

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.M.A.No.1292 of 2017

ORDER

The unsuccessful plaintiff in I.A.No.1037 of 2017 on the file of the learned XV Addl.District Judge, Ranga Reddy district at Miyapur, in seeking temporary prohibitory injunction against the 5 defendants/respondents pending disposal of the suit O.S.No. 1087 of 2017 filed for the relief of permanent prohibitory injunction claiming that the plaint schedule property which is item Nos.A to D mentioned in the schedule, originally belongs to their paternal grandfather Harbijan Singh who got title over the property by virtue of his purchase in 1989 and subsequently he died testate having made a bequeath under original of Ex.P.9 Will dt.14.06.2003 before his death on 17.12.2003 covered by Ex.P.6 death certificate, and the legatee who is no other than the donor under Exs.P1 to P4 gifted the property under the four documents in favour of the plaintiff herein and that it is a vacant land and the plaintiff is in possession and enjoyment and earlier Haribajan Singh and subsequently after death of said Harbajan Singh from the donor under title covered by Exs.P.1 to 4 who was the legatee of the testament of Harbhajan Singh under original of Ex.P.9 and that, the defendants without any right are trying to interfere and dispossess him. Among Exs.P.1 to P.25 placed reliance by the plaintiff in the temporary injunction application besides Exs.P.1, 14, 6, 8 and 9 the other documents are Ex.P.7 sketch. the Ex.P.5 is the registration extract of the sale deed for the property

purchased in 1989 by Harbhajan Singh obtained on 26.08.2017, Ex.P.8 letter addressed to the grampanchayat, Kothaguda, Ex.P.10 cist receipt, Exs.P.11 to P14 pahanies obtained in the year 2017 February and March, Exs.P.15 to P.18 are encumbrance certificates, Ex.P.20 is 4 phogographs, Ex.P.22 to Ex.P.24 order copy in W.P.No.18573 of 2014 of this Court, order in CMA No.647 of 2014 of this Court, order in SLP No.34856 of 2014 of the Apex Court and notice of GHMC,dt.06.05.2015 besides that Ex.P.21 is the Photostat copy of the passport of Harbhajan Singh, dt.13.09.1996.

2. The contest of the respondents/ defendants respectively is that Harbhajan Singh in his lifetime sold the property under the original of Ex.R.1, Certified copy of sale deed,dt.11.10.1991, and there are in turn sales for entire extent or part, as the case may be, of the plaint schedule property covered by certified copies of the sale deeds Exs.R.6,R.2 to R.5, 7 and 8 and 10. Ex.R.9 is the so called relinquishment deed, dt.04.07.2002, Ex.R.11 is the development agreement, dt.11.05.2009, Ex.P.12 encumbrance certificates obtained in October,2010, Ex.R.13 and R.14 proceedings of the District Collector, Sherlingampalli of 2002 and 2003, Ex.R.15 and 16 are the revenue pattadar passbooks and Exs.R.17 to R.23 are the pahanies and Ex.R.24 proceedings of the Cyberabad Development Authority of 2004, Ex.R.25 and 26 letters of Airport Authority of India of 2005 and 2008, Ex.R.32 is the application for compliance with the requirements not complied for the GHMC approved plan that is of February,2013 from which

Ex.R.34 building permission, dt.31.12.2015, Ex.R.35 and 36 are the sketch maps for the Sy.Nos.39 and 41 and Ex.R.33 photographs. The lower Court from the above from the impugned order, dt.09.09.2017 dismissed the application for grant of temporary injunction sought for in I.A.No.1037 of 2017. It is impugning the same, the present miscellaneous appeal is filed.

3. The contentions in the grounds of appeal vis-à-vis the oral submissions of the learned counsel for the appellant/ plaintiff are that the impugned order of the lower Court is perverse and unsustainable and without referring to the material documents and not drawing attention to the crucial aspects of possession and enjoyment of the plaintiff, leave apart even the question of giving pattadar passbooks and revenue title deeds or pahanies for the land which is open not within the meaning of the definition of the land u/ Sec.2 sub-section 4 of the A.P.Records of Rights Act, 1971 and thereby the dismissal order of the lower Court is liable to be set aside and temporary injunction is to be granted pending disposal of the suit from the prima facie title in favour of the plaintiff since his predecessors in the interest. Even taken for arguments of the so called Will of the deceased Harbhajan Singh executed in favour of the donor under the original of Exs.P.1 to 4 are not proved by filing any affidavit of at least one of the attestors as contemplated by Section 63 of the Indian Succession Act, from the factum of the respondents' documents particularly Ex.R.1 itself admits the source of title over the property that

belongs to Harbhajan Singh that is the paternal grandfather of the plaintiff in question.

