

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.1244 OF 2017

JUDGMENT:

Heard both sides.

2. Perused the grounds urged in the appeal and the petition, counter and the other material including the impugned order of the lower court dated 09.10.2017 in I.A.No.284 of 2017 in the pending suit for bare injunction in O.S.No.30 of 2017 on the application for grant of temporary injunction in relation to the plaint schedule property restraining the defendants 1 to 3 and their men from interfering with the plaint schedule property sought, since ended in dismissal, the present appeal maintained.

3. The crux involved with reference to the pleadings and exhibits P1 to P34 and R1 to R34 is whether the plaintiff got right over the plaint schedule property and in possession to the entitlement of temporary injunction and if so, whether the impugned order of the lower court in dismissing the application by vacating the *ad interim ex parte* injunction order dated 31.05.2017, is unsustainable. Though it is the settled law that the court in deciding a temporary injunction application, any documents marked is only for purpose of reference and not by application of mind strictly with reference to the legal parameters in relation to the

admissibility, relevancy and the strict proof required by the canons of law. It is thereby the material for consideration in grant or refusal in considering the existence of *prima facie* case, balance of convenience and showing of the irreparable injury otherwise plaintiff will suffer if no interim protection order pending disposal of the suit by temporary injunction be granted, leave about the power of the court in the grant or refusal of the discretionary relief always rests in imposing terms and also subject to modification from time to time even plaintiff could not able to establish the entitlement of the temporary injunction, leave about the furnishing of security if at all granted temporary injunction as the case may be. From this though revenue record is by itself not a document of title, in the absence of any document of title the permanent revenue record can definitely be construed in considering the suit for bare injunction based on title with reference to it of the plaintiffs entitlement to injunction or not with reference to such revenue record, that too when Record of Rights Act, 1971, Section 6A speaks of a revenue title deed granted gives the presumption of title.

4. No doubt the defendant placed reliance upon Exhibits R16 to R21, so-called registered sale deeds of 1964 in saying the 1st defendant Society was formed in 1964-1965 and purchased the property and constructed the college and also there is a compound wall. Some photographs are filed to

refer the compound wall. If at all the sale deeds placed reliance by defendant with reference to Exhibits R16 to R21 with reference to the 14 photographs said to have been filed covered by Ex.R22 is relating to plaint schedule property, there is something to say plaintiff is not entitled because defendant is able to show that he is entitled to right over the property by virtue of the so-called sale deeds. That issue not at all dealt with by the trial court from the very lengthy order running 21 pages with reference to the documents. The trial court then should not have been ignored the revenue records right from 1964-1965 more particularly from Exs.P6 to P25 apart from Form 1B Permanent Revenue Register covered by Ex.P26 showing the entitlement of the plaintiff over the plaint schedule property. Once such is the case, the trial court should have been at best appointed an Advocate Commissioner to localize the property covered by the plaint schedule with reference to the pahanees covered by Exs.P6 to P25 and Form 1B register and the sale deeds descriptions covered by Exs.R16 to R21, it was not done. The trial court simply dismissed the application for temporary injunction mainly based a reference on the so-called photographs 14 in number covered by Exs.R22, though photographs are also to somehow show it depicts a compound wall, it is not a proof much less to come to any conclusion of existence of *prima facie* case of the so-called compound wall if at all described in the photographs is in relation to plaint schedule property, in

the absence of showing with reference to the photographs how they are shown as related to the plaint schedule property. That could not even be considered by the lower court. Had it been properly considered by the court, it could have been a case for purpose of elucidating the matter in dispute as to the sale deeds and photographs relate to the plaint schedule property or not by appointment of an advocate commissioner for noting the physical features if necessary by localization of the plaint schedule with reference to the revenue record placed on behalf of the plaintiff and with reference to the certified copies of the sale deeds placed on behalf of the defendant.

5. Having regard to the above, the dismissal order of the lower court is set aside, the matter is remanded to the lower court to restore the petition for fresh consideration by directing both parties to maintain existing *status quo* including as to the existence of the wall with a direction to the lower court by virtue of this order to appoint an Advocate Commissioner at the expense of the defendants/respondents for purpose of noting the physical features of the plaint schedule property and also for localization of the property by measurement and demarcation if necessary. Both parties by virtue of this order within fifteen days from today shall file any work memos for the court to pass an order for

appointment of an Advocate Commissioner within the scope of the observations made above.

6. Accordingly, the CMA is disposed of with observation that none of the observations in the earlier order of the trial court, since set aside or the observations herein will influence the mind of the trial court in deciding the matter afresh or in deciding the suit *lis*.

7. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

27.11.2017
SS

DR.B.SIVA SANKARA RAO, J

