

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CIVIL MISCELLANEOUS APPEAL NO. 217 OF 2016

JUDGMENT: (Per the Hon'ble Smt. Justice Anis)

1. This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C.),' is directed against the order, dated 31.12.2015 passed in I.A.No.553 of 2015 in O.S.No.626 of 2015 on the file of the I Additional District Judge, Visakhapatnam.

2. Appellant was arrayed as the respondent No.1, while the respondent No.1 as the petitioner and the respondents 2 and 3 as the respondents 2 and 3 in I.A. before the trial Court.

3. For the sake of convenience, the parties are referred to as arrayed in the I.A. before the trial Court.

4. The petitioner/plaintiff filed the petition under Order XXXIX Rules 1 and 2 C.P.C. for grant of interim injunction against the first respondent/defendant from dealing with the suit schedule property in any manner including development, making construction, alienation or encumber or creating any third party interest whatsoever over the suit schedule property till disposal of the suit.

5. The brief averments made in the petition filed before the trial Court are as follows:

The petitioner is the special power of attorney holder of one Vanamu Durga Naidu. According to him, one Gandham Rama Rao purchased 1000 Sq. yards of vacant site in Survey No.56/2 of Pothinamallayya Palem Village of Chinagadilli Mandal, Visakhapatnam under a registered Sale deed on 31.08.2000 from one Pinniti Vijaya Pratap, GPA holder of Puppala Surya Kantham and others. Subsequently, the said Gandham Rama Rao having retained 680 Sq. yards of land out of 1000 Sq. yards for himself under two bits towards southern and northern sides and the remaining extent of 320 Sq. yards of vacant land situated at middle in between the said two bits of 680 Sq. yards was sold to one Bodu Kamala under a registered possessory sale agreement coupled with GPA dated 16.11.2000 and ever since she was in an uninterrupted possession and enjoyment of 320 Sq. yards, which is the suit schedule property. The said Bodu Kamala sold away the said property to the plaintiff Vanam Durga Naidu under a registered Sale deed dated 28.11.2002. Since the date of purchase, the petitioner/plaintiff was in physical possession and enjoyment of the suit schedule property. It is also contended that the

plaintiff Vanam Durga Naidu sold away the suit schedule property to one Pothina Siva Lingeswara Rao under an agreement of sale dated 12.01.2007 for his family expenses and his purchaser paid the entire sale consideration to him. Since the property situated in Survey No.56/2 of Pothinamallayya Palem is affected by list of properties prohibited from registration under Section 22-A of A.P. Registration Act, the sale deed was not executed in favour of said Siva Lingeswara Rao. In the month of May, 2015, the petitioner came to know as well noticed that the first respondent/defendant has constructed boundary wall from south to north including the suit schedule property as if it is his property. Immediately, the petitioner approached the first respondent and questioned him about the construction of boundary wall and who in turn informed that he purchased the same from G.Rama Rao under a registered Sale deed dated 07.02.2003. Then, the petitioner advised the first respondent to get the document rectified and amended the boundaries mentioned in the document by the vendor. In spite of several requests made by the petitioner, the first respondent did not choose to hear his request and without rectifying the defect, a false complaint has been filed against the petitioner before Pothinamallayya Palem Police Station. Further, the first respondent also obtained building plan

dated 26.10.2013, which was sanctioned by the second respondent for construction of apartment in the subject-matter of the property. The third respondent also accorded LRS vide RC.No.3239/10/L5. According to the petitioner, the respondents 2 and 3 might have sanctioned the said approvals basing on the document submitted by the first respondent and those approvals are defective one and non-est in the eye of law.

The first respondent with an intention to illegally occupy the suit schedule property belongs to the petitioner, deliberately proceeding with the permanent construction in the suit schedule property highhandedly. If the first respondent is allowed to do so, multifarious litigations would be arisen. Therefore, the petitioner stated that he got *prima facie* case and balance of convenience is in his favour, and prayed the Court to grant injunction restraining the respondent No.1 as prayed for.

