Document No.6/ 99. C.Venkat Ram Reddy sold an extent of Ac.1.20 guntas and another Ac.2.08 guntas, out of the above said property. Thus, the purchasers, Ameer Baig and others are in exclusive possession and enjoyment of the total extent of land with absolute rights. The purchasers are in possession of Ac.3.28 guntas and the said property was sold to various

prospective plot purchasers. The said Venkat Ram Reddy, as a registered GPA holder has sold an extent of Ac.0.10 gunts of land in Sy.No.815/ EE situated at Kandi village, Sangareddy Mandal, Medak District, through registered sale deed dated 06.10.2005, vide document No.13552 of 2005. He also sold Ac.1.15 guntas in Sy.No.815/ A, AA, E, admeasuring an area of Ac.1.15 guntas situated at Kandi village, Sangareddy Mandal, Medak District, in favour of Ameer Baig and others through registered sale deed dated 06.10.2005, vide document No.13551 of 2005. The purchasers of the said land are in possession and enjoyment of the property since the date of the said purchase. Venkat Ram Reddy also sold Ac.0.12 guntas of land in Sy.No.815/ E under registered sale deed dated 19.07.1999, vide Document No.3012 of 1999 and the purchasers are in exclusive possession and enjoyment of the property from the date of the said purchase. Ameer Baig and others sold an extent of Ac.1.10 guntas in Sy.No.815/ A, AA, E, situated at Kandi village, Sangareddy Mandal, through registered sale deed dated 04.04.2006, vide document No.9683 of 2006; thereafter he has divided the land into plots and sold to various persons. The 1st defendant and his brother Chand Pasha have jointly purchased the plot bearing No.74 admeasuring 177 square yards in Sy.No.815/ A, AA, E within specific boundaries situated at Kandi village, through registered sale deed dated 16.06.2006, vide document No.14945 of 2006. The name of the father of the 1st defendant was mischievously wrongly shown by the plaintiff. The name of the 2nd defendant was also wrongly described as Amruth Shaik though his name is Amra Ram Chowdary. Amra Ram Chowdary has purchased plot No.61 admeasuring 205.63 square yards, within definite boundaries, through registered sale deed, dated 02.02.2015, registered as Document No.1727 of 2015. He purchased the said property from Parihariya Naresh Srvi. He is in possession and enjoyment of the property since the date of the said purchase. This apart, the defendants and several other persons purchased the plots through registered sale deeds and they are all in exclusive possession of their

respective plots. If really, the plaintiff and her husband purchased the property as stated by her, they would not have kept quiet without having the property mutated in their names. The claims of the plaintiff that she is the absolute owner of the property and that she earlier raised seasonal crops and that no crops are now being raised since the land was abutting National Highway are all false. The further allegations that after the purchase of the suit land, she did not file any application before the revenue authorities for mutation of the land in her name and that she applied to the Tahasildar on 24.05.2016 through Mee-Seva and that the same is pending consideration are absolutely false. She did not apply for mutation, since C.Venkat Ram Reddy never executed any sale deed in her favour and as she also knows that the document is not genuine and that it was brought into existence by impersonation. These defendants never threatened the plaintiff as alleged in the plaint. The allegations made by the plaintiff are invented. The plaintiff without being in possession filed the suit and the subject application. The petition is liable for dismissal.

5. At the time of hearing before the trial Court, exhibits P1 to P11 and R1 to R22 were marked. No oral evidence was adduced by both the sides.

6. On merits and by the orders impugned in this revision, the trial Court granted a temporary injunction as prayed for in favour of the plaintiff and made absolute the *ex parte* injunction granted on 18.07.2016.

7. Therefore, the aggrieved defendants are before this Court.

8. The learned counsel for the defendants while reiterating their defence in the counter would contend that the plaintiff's document is not a genuine document and that the plaintiff failed to prove that the property purchased under sale deed dated 29.10.2011 (exhibit P3) relates to the suit schedule property and that the trial Court ought to have seen that the property in

possession of the defendants is different from the property of the plaintiff herein and that the plaintiff is an accused in Criminal proceedings in respect of a sale deed in C.C.No.187 of 2004 on the file of the Judicial Magistrate of First Class (Spl. Prohibition & Excise), Sangareddy, and that in that case, she had admitted that she knows nothing about the case and that her husband purchased the land in question from PW1 therein and that it was registered in her name and that despite the plaintiff filing an application for mutation in the year 2016, the Tahasildar did not mutate the property in her name. He would further contend as follows: "The Court below ought to have seen that the 1st defendant and his brother Chand Pasha got permission for construction of house in the suit schedule property on 26.02.2015 and that the said fact is evident from Exhibit R20 and that the construction is made upto lintel level. The Court below ought to have seen that the 2nd defendant's vendor, P.Naresh Srvi, got permission for construction of a shed in Plot Nos.61 and 68, vide proceedings of the Gram Panchayat, Kandi, on 20.03.2014 and that in fact, a shed was constructed by him in it and that the 2nd defendant/ appellant is carrying on sanitary business. The Court below ought to have seen that the constructions made by the defendants in their respective properties are evident from the photographs and compact CDs, Exhibits R18 and R19. The Court below erred in granting an injunction, having noted that the said exhibits evidence the existence of the constructions in progress and the shed over the subject plots. The Court below observed in its orders that in the absence of any evidence like a layout or Gram Panchayat permission to divide the land into plots, it cannot be said, at the interlocutory stage, that the constructions appearing in the photos are in the suit schedule property. When the Court is unable to decide as to whether the constructions in the photographs are in the plaint schedule property or not, the Court below ought to have appointed an advocate commissioner as sought for by the defendants and ought not to have granted an injunction in favour of the plaintiff when there is a doubt about the

