

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLEANEIOUS APPEAL No.130 of 2018

JUDGMENT:

This Civil Miscellaneous Appeal under Order XLIII Rule 1 of CPC is filed questioning the Order dt. 09.01.2008 in I.A.No.1926 of 2017 in A.S.No.189 of 2017 passed by IV Additional District Judge, Kakinada, allowing an application filed under Order 39 Rules 1 and 2 CPC granting temporary injunction during pendency of the appeal.

It is the case of the respondent herein/plaintiff is that he is the cousin of the petitioners herein and claiming right over the schedule property by virtue of the Will dt. 12.12.2012 executed by Subbayamma i.e., grand mother of both petitioners and respondents, in their favour, which is marked as Ex.A.1 before the trial Court and in pursuance of testamentary dispossession, he is continuing in possession and enjoyment of the property and to substantiate his possession, he produced several documents before the Court below. It is also contended that the petitioners herein are trying to interfere with his peaceful possession and enjoyment of the schedule property and prayed for interim injunction.

The petitioners herein contended that they are alone in possession and enjoyment of the property and cultivating the land in their own right being 50% shareholder in view of the dismissal of the suit No.227 of 2014 and therefore, the plaintiff is not entitled to claim temporary injunction against co-sharers and prayed for dismissal of the petition setting aside the Order passed by the Appellate Court in I.A.No.1926 of 2017.

During hearing, Sri N. Siva Reddy, learned counsel for the petitioners/defendants contended that those documents were created subsequent to obtaining temporary injunction and pattadar passbook

was obtained by him, against which they filed an appeal before Revenue Divisional Officer, Kakinada, and the same was dismissed, challenging the same, they filed revision and it is pending for consideration.

It is also contended that after dismissal of the suit by the trial Court, the petitioners herein are alone cultivating the property in their own right and thereby the Order passed by the Appellate Court is erroneous and prayed to set aside the Order passed by the Appellate Court in I.A.No.1926 of 2017.

Sri M. Balasubrahmanyam, learned counsel for the respondent herein/plaintiff contended that the trial Court granted interim injunction, which was in force during the pendency of the suit, and consequent upon dismissal of the suit, the temporary injunction is merged with the main judgment and the documents produced by him before the trial Court are suffice to hold that he is in possession and enjoyment of the property in his own right and when the interim injunction was in force during pendency of the suit, he is entitled to claim temporary injunction in the appeal, since the appeal is continuation of main suit and prayed for dismissal of the appeal.

It is an undisputed fact that the respondent herein/plaintiff obtained temporary injunction against the petitioners herein on the date of filing of suit, which was in force till dismissal of the suit by Judgment dt. 04.12.2017, where the trial Court disbelieved Ex.A.1-Will set up by these petitioners. Now the appeal is pending before IV Additional District Judge, Kakinada and along with the appeal, the plaintiff filed an application for grant of temporary injunction and the said Court while granting stay held that Exs. A.1 to A.21 are suffice to conclude that the

respondent herein/plaintiff is in possession and enjoyment of the property.

Nodoubt, when the respondent obtained interim injunction, which was in force during pendency of the suit, he is entitled to claim temporary injunction even in the appeal since appeal is continuation of suit and whether those documents were created subsequent to filing of the suit or not is a question to be decided only during trial, but as on today, the material produced before the court prima facie that both are paying taxes to the schedule property, vide Exs. A.4, A.8 to A.19 and Ex.B.1. But at this stage, it is difficult to decide the correctness of those tax receipts in the present miscellaneous appeal. When the subject matter of the property is an agricultural land, the best evidence is Adangals maintained by the VRO to establish their possession. The petitioners herein only produced two documents Exs. B.1 and B.2 i.e., Bunch of Tax Receipts and attested Medical Record pertaining to Narla Subbayamma, the testatrix. But Exs. A.5 to A.7 are the adangals for the fasali 1423 dt. 24.08.2014 clinches the issue and to establish that the respondent/plaintiff is in *prima facie* possession and enjoyment of the property in dispute. Therefore, the Appellate Court on believing the possession as on the date of filing the suit and appeal based on Exs. A.1 to 21 concluded that *prima facie* case is in favour of the respondent/plaintiff and he will suffer irreparable loss and injury if no injunction is granted in his favour and balance of convenience is also in his favour for the reason that the petitioners herein did not produce any material to establish their possession though they are claiming to be in possession of the property, and apart from that the temporary injunction was in force in favour of the plaintiff during pendency of the suit and appeal is continuation of the suit. Therefore, the Order passed by the Appellate Court does not call for any interference of this Court, while

exercising power under XLIII Rule 1 CPC and this Civil Miscellaneous Appeal is liable to be dismissed as it lacks merit.

Accordingly, this Civil Miscellaneous Appeal is dismissed.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 22-02-2018
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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