6. The first respondent filed counter and contended that the petition filed by the petitioner is not maintainable and is liable to be dismissed *in limini*. The document which is in favour of the petitioner is an unregistered and under stamped paper, hence the attorney holder has no power to institute the suit and the application is liable to be rejected at the

threshold for want of stamp duty and registration. The documents i.e., agreement of sale and special power of attorney dated 24.08.2007 are created for the purpose of present suit to grab the property belongs to this respondent. The first respondent admitted about acquiring of rights on 1000 Sq. yards by G.Rama Rao and denied that the said Rama Rao was in possession and enjoyment of the property as his possession was seized after the execution of the sale deeds in favour of the first respondent as well as Smt. Boddu Kamala. The first respondent also denied that G.Rama Rao has retained 680 Sq. yards out of 1000 Sq. yards on northern and southern side and left 320 Sq. yards in the middle of 680 Sq. yards in two bits and the petitioner has to prove the same. Further, the boundaries are not tallied with the documents in favour of G.Rama Rao and B.Kamala. The sale deed in favour of the first respondent clearly shows that 680 Sq. yards is bounded by 30 ft. wide road on western side and northern side and the property is situated within four corners of the boundaries. Further, there is no whisper as to the delivery of the schedule property to the petitioner and the document cannot be looked into for want of stamp duty and registration since it is a possessory agreement of sale. The rectification deed clinchingly shows that a false claim is made by the petitioner and his vendor and admitted that a crime

was registered against the petitioner as he attempted for demolition of the boundary wall which was already constructed in the property belongs to the first respondent. After purchase of the property, the first respondent constructed a row of houses with due approval of the panchayat for development of the property and he removed only the row of houses by retaining the boundary wall with an intention to construct apartment in the said property of 680 Sq. yards. The conduct of the petitioner in issuing notice to the respondents 2 and 3 without issuing notice to the first respondent would clearly shows the malafide intention of the petitioner and the ulterior motive to cause harm to the respondent behind his back. Therefore, the present application is liable to be dismissed for want of necessary party to the suit i.e., G.Rama Rao, who is the original owner of the entire extent of 1000 Sq. yards. The first respondent also stated that he mobilized money and material for construction and the petitioner with an eyesore attributing malafides against the respondents 2 and 3. The first respondent is paying property tax to the local panchayat and to GVMC after its conversion and further stated that the petitioner has not made out any ground to seek injunction against the first respondent. Therefore, finally prayed the Court to dismiss the petition.

7. In the counter filed by the third respondent, it is stated that the first respondent purchased the property which was covered by an unapproved layout and applied for regularization of the site. After due verification of all the documents and after following the due procedure, regularized the same under LRS vide RC No.3239/10/L5 dated 09.05.2012. The third respondent received the notice from the petitioner on 27.08.2015. It is further stated that the third respondent has nothing to do with the allegations made by the first respondent and the file regarding the regularization was already closed long back and nothing can be done by the third respondent at this point of time and prayed the Court to dismiss the petition.

8. The second respondent filed counter and denied the allegations made by the petitioner and put the petitioner to prove the same. According to this respondent, the the first respondent submitted building plan seeking permission for the proposed construction of the residential apartment consisting of stile for parking, ground + 4 floors in the site area of 557.32 Sq. meters or 568.40 Sq. yards covered by Survey No.56/2 of Pothinamallayya Palem Village duly enclosing the land regularization proceedings issued by the third respondent along with ownership documents. The

respondent accorded permission vide proceedings dated 26.10.2013 subject to certain conditions laid down in the proceedings and the respondents 2 and 3 have nothing to do with the inter se disputes between the first respondent and the petitioner. It is also stated that the sanctions were issued purely basing on the LRS proceedings and the ownership documents produced by the first respondent. It is further stated that the first respondent already commenced construction pursuant to the sanctioned plan granted by the respondent corporation and finally stated that there is no *prima faice* case against the respondents and prayed the Court to dismiss the petition.