identity of the plaint schedule property and the existence of constructions thereon. The defendants filed I.A.No.669 of 2016 for appointment of an Advocate Commissioner to note down the physical features and constructions and structures, if any, in the suit schedule property. But the trial Court erroneously dismissed the said petition. Had the trial Court appointed a Commissioner, it would have been clear as to whether the plaint schedule land was under cultivation for some time and was left fallow there after or whether there are any constructions as being contended by the defendants, in the subject land. By not appointing the Commissioner, the trial Court denied to the defendants, an opportunity to substantiate their defence that there are constructions in the plaint schedule property. The 2nd defendant specifically pleaded in the counter and in his written statement that he made construction in the plot purchased by him, i.e., a shed and the said shed is being used for the purpose of keeping sanitary material and that the said shed was constructed after obtaining necessary permission from the Grampanchayat, Kandi, and that the 1st defendant also obtained construction permission from the Gram Panchayat for construction of a residential house and that the construction was raised by him upto lintal level and that therefore, the defendants sought appointment of a Commissioner to note down the physical features and constructions, if any, in the suit schedule property. The trial Court erroneously observed that appointment of a Commissioner amounts to collection or gathering of evidence. The said observation is contrary to the settled legal position. The plaintiff having obtained an unsustainable injunction orders, is insisting for grant of police aid to disturb the possession of the defendants and to trespass into the property under the guise of temporary injunction orders and police aid orders. Even before the disposal of the suit and appointment of a commissioner, if the plaintiff trespasses into the property with the police aid and demolishes the constructions in the plots of the defendants, the defendants would be put to serious and irreparable loss.

9. Per contra, the learned senior counsel for the plaintiff while reiterating the case of the plaintiff contend that the plaintiff having purchased the suit schedule property by virtue of a registered sale deed dated 29.10.2011 has been in continuous possession and enjoyment of the same and that till one year prior to the institution of the suit, she raised crops and that since about one year prior to the suit, no crops were being raised as the land is adjacent to National Highway and that the plaintiff having not earlier applied for mutation, applied, on 09.06.2016, to the Tahasildar, Sangareddy, for mutation of the property in her name and that the plaintiff did not suppress the fact relating to calendar case and that the plaintiff, in fact, filed Exhibit P6, copy of the judgment in C.C.No.187 of 2004 to show that the accused therein, K.Manikya Reddy and S.A.Rahaman were found not guilty of the offences punishable under Sections 419, 420, 463 and 120-B IPC and that they are acquitted and that from the deposition of the plaintiff, PW2 therein, it is clear that her husband purchased the land from PW1 therein and got the property registered in her name and that in the light of the facts of the case, the appeal is devoid of merit and is liable to be dismissed and that the well considered order of the trial Court needs no interference.

10. I have given detailed and thoughtful consideration to the facts and submissions. I have stated the pleadings and contentions of the parties, in detail.

11. The plaintiff claims that she purchased the plaint schedule property under Exhibit P3, sale deed dated 29.10.2011. She also filed the original GPAs dated 16.06.1988 and 12.01.1989, Exhibits P1 and P2. Admittedly, the property is not mutated in her name though she purchased the property in the year 2011. Just prior to the suit, she filed an application before the Tahasildar for mutation and the same is pending. The defendants filed the original sale deed dated 06.10.2005; they contend that they purchased from the original

owners, the plots mentioned in their defence. They have also filed certified copies of GPAs bearing Document Nos.147/ 88 and 10/ 89 besides certified copies of sale deeds of some third party purchases and photographs with compact discs and the respective permissions issued by the Gram Panchayat for making constructions in their respective plots. I have gone through the copies of exhibits filed before this Court.

