

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL NO.80 OF 2018

JUDGMENT:

This appeal is filed assailing the order, dated 17.01.2018 passed in I.A.No.267 of 2017 in O.S.No.36 of 2017 on the file of the Court of Principal District Judge (FAC,I-Addl. District Judge) at Mahabubnagar.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present appeal are briefly as follows:

The respondents filed O.S.No.36 of 2017 on the file of the District Court, Mahabubnagar, against the appellants seeking perpetual injunction in respect of an extent of 3389.33 square yards in Survey No.102/6/A/AA/E situated at Ward No. 8, Block No.2, near Government Civil Hospital, Mahabubnagar. The appellants filed written statement denying all the averments made in the plaint *inter alia* contending that they own a house along with vacant site in Survey No. No.102/3 Mahabubnagar town. During the pendency of suit, the respondents filed the above interlocutory application under Order XXXIX Rules 1 and 2 CPC seeking interim injunction. The petitioners filed counter *inter alia* contending that the petition is not maintainable either on facts or in law. The trial Court after affording reasonable opportunity to both parties, dismissed the application. Hence, this appeal.

4. The contention of the learned counsel for the appellants is two fold viz., 1) the findings recorded by the trial Court are not based on evidence, much less, legally admissible evidence; and 2) the trial Court has not properly appreciated recitals of Ex.P16.

5. **Per contra**, learned counsel for the respondents submitted that the trial Court rightly considered the revenue records and gift deed and granted interim injunction in favour of the respondents. He further submitted that the findings recorded by the trial Court are based on evidence, much less, legally admissible evidence, hence, it is not a fit case to allow the appeal.

6. The point for consideration is whether there is any illegality, irregularity or impropriety in the impugned order?

7. To substantiate the arguments, the learned counsel for the appellants has drawn attention of this Court to **KAMMAGANI NADHAM AND OTHERS V VANGALA RAJA MALLA REDDY**¹, wherein it was held that while granting or refusing injunction, Court has to assess the comparative loss caused to the parties.

8. Establishment of *prima facie* case, balance of convenience and irreparable loss likely to be caused to the petitioners is *sine quo non* for granting interim injunction. It is needless to say that a person who seeks equitable relief has to approach the Court with clean hands.

9. Let me consider the facts of the case on hand in the light of the above legal principle.

10. One Bheemachary, who is the grand father of the respondents owned land in Sy.No.102/6/A/AA/E, One Anand Rao is the father of the respondents. During family partition, the father of the respondents got the suit schedule property along with some other property. The father of the

¹ 2014 (6) ALT 84

respondents executed gift deed on 28.03.2017 in their favour. A perusal of Exs.P1 to P14 clearly reveals that Bheemachary is the owner of the land in Sy.No.102/6/A/AA/E. It is the case of the appellants that they purchased the property from the wife of one Masi Reddy in the year 1963. A perusal of Exs.R4 and R5 reveals that appellants purchased the property from the wife of Masi Reddy in Survey No.102/3. The recitals of Exs.R19 to R25 supports the version of the appellants. Exs.P1 to P15 and Exs.P17 to P23 *prima facie* reveal that the respondents have been in possession and enjoyment of the suit schedule property. The balance of convenience is also in their favour.

11. Learned counsel for the appellants submitted that the respondents are making construction without obtaining necessary permission from the Mahabubnagar Municipality. The trial Court made an observation that the respondents obtained permission Ex.P16 from the Municipality in order to construct a compound wall around their land. It is the further contention of the appellants that Ex.P16 is not the permission obtained by the respondents.

12. Even assuming, but not conceding that the respondents are making construction without obtaining necessary permission, the Municipality is the competent authority to take appropriate action against the respondents. It is not the case of the appellants that they own land in Survey No.102/6/A/AA/E. The case of the appellants is that they own building and vacant site in Survey No.102/3. The respondents are not claiming vacant land in Survey No.102/3. The various sale deeds filed by the appellants clearly show that Bheemachary own vacant land on southern side of appellants vacant site. The documents

produced by the appellants support the version of the respondents that they own land in Sy.No.102/6/A/AA/E.

13. The contention of the appellants is that the respondents may encroach their property taking advantage of interim injunction granted by the trial Court. If at all, the respondents encroach the property of the appellants, the appellants are at liberty to take appropriate action in accordance with law.

14. *Prima facie* case and balance of convenience is in favour of the respondents. If no injunction is granted in favour of the respondents, it may cause untold hardship to them when compared to the appellants. The trial Court considered the documents produced by both parties and arrived at a conclusion that the respondents are entitled for interim injunction. The trial Court has assigned reasons, much less, cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the trial Court. The decision relied on by the learned counsel for the appellants is no way helpful to substantiate the stand of the appellants. There are no grounds, much less, valid grounds to interfere with the impugned order. The appeal lacks merits and *bona fides*. Hence, the appeal is liable to be dismissed.

15. Accordingly, the Civil Miscellaneous Appeal is dismissed. No order as to costs. Miscellaneous petitions, if any pending, in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 20-09-2018.
Hsd