9. During the course of enquiry, on behalf of the petitioner, Exs.P.1 to P.14 got marked and on behalf of the respondents, Exs.R.1 to R.13 got marked.

10. The trial Court, after considering the oral and documentary evidence, allowed the petition restraining the first respondent from dealing with the suit schedule property in any manner including development, making construction, alienation or encumber or creating and third party interest whatsoever over the suit schedule property till pending disposal of the suit.

11. Aggrieved by the injunction order passed by the trial Court, the first respondent/defendant preferred the present Civil Miscellaneous Appeal.

12. The learned counsel for the appellant/first respondent argued that the appellant denied the title of the respondent/plaintiff, in such circumstances the Court below ought not to be granted interim injunction against the appellant and in favour of the respondent/plaintiff. It is also argued that the Court below failed to observe that possessory agreement of sale does not confer any title whatsoever and prayed the Court to allow the appeal. It is also contended that the respondent/plaintiff failed to prove *prima facie* case and balance of convenience and the Court below erred in holding that the plaintiff is in possession of the suit schedule property and thereby granted injunction in favour of the respondent/plaintiff. It is further argued that the Court below failed to see that the vendor of the plaintiff by name Bodu Kamala did not have valid title to the suit schedule property, and therefore, the first respondent/plaintiff claiming ownership, title and possession to the said property does not arise. It is also argued that the respondent/plaintiff ought to have filed the suit under Section 6 of the Specific Relief Act and that the lower Court observed that the very identity of the

property was in question, but finally granted injunction against the appellant.

It is further argued that after purchase of the property by the appellant, he obtained LRS plan from the third respondent and after verifying measurements of the property, the third respondent accorded LRS plan and that the proceedings issued by the respondent No.3 would clearly shows the boundaries of the respondent's property. It is also argued that the respondent already commenced construction in the property and if the constructions are stalled much loss to be caused to the appellant/defendant. It is finally argued that the respondent/plaintiff has not made out *prima facie* case and balance of convenience, and therefore, prayed the Court to set aside the order passed by the Court below dated 31.12.2015 in I.A.No.553/2015.

13. On the other hand, the learned counsel for the first respondent/petitioner argued that the petitioner purchased the property admeasuring 320 Sq. yards in Survey No.56/2 of Pothinamallayya Palem Village of Chinagadilli Mandal, Visakhapatnam from Smt. Bodu Kamala under a registered document dated 28.11.2002 and since the date of purchase, the respondent/plaintiff was in physical possession and enjoyment of the said property exercising all the rights. It is

.also argued that in the month of May, 2015, the respondent/plaintiff noticed that the appellant constructed the boundary wall including the property belongs to the respondent/plaintiff and in spite of several requests made by the respondent/plaintiff, the appellant did not stop the construction in the property belongs to the respondent/plaintiff, and therefore, the respondent/plaintiff constrained to file the suit and obtained the injunction in I.A.No.553 of 2015. It is also argued that the appellant/first defendant illegally occupied the suit schedule property belongs to the respondent/plaintiff without any manner of right or title and deliberately proceeding with the illegal permanent constructions. It is also argued that the trial Court, after considering the documentary evidence, rightly granted injunction against the appellant/first defendant restraining him from dealing with the suit schedule property in any manner including development, making construction, alienation or encumber or creating and third party interest whatsoever over the suit schedule property pending disposal of the suit and the said findings of the Court below need no interference, and finally, prayed the Court to dismiss the appeal.

14. After hearing both sides, the point that arises for consideration is:

Whether the appellant/first respondent has made out any case to set aside the impugned order passed by the trial Court as prayed for?