12. At one breath, the defendants contend that their properties are different from that of the plaintiffs; and at another, they contend that under the guise of the injunction order obtained, the plaintiff intends to occupy the properties purchased by them wherein constructions were made by them with necessary permissions and that the plaintiff has also filed an application before the trial Court for grant of police aid and that if police aid is granted, the plaintiff, under the guise of the temporary injunction order, which are impugned in this appeal, and the police aid orders would trespass into their property and would demolish the constructions therein, under the guise of the said orders. It is to be noted that the plaintiff specifically contends that after purchase of the property, she raised seasonal crops in the suit land for some time and that since one year prior to the suit, she is not raising seasonal crops as the suit land is abutting National Highway No.65. From the relief claimed it is obvious that the dispute is also about a boundary bund and the alleged attempts for its removal. However, the defendants contend that the 1st defendant having obtained permission for construction of a house, raised pillars upto lintel level and that the 2nd defendant similarly having obtained permission from the Gram Panchayat constructed a shed and is using the same for storing sanitary material for his business purpose. Adverting to the photographs filed by the defendants, the trial Court observed that from the photographs it is not possible, at the interlocutory stage, to state as to whether or not the constructions therein are in the plaint schedule property. The issue involved in the application for temporary injunction is about existence or

otherwise of a *prima facie* case with regard to possession over the plaint schedule land. Therefore, the crucial question is – ‘which one of the two versions of the parties is true?’

13. On one hand, the defendants having disputed the nature of the suit schedule land and the use to which it is being put, *inter alia* claimed that there are constructions made by them in the plots purchased by them. On the other hand, the plaintiff claimed that the plaint schedule property was an agricultural land and till about one year prior to the suit, she raised seasonal crops and that thereafter she is not raising any such crops. The defendants requested the trial Court to appointment of a Commissioner to visit the suit schedule property and note down its physical features and submit a report as to whether the suit schedule land is an agricultural land left fallow or whether there are any constructions over it or any part of it. The trial Court dismissed the said petition having observed that no commissioner can be appointed for collection of evidence. Nevertheless, there is no hard and fast rule or a settled position of law that an advocate commissioner cannot at all be appointed for any purpose in a suit for perpetual injunction. And, it cannot be laid down as a rule of thumb that in no suit for perpetual injunction, an advocate Commissioner can be appointed; however, the law is well settled that a Commissioner cannot be appointed to find out as to who amongst the parties is in possession of the suit property as it is the function of the Court to decide the issue as to who amongst the parties is in possession of the suit property and the said judicial function cannot be delegated to an advocate commissioner. Under law, in any suit in which the Court deems local investigation is requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to an advocate or any competent person and direct to make such investigation and to report to the Court. When there is a dispute about the nature of the land and the use it is being put to, appointment of a Commissioner to inspect the schedule land and note down the nature of the

land and the use to which it is being put to and its physical features including the existing constructions, if any, on it would clinch the issue. Orders in the nature of appointment of an advocate Commissioner to note down the physical features, including the constructions, if any, and the boundaries of the disputed properties are incidental and complimentary in nature and assist the Court in arriving at a just decision in the *lis* unlike supplementary orders. The request for appointment of Commissioner for the purpose stated by the defendants, in the considered view of this Court, by no stretch of imagination, can be called an attempt to gather evidence. However, the defendants' request for appointment of a Commissioner for the desired purpose was negated by the trial Court. Further, the trial Court also observed in its orders to the effect that there is absence of evidence like a layout or a Gram Panchayat permission with regard to the division of the land into plots and to accept that the plots being claimed by the plaintiffs are part and parcel of the suit schedule property and that at the interlocutory stage, it cannot be said that the constructions reflected in the photographs are in the schedule property. Therefore, the trial Court did not decide as to whether the contentions of the defendants that the construction made by them are in the plaint schedule property or not, but, however, observed that such issue cannot be decided at the interlocutory stage. In that view of the matter, this Court is of the considered view that the appeal can be disposed of with appropriate directions, while setting aside the order impugned.

14. Accordingly, the Civil Miscellaneous Appeal is allowed and the order impugned is set aside. As a sequel, I.A.No.551 of 2016 in O.S.No.95 of 2016 is remitted to the Family Court-cum-VIII Additional District Court, Medak at Sangareddy, for disposal afresh in accordance with the procedure established by law, however, after appointment of an Advocate Commissioner to note down the physical features of the plaint schedule land and also the existence or the otherwise of the constructions or structures, if any, over or in any part

of it, on the defendants filing a fresh application for the said purpose. However, since there is an interim injunction in favour of the plaintiff from 18.07.2016 and as the said order was made absolute on 28.10.2016 by the Court below while allowing the application of the plaintiff and as the temporary injunction order is continuing till date, the said injunction order in favour of the plaintiff shall be in force till the trial Court disposes of I.A.No.551 of 2016 afresh. Nevertheless, the trial Court shall not take up the application filed by the plaintiffs for grant of police aid till the above said application seeking temporary injunction now remitted is disposed of afresh, as directed in this judgment.

Pending miscellaneous petitions, if any, in this appeal shall stand closed.

No costs.

17th January, 2017
RAR



M. SEETHARAMA MURTI, J