

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.948 OF 2016

JUDGMENT:

1 This Civil Miscellaneous Appeal, under Order 43 Rule 1 CPC, is filed challenging the order dated 19.10.2016 passed in I.A.No.296 of 2015 in O.S.No.49 of 2015 on the file of the Court of the Senior Civil Judge at Zaheerabad.

2 The contention of the learned counsel for the petitioners is two fold: 1) The order passed by the trial Court is not sustainable either on facts or in law. 2) The trial Court dismissed the petition on erroneous grounds.

3 ***Per contra***, the learned counsel for the respondents submitted that the trial Court has considered the material available on record in right perspective and dismissed the petition. He further submitted that there is no irregularity or illegality in the impugned order, which warrants interference of this Court.

4 For the sake of convenience, parties to this Civil Miscellaneous Appeal will hereinafter be referred to as they are arrayed before the trial Court.

5 A perusal of the record reveals that the petitioners filed O.S.No.49 of 2015 on the file of the Court of the Senior Civil Judge at Zaheerabad against the respondents for partition of the suit schedule property and consequential perpetual injunction restraining them not to interfere with the possession and enjoyment of the petitioners over the suit schedule property. Along with the suit, the petitioners filed I.A.No.296 of 2015 under Order 39 Rules 1 and 2 CPC seeking ad-interim injunction restraining the respondent Nos.2 and 3 not to interfere with the suit schedule property.

6 Before the trial Court on behalf of the petitioners Exs.P.1 and P.2 were marked and on behalf of the 2nd respondent Exs.R.1 to R.4 were marked.

7 The trial Court having considered the material placed before it arrived at a conclusion that the petitioners failed to establish prima facie case and balance of convenience in their favour and dismissed the petition.

8 Now the point that arises for consideration in this Civil Miscellaneous Appeal is whether the impugned order is sustainable either on facts or in law?

POINT:

9 The Petitioners 1 and 2 are none other than the sons of the first respondent. It is the case of the petitioners that originally the suit schedule property which is an extent of Ac.2-11 gts. in Sy.No.53 and Ac.2-06 gts. in Sy.No.53/A3 totalling Ac.4-17 cents situated in Kothur-D village, Koheer Mandal, Medak District purchased by the first respondent under a registered sale deed. It is the further case of the petitioners that the first respondent sold the property to 4th respondent who in turn sold the same to respondent Nos.2 and 3. It is the further case of the petitioners that the first respondent sold the property in favour of the 4th respondent without their consent. It is the case of the respondents Nos.2 to 4 that neither the first respondent nor the petitioners were in possession of the property as on the date of filing of the suit.

10 Establishment of prima facie case, balance of convenience in favour of the petitioners and the irreparable loss likely to be caused to the petitioners if no injunction is granted are *sine qua non* for granting

interim injunction. A person who approaches the Court seeking equitable relief must come to the court with clean hands.

11 Petitioner Nos.1 and 2 have filed the suit against the respondent No.1 for partition of the suit schedule property. A perusal of the record reveals that the father of the petitioners i.e. first respondent herein purchased the suit schedule property under a registered sale deed dated 06.11.1985 from one Sangamma W/o Sayanna. The first respondent sold the suit schedule property to the 4th respondent under a registered sale deed dated 26.6.1992. The 4th respondent executed a General Power of Attorney dated 26.6.2010 in favour of 3rd respondent. The 3rd respondent sold the property to the 2nd respondent under a registered sale deed dated 01.12.2011.

12 A perusal of the record prima facie reveals that the suit schedule property is self acquired property of the first respondent. Even as per the case of the petitioners, first respondent sold the property in the year 1992. This clearly indicates that the first respondent was not in possession of the suit schedule property since 1992. A perusal of the record prima facie reveals that the respondent Nos.2 and 3 have been in possession and enjoyment of the suit schedule property as on the date of filing of the suit. Exs.R.1 to R.4 fully support the version of the respondents. Absolutely there is no material on record to establish that as on the date of filing of the suit either the first respondent or the petitioners were in possession of the suit schedule property. In such circumstances question of granting interim injunction in favour of the petitioners does not arise.

13 At the time of arguments, the learned counsel for the petitioners submitted that the respondent Nos.2 and 3 may be directed not to

alienate the suit schedule property pending disposal of the suit. The petitioners did not file application seeking such relief. It is needless to say that Court cannot grant relief in favour of the parties to the proceedings without there being an application. The petitioners miserably failed to establish prima facie case in their favour. On the other hand, the material placed before the Court prima facie establishes that the petitioners were not in possession of the suit schedule property as on the date of filing of the suit. The balance of convenience is in favour of the respondent Nos.2 and 3. If interim injunction is granted, it may cause untold hardship to the respondents. The petitioners failed to prove the three basic ingredients to grant ad-interim injunction in their favour. The trial Court has considered the oral, documentary evidence and other material available on record and arrived at a conclusion that the petitioners failed to prove the prima facie case and balance of convenience in their favour. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court. Viewed from any angle, the petitioners are not entitled to the relief of interim injunction. The appeal lacks merits and bonafides.

14 Accordingly, this Civil Miscellaneous Appeal is dismissed. No order as to costs. Consequently, miscellaneous petition if any pending in this Civil Miscellaneous Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 11th April, 2017
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