4. Whereas, it is the contention of the learned counsel for the respective respondents particularly R.1 on one side and R.5 on the other side that the very suit for bare injunction is not maintainable including from the expression of the Apex Court *Anathula sudhakar Vs. P.Buchi Reddy(dead)* by L.Rs.¹ where it is observed that it is not mere because of without any right of interference by the defendants but from the cloud on title pursuant to the registered document the defendants placed reliance, thereby the plaintiff ought to have been filed a suit for declaration of title with possession or injunction, as the case may be, consequently. Once that is the case, there is no prima facie case and the other contention is with reference to the expression of the Apex Court in *Prem Singh Vs. Birbal*² particularly from para-27 that once there is registered document which is age old one of 1991, the presumption of genuineness of the registered document under which title passed to the defendants or the predecessor can be drawn attention. Once such is the case, the plaintiff has no prima facie case leave about not maintainable and that the plaintiff is not in possession and the lower Court order is supported by the reasons and for this Court while sitting in appeal merely because another view is possible not a ground to interfere and thereby the appeal is liable to be dismissed. It is also the

¹ (2008) 4 SCC 594

² 2006 5 SCC 353

contention that construction of the building complex commercial and otherwise is in progress and the plaintiff's filing of the suit without any right in favour of Harbhajan Singh even to make any bequeath to the so called donor in favour of the plaintiff is vexatious claim and thereby the appeal is liable to be dismissed.

5. Heard both sides at length and perused the entire material on record.

6. Undisputedly so far as the impugned order of the lower Court concerned, though the order is running in 21 paragraphs with more than 18 pages, it did not advert to the crucial aspect of Ex.P.21 copy of passport of Harbhajan Singh with reference to Ex.R.1 certified copy of sale deed, dt.11.10.1991. No doubt, whether Harbhajan Singh executed the sale deed in question covered by Ex.R.1 or not is a matter to be decided after full-dressed trial with reference to the sale deed contains any signature of Harbhajan Singh from the contention of Harbhajan Singh used to sign in Urdu. Ex.P.21 passport of 1996 during lifetime of Harbhajan Singh also shows signature in Urdu. Once such is the case, whether Harbhajan Singh executed the sale deeds covered by original of Exs.R.1 and R.6 and in turn by any of the vendees under Harbhajan Singh as per the other documents covered by Exs.R.2 to R.5 and R.7 to 1, which is also a matter to be decided during trial.

7. So far as the existence of prima facie case concerned, what the plaintiff has to establish in a suit for injunction based on

title is prima facie existence of title to decide something more than a bonafide contention and triable issue. Once the prima facie case for arguments sake is taken as established, the other aspects of balance of convenience in whose favour and the plaintiff is to suffer any irreparable injury for non-granting of injunction requires consideration, however, lower Court did not at all advert to it. However, the fact remains that from the expression of the Apex Court in Prem Singh supra from the presumption that can be prima facie drawn to the sale deeds in question in favour of the defendants and their predecessors in title covered by Exs.R.1 to R.10 and also from the municipal approved plan covered by Exs.R.34, dt.31.12.2015 and it is the claim that some of the construction are in progress. Though the plaintiff, in pending suit, even asked for appointment of an Advocate-Commissioner by filing application, dt.01.11.2017 that was opposed by filing counter by the defendants of saying appointment of an Advocate-Commissioner is not necessary. However in the case whether it is open land or there are constructions and any further constructions in progress even as per the very contest of the 1st defendant with reference to Ex.R.34, appointment of Advocate-Commissioner is necessary for the purpose of elucidating the real matter in controversy and could not have been opposed by the defendants even sought by plaintiff.

8. Having regard to the above and from the defendants chosen to give undertaking of the construction that are taking

place is at their own risk and from such undertaking it will not impair any of the rights of the plaintiff in the event of ultimate success of the suit by recording said oral undertaking given by the counsel in open Court to bind the party with all legal consequences, the CMA is disposed of by directing the lower Court to appoint an Advocate-Commissioner to note down the existing physical features of the suit property as on date and to decide the suit as early as possible thereafter. It is made clear that the construction by the defendants will not automatically give any entitlement of alienation by further creation of any third party rights without disclosing to the purchasers about this order so that any purchasers cannot claim any better rights much less with claim as bonafide purchasers.

9. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 12.12.2017

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