

**THE HONB'E SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CIVIL MISCELLANEOUS APPEAL NO.217 OF 2018

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

This Civil Miscellaneous Appeal is filed challenging the order dated 29.12.2017 in I.A.No.940 of 2017 in O.S.No.104 of 2017 on the file of the Court of XXVII Additional Chief Judge, City Civil Court at Secunderabad (for short, the trial Court).

2. The plaintiff in O.S.No.104 of 2017 on the file of the trial Court is the appellant in this Civil Miscellaneous Appeal. The point in this appeal is whether the plaintiff is entitled to a temporary prohibitory injunction under Order XXXIX Rules 1 & 2 CPC to restrain the defendants and those claiming under them from alienating the suit property in any manner? Hereinafter, the parties shall be referred to as they are arrayed in the suit.

3. The plaintiff filed O.S.No.104 of 2017 (i) for setting aside the compromise judgment and decree dated 29.04.2011 passed in O.S.No.202 of 2010 on the file of the Court of I Additional Chief Judge, City Civil Court at Secunderabad, (ii) for a preliminary decree in favour of the plaintiff declaring that plaintiff is entitled to 2/7th share in the suit property, (iii) for a final decree of the said share, (iv) for a perpetual prohibitory injunction restraining defendants and those claiming under them from changing the nature of the suit property and for other consequential reliefs.

3. Along with the suit, the plaintiff filed I.A.No.940 of 2017 under Order XXXIX Rules 1 and 2 CPC for a temporary prohibitory injunction to restrain the defendants and those claiming under them from alienating the suit schedule property in any manner. After a contest, the trial Court dismissed the said application by its order dated 29.12.2017. Assailing the same, the plaintiff has come up with this appeal.

4. It is an admitted fact that the plaintiff earlier filed O.S.No.202 of 2010 on the file of the Court of I Additional Chief Judge, City Civil Court at Secunderabad seeking partition and separate possession of her share in the suit property which is an extent of land admeasuring Ac.2-34 guntas out of Ac.3-17 guntas in Sy.Nos.51 to 54, situated at Kakaguda, Secunderabad. The entire case made out by the plaintiff and the stand of the defendants are set out in detail in the impugned order of the trial Court and it is not necessary to repeat them here.

5. What should be noted is that the record would disclose that the plaintiff and the defendants earlier entered into a compromise in O.S.No.202 of 2010 and I Additional Chief Judge, CCC at Secunderabad, basing upon that compromise and in accordance with law, recorded a compromise decree dated 29.04.2011 and a final decree was also passed on 27.01.2012 basing upon that compromise. The first relief sought by the plaintiff in the present suit is to set aside that compromise on the ground that her counsel in the previous suit mislead her and

took her signatures on some documents informing her that they were papers relating to her evidence and suppressed the facts. The defendants in the present suit denied this case of the plaintiff.

6. The contention of the learned counsel for the plaintiff is that in the above circumstances, it must be *prima facie* held that the plaintiff's counsel in the earlier suit and the opposite parties played fraud on the Court and obtained the compromise decree in O.S.No.202 of 2010. *Prima facie*, it is difficult to accept this contention. The plaintiff's case itself shows that her counsel mislead her and therefore it is not a case of fraud on the Court. Her ground clearly is that the said compromise and the decree based upon it in the earlier suit is not a lawful one. It should also be noted that the earlier suit in which the compromise decree was recorded is dated 29.04.2011, but the plaintiff has come up with the present suit in 2017 i.e., six years later without any explanation for the delay.

7. The trial Court considered the above aspects and rejected the plaintiff's contention. It is however open for the plaintiff to agitate this issue in the main suit based upon evidence and it is not necessary to express any opinion here and even otherwise on the material available such an opinion cannot be expressed.

8. The trial Court then examined and considered Rule 3-A of Order XXIII CPC which says that "no suit shall lie to set aside a

decree on the ground that the compromise on which the decree based was not lawful” and concluded that the present suit itself *prima facie* is not maintainable. This conclusion of the trial Court is in accordance with Rule 3-A of Order XXIII CPC and in our opinion does not call for any interference.

9. Even on merits, the trial Court examined the matter about the record in the earlier suit in para 22 of its order and concluded that the record would *prima facie* disclose that the plaintiff did enter into a compromise and also a subsequent registered development agreement dated 12.12.2011 in favour of the developer. It is also seen from the trial Court's order that after going through the record, it has observed that the buildings are already constructed and the counter of defendant No.21 would also disclose that the plaintiff also received her share of developed area and this is not denied. Thus keeping her eyes wide open, the plaintiff not only signed on the compromise deed, but also received her share of built up area/developed area and having waited for more than six years, she has now come up with this suit. Therefore, in the above circumstances, she cannot be heard now to say that she signed the papers without knowing what they contained and that she is an illiterate person. It can also be said that she is now estopped from taking such a plea. It was pointed out that in case of an illiterate woman, the burden of proving that she signed the document voluntarily knowing its contents lies upon the opposite party

and therefore the plaintiff's case should be accepted. The plaintiff can raise this point in the trial on the evidence and it is not possible for us to go into the same now. It is thus clear that both *prima facie* case and balance of convenience are in favour of the defendants and these are sufficient to dismiss the present Civil Miscellaneous Appeal.

10. For the reasons aforestated, the Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand closed.

C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

Date: 12-04-2018
TJMR

