

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CMA.No.449 of 2018

Date:13.08.2018

Between.

T.Rama Rao, S/o Late Ankamma
and another.

.....Appellants

And.

K.Nageswararao,
S/o Late Subbaiah

.....Respondent

Counsel for the appellants: Mr. T.Rama Koteswara Rao
for Mr. Rama Mohan Palanki

Counsel for the respondent: Mr. Aravala Sreenivasa Rao

The Court made the following:

JUDGMENT: (*per Hon'ble Seetharavamma i Justice C.V.Nagarjuna Reddy*)

The unsuccessful respondents in I.A.No.127 of 2016 in O.S.No.38 of 2016 on the file of the Additional Senior Civil Judge, Narasaraopet, filed this Civil Miscellaneous Appeal against order, dated 26.10.2017, whereby the lower Court has granted temporary injunction in favour of the respondents herein in respect of the suit schedule properties.

The brief facts leading to the filing of this appeal are stated hereunder:

One Venkateswarlu was the original owner of the suit schedule properties. He died leaving behind his wife- Seetharavamma without any children. During his life time, he executed Settlement deed, dated 19.10.1989, and got it registered, as per which, he created life interest in favour of his widow with absolute rights after her death in favour of the respondents, who are the children of his brother. It is not in dispute that during the life time of Seetharavamma, she was in possession of the suit schedule properties. Seetharavamma died on 04.12.2015 after executing Ex.P-1-Will, dated 18.6.2011. It needs to be noted that during the life time of Seetharavamma, the appellants have filed O.S.No.131 of 2008 on the file of the Principal Junior Civil Judge, Chilakaluripet, for permanent injunction restraining Seetharavamma from alienating the suit schedule properties. The two issues framed in the said suit were

(1) Whether Seetharavamma was the absolute owner of the suit schedule properties? and (2) Whether the plaintiffs are entitled to vested remainder in relation to the same, as per the conditions stipulated in the Settlement deed?. On appreciation of the oral and documentary evidence, both the above issues were held against the appellants and in favour of Seetharavamma.

It has been brought to the notice of this Court that against the said judgment, the appellants have filed A.S.No.72 of 2011; that the same was subsequently withdrawn; and that, later on 31.3.2016, an application for restoration of the said appeal was filed and the same is pending.

The respondent herein filed the afore-mentioned suit-O.S.No.38 of 2016 after the death of Seetharavamma as, the appellants were allegedly interfering with his possession of the suit schedule properties. It is his pleaded case that he lived with Seetharavamma till her death; that under Ex.P-1-Will, he automatically succeeded to her estate; and that he is continuing in physical possession of the suit schedule properties following the death of the testator-Seetharavamma. The appellants, however, stated that they succeeded to the estate of Venkateswarlu, having regard to the fact that Seetharavamma only had limited estate, and have become beneficiaries of the vested remainder and got into possession of the suit schedule properties.

The lower Court, on appreciation of the elements of *prima facie* case, balance of convenience and irreparable injury, held that the respondent, who was living with Seetharavamma, has not only automatically succeeded to the suit schedule properties but also is in physical possession of the same and that therefore, he is entitled to grant of injunction.

After hearing Mr.T.Rama Koteswara Rao, learned counsel representing Mr. Rama Mohan Palanki, learned counsel for the appellants and Mr. Aravala Sreenivasa Rao, learned counsel for the respondent, we are of the opinion that the issue whether the limited rights have matured into absolute rights in favour of Seetharavamma under Settlement deed, dated 19.10.1989, having already been decided in her favour as on date, the appellants do not have title over the suit schedule properties. Having already withdrawn the appeal filed against the judgment and decree, dated 15.6.2011, in O.S.No.131 of 2008 on the file of the Principal Junior Civil Judge, Chilakaluripet, the appellants cannot claim right over the suit schedule properties unless they succeed in getting the said appeal disposed of and eventually, succeed in the said appeal.

As regards the physical possession of the suit schedule properties, the finding of the lower Court that the respondent was living with Seetharavamma till her death is not seriously challenged. Therefore, by virtue of Ex.P-1-Will executed by

Seetharavamma, the respondent has automatically succeeded to her estate. It therefore necessarily follows that the respondent also stepped into the shoes of the testator-Seetharavamma on her demise as regards physical possession of the suit schedule properties.

In the light of the discussion as undertaken above, we do not find any reason to interfere with the impugned order of the lower Court. However, the findings of the lower Court having been rendered for the purpose of granting interlocutory relief, the same shall not have any bearing on the adjudication of the suit and also on the appeal preferred against the judgment and decree, dated 15.6.2011, in O.S.No.131 of 2008 on the file of the Principal Junior Civil Judge, Chilakaluripet.

Subject to the above observations, the Civil Miscellaneous Appeal is dismissed.

As a sequel to dismissal of the Civil Miscellaneous Appeal, I.A.No.1 of 2018 filed for interim relief is dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

13th August, 2018

DR