

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

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HON' BLE SRI JUSTICE P. KESHA RAO

C.M.A.Nos.1158 and 1159 of 2017

COMMON JUDGMENT:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

Inasmuch as the question of fact and law and the parties in these two appeals are one and the same, these matters are taken up together for disposal by this Common Judgment with the consent of the learned counsel for both the parties.

While C.M.A.No. 1158 of 2017 is filed assailing the Common Order dated 22.03.2017 in I.A.No. 1024 of 2014 in O.S.No. 32 of 2014 passed by II Additional District Judge, Karimnagar at Jagtial, C.M.A.No. 1159 of 2017 is filed challenging the same order in I.A.No. 1023 of 2014 in O.S.No. 32 of 2014.

I.A.No. 1023 of 2014 was filed under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C. seeking to grant temporary injunction restraining the respondents / defendants from alienating the petition schedule property. Whereas, I.A.No. 1024 of 2014 was filed under the same provision of law seeking to grant temporary injunction restraining the respondents / defendants from ever interfering with the peaceful possession and enjoyment of the appellant-plaintiff over the petition schedule property. The trial Court, after careful consideration of the rival contentions, pleadings and

the material on record, dismissed both the Interlocutory Applications.

In the impugned Common Order, the trial Court has categorically observed that it is a fact that under the sale deed bearing document No. 3195 of 2014, dated 09.07.2014, respondent Nos.1 to 3 alienated Ac.0.40 guntas in Sy.No. 367/ E of Nookapalli village equal to one acre of land to respondent No.4 – defendant No.4 i.e. Pippari Srinivas for Rs.24,20,000/- and since the date of purchase, respondent No.4 has been in possession and enjoyment of that land. This one acre of land is bounded by the Road on the eastern side, the land of Olepu Gangadhar on the western side, the way on the northern side and the land of Javvaji Lingavva on the southern side. When the document relied on by the appellant - plaintiff reveals that since the date of purchase, the 4th respondent has been in possession and enjoyment of the one acre of land which is part and parcel of the suit schedule property, it is clear that the appellant is out of possession of the part of the suit schedule property.

Accordingly, the trial Court has opined that when the appellant – plaintiff is out of possession of the part of the suit schedule property to an extent of one acre, the appellant cannot seek the relief as prayed in I.A.No. 1024 of 2014.

In addition to the above, the title deed and pattedar passbook, which stand in the name of Muddam Rajaiah, the father of the appellant, speak that Ac.2.09 guntas is his self-acquired property covered in Sy.No. 367/ E. When there is no record to show that this land fell to the father of the appellant under succession, and when there is no record to show that the appellant-plaintiff got the entire suit schedule property to an extent of Ac.2.09 guntas exclusively towards his share by virtue of either registered partition deed or oral partition alleged to have occurred between himself and his father – Muddam Rajaiah in the year 2012, *prima facie* when pattedar passbook shows that the suit schedule property is his father's self-acquired property, the trial Court was of the opinion that the appellant's father can settle or alienate his self-acquired property to any party.

The trial Court has observed that whether respondent Nos.1 to 3 acquired one acre of land under coercion, threat or misrepresentation when the appellant's father was not in fit condition and whether respondent Nos.1 to 3 obtained gift settlement deeds in their favour pertaining to one acre of land which is part and parcel of the suit schedule property, are the issues to be decided after full trial. However, when the title deed and pattedar passbook, which stand in the name of the father of the appellant, show that the suit

schedule property is his self-acquired property and when he settled a part of it i.e. an extent of Ac.0.40 guntas to his daughters i.e. respondent Nos.1 to 3, who in turn, alienated one acre to respondent No.4, who is a *bona fide* purchaser for Rs.24,20,000/- and when the appellant-plaintiff is out of possession of the one acre of land out of total extent of Ac.2.09 guntas, the appellant-plaintiff cannot seek the relief as prayed in I.A.Nos. 1023 and 1024 of 2014.

The trial Court has also observed that whether respondent Nos.1 to 3 played fraud on the father of the appellant and obtained gift settlement deeds dated 15.04.2014 and whether such instruments and the sale deed which stand in the name of respondent No.4, dated 09.07.2014 are void *abinitio* and will not bind on the appellant, are the issues to be decided after full trial.

Hence, by recording the aforesaid facts, the learned II Additional District Judge, Jagtial, Karimnagar District rightly dismissed both the Interlocutory Applications.

Keeping in view the facts recorded above and the opinion of the trial Court, we find no illegality or perversity in the impugned Common Order.

Hence, we do not find any merit in the appeals, and the same are accordingly dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending,
shall stand disposed of as infructuous.

10.11.2017

SURESH KUMAR KAIT, J

bcj

P. KESHA RAO, J

