

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

CIVIL MISCELLANEOUS APPEAL No.271 of 2018

14.08.2018

Between:

Bingi Srinivas Yadav and others

..Appellants

and

Bingi Pentaiah and others

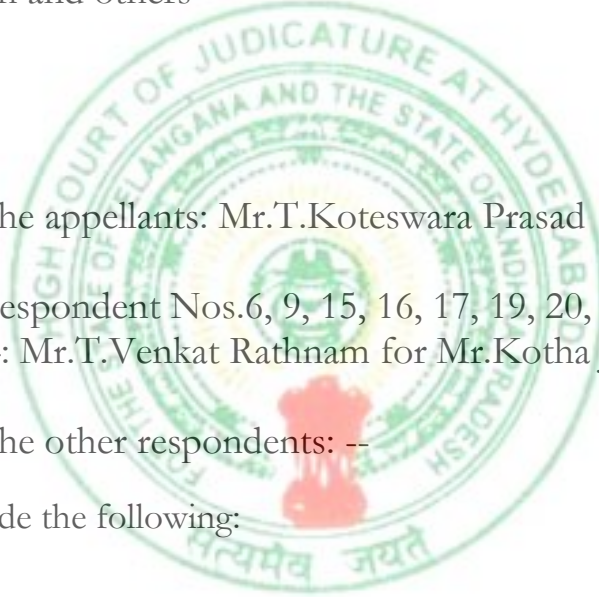
..Respondents

Counsel for the appellants: Mr.T.Koteswara Prasad

Counsel for respondent Nos.6, 9, 15, 16, 17, 19, 20, 21, 24, 25, 27, 29, 31, 32 and 34: Mr.T.Venkat Rathnam for Mr.Kotha Janardhan Reddy

Counsel for the other respondents: --

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Miscellaneous Appeal is filed against order, dated 22.01.2018, in I.A.No.91 of 2016 in O.S.No.74 of 2016 on the file of learned XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri.

2. We have heard Mr.T.Koteswara Prasad, learned counsel for the appellants, and Mr.T.Venkat Rathnam, learned counsel representing Mr.Kotha Janardhan Reddy, learned counsel for respondent Nos.6, 9, 15, 16, 17, 19, 20, 21, 24, 25, 27, 29, 31, 32 and 34.

3. The appellants and respondent No.3 are the sons of respondent No.1. Respondent No.2 is the brother of respondent No.1. Respondent Nos.1 and 2, being the original pattadars of the suit schedule properties, converted the same into house sites and sold the said plots in the year 2001 itself to respondent Nos. 6 to 37 (hereinafter referred to as 'third parties'). It is the pleaded case of third parties that most of them are petty employees, who purchased the plots from out of their hard earned money, and that some of them have even constructed houses. Almost 15 years after respondent Nos.1 and 2 sold the plots to third parties, the appellants filed O.S.No.74 of 2016 seeking partition of the suit

schedule properties by pleading that the said properties originally belonged to their grandfather - B.Komuraiah and that therefore, they are also entitled to shares in the properties left behind by Komuraiah. They filed I.A.No.91 of 2016 under Order XXXIX, Rules 1 and 2 read with Section 151 C.P.C. for grant of injunction restraining the respondents from changing the nature of the suit schedule properties and creating third party interests thereon.

4. The Court below has appreciated the elements of *prima facie* case, balance of convenience and irreparable injury based on the evidence on record. It has referred to Exs.R-2 to R-9 – the pahanies showing the names of respondent Nos.1 and 2 as the pattadars and also found that the said respondents executed sale deeds in favour of third parties during the year 2001. The Court also recorded its *prima facie* finding that there is no documentary proof showing that the grandfather of the appellants was the original pattadar of the suit schedule properties. The Court below has, accordingly, felt that the elements of *prima facie* case and balance of convenience do not lie in favour of the appellants.

5. On reconsideration of the facts in their entirety, we have no reason to differ with the findings of the Court below. The appellants claimed their right on the half baked plea that the suit schedule properties originally stood in the name of

Komuraiah, but they failed to produce any evidence to *prima facie* establish their stand. Moreover, when the suit schedule properties were sold as far back as 2001, the appellants have not come out with any reason as to why they kept quiet for nearly 15 years before filing the suit.

6. In the light of the above, we do not find any reason to interfere with the order of the Court below.

7. The Civil Miscellaneous Appeal is, accordingly, dismissed.

8. As a sequel to dismissal of the C.M.A., I.A.No.1 of 2018 filed by the appellants for interim relief stands dismissed as infructuous.



C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

14th August, 2018

GHN