15. **POINT:**

A perusal of the record shows that the petitioner/plaintiff filed the suit for declaration to declare him as an absolute owner of the suit schedule property admeasuring 320 Sq. yards in Survey No.56/2 of Pothinamallayya Palem Village of Chinagadilli Mandal, Visakhapatnam and for consequential relief of permanent injunction. Along with the suit, the petitioner filed I.A.No.553 of 2015 seeking interim injunction restraining the first respondent/defendant from dealing with the suit schedule property in any manner including development, making construction, alienation or encumber or creating any third party interest whatsoever over the suit schedule property pending disposal of the suit.

16. Admittedly, Sri Gandham Rama Rao purchased 1000 Sq. yards of vacant land in Survey No.56/2 of Pothinamallayya Palem Village on 31.08.2000 from one

Pinniti Vijaya Pratap, GPA holder of Puppala Surya Kantham and others. Out of the said land, the said Rama Rao retained 680 Sq. yards for himself in two bits and remaining extent of 320 Sq. yards was sold to Smt. Bodu Kamala. From the date of purchase, the said Bodu Kamala was in possession of the suit schedule property. Thereafter, the said Kamala sold away the plaint schedule property to the petitioner/plaintiff on 28.11.2002 and delivered the possession of the said property. Since the date of purchase, the petitioner has been in physical possession and enjoyment of the said property.

17. There is no dispute that the petitioner/plaintiff purchased the suit schedule property under a registered Sale deed dated 28.11.2002. It is also not in dispute that the first respondent/defendant constructed a boundary wall from South to North including the plaint schedule property in spite of the petitioner/plaintiff issuing a legal notice questioning his highhandedness. It is an admitted fact that the first respondent/defendant on obtaining the sanction for construction from respondents 2 and 3, started construction in the suit schedule property. There is no dispute that the first respondent purchased 680 Sq. yards of land from G.Rama Rao under a registered Sale deed dated 07.02.2003

and since the date of purchase, he has been enjoying the property purchased by him.

18. The petitioner as well as the respondent No.1 filed their respective sale deeds into the Court and a perusal of the boundaries mentioned in the sale deeds, it is clear that on the western side plot of the petitioner, there is a road and on the western boundary of the respondent also there is a 30 feet road. Thus, a perusal of the plan and sale deeds of both the parties, it is clear that the boundary of both the lands on the eastern side is Survey No.56/2 and on the western side, 30 feet wide road of APHB colony.

19. According to the petitioner, in his absence from Visakhapatnam, the first respondent constructed a boundary wall from South to North including the suit schedule property as if his property is a contiguous bit. In spite of his several requests, the appellant/defendant did not choose to hear his requests and started construction in the property. Admittedly, the vendor's vendor of the petitioner and the vendor of the first respondent is none other than Sri Gandham Rama Rao. At the first instance, the said Rama Rao sold 320 Sq. yards to the vendor of the petitioner and subsequently he sold away the remaining 680 Sq. yards to the first respondent/appellant.

20. By filing the Sale deed and link document, the petitioner proved his *prima facie* title and possession to the suit property and the first respondent by obtaining proceedings of land regularization scheme, started construction in the property which includes the plaint schedule property. Thus, the first respondent/defendant encroached the property belongs to the petitioner/plaintiff. If the first respondent is permitted to proceed with the further construction, it would further lead to the alienation of the property to the third parties. Thus, the trial Court rightly granted injunction restraining the first respondent from making further construction in the suit schedule property and the findings of the trial Court in granting the injunction are based on record as the petitioner made out his *prima facie* case and balance of convenience and if the constructions are allowed to be proceeded, the purpose of suit will be defeated and the very existence of suit schedule property may be extinguished. Thus, the appellant has not made out any case to set aside the order passed in I.A.No.553 of 2015 and the appeal is devoid of merits and is liable to be dismissed.

21. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the order dated 31.12.2015, passed by

the I Additional District Judge, Visakhapatnam, in I.A.No.553 of 2015 in O.S.No.626 of 2015. No order as to costs.

22. Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

(SANJAY KUMAR, J)

(ANIS, J)

25.01.2017
Anr



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