

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

C.M.A.No.312 of 2018

04.10.2018

Between:

Smt.Tajunnisa and others

..Appellants

and

Smt.Sartaj Begum and another

..Respondents

Counsel for the appellants: Mr.Mohd.Osman Shaheed

Counsel for the respondents: Mr.Aadesh Varma

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 21.03.2018, in I.A.No.946 of 2016 in O.S.No.451 of 2016 on the file of learned X Additional Chief Judge, City Civil Court, Hyderabad.

2. We have heard Mr.Mohd. Osman Shaheed, learned counsel for the appellants and Mr.Aadesh Varma, learned counsel for the respondents.

3. Appellant Nos.1 and 2 - the daughters, and appellant No.3 - the adopted son, of respondent No.1, filed the aforementioned suit for partition and separate possession of their shares in the suit schedule properties. Along with the suit, they filed I.A.No.946 of 2016 for temporary injunction restraining the respondents from alienating or otherwise encumbering the properties till the disposal of the suit.

4. It is the case of the appellants that the properties held by respondent No.1 are inherited by the latter, whereas the respondents pleaded that the said properties are her self-acquisitions. The Court below, on appreciation of the respective pleadings and the documentary evidence produced by the parties, has held that the appellants could not satisfy the elements of *prima facie* case, balance of convenience and irreparable injury in their favour. The Court

below has further held that no *prima facie* evidence was adduced by the appellants in support of their plea that respondent No.1 inherited the properties and that therefore, they are entitled to shares therein.

5. In our opinion, in the absence of any such evidence produced by the appellants to show that the suit schedule properties were inherited by respondent No.1, the Court below is justified in rejecting the application for injunction. However, in the facts and circumstances of the case, we are inclined to observe that the alienations, if any made by respondent No.1 to the third parties, shall be subject to the result of the suit.

6. Subject to the above observation, the Civil Miscellaneous Appeal is dismissed.

7. As a sequel to dismissal of the appeal, interim order, dated 11.04.2018, in I.A.No.1 of 2018, is vacated and I.A.No.1 of 2018 filed by the appellants for interim injunction stands dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

04th October, 2018

GHN