

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

CMA.No.443 of 2018

Date:26.09.2018

Between.

Peddati Premavani,
W/o P.D.Jashuva

.....Appellant

And.

Mallu Venkata Reddy,
S/o Gangi Reddy

.....Respondent

Counsel for the appellant: Mr. Nimmagadda Revathi

Counsel for respondent No.1: Mr. Srinivas Emani



The Court made the following:

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

This Civil Miscellaneous Appeal is filed against order, dated 28.12.2017, in I.A.No.670 of 2017 in O.S.No.28 of 2017 on the file of the III Additional District Judge, Rajampet.

We have heard the learned counsel for both parties and perused the record.

The appellant has filed the afore-mentioned suit for declaration of title and permanent injunction in respect of Ac.1.60 cents of land in Survey No.923 of Korlakunta Village, Obulavaripalli Mandal, Kadapa District. It is the pleaded case of the appellant that respondent No.1, who is the original owner, has sold an extent of Acs.8.50 cents of land, which includes the suit schedule property, under Exs.P-1 and P-2-sale deeds, dated 04.04.1983, in favour of B.Palakondaiah and Narayanamma, respectively, and that the said purchasers have sold the same to one Anamalagundam Venkataiah under Ex.P-3-sale deed, dated 30.7.1997; that after the death of the said Venkataiah, his legal heirs sold the said land to one Jailabdin under Ex.P-5-registered sale deed, dated 03.10.2011, and that from the said Jailabdin, the appellant purchased the suit schedule property admeasuring Ac.1.60 cents for valuable consideration under Ex.P-4-registered sale deed, dated 30.7.2012, with an intention to

construct Mines and Minerals Company. The appellant further pleaded that on the strength of the said sale deed, she has been in possession and enjoyment of the suit schedule property, constructed a building therein after obtaining permission from the authorities concerned and installed all the required machines, by raising huge loans from the State Bank of India, Kodur, in the year 2012. As respondent No.1 was allegedly interfering with her possession, the appellant filed I.A.670 of 2017 for temporary injunction restraining him from interfering with her peaceful possession and enjoyment of the suit schedule property. Respondent No.1 resisted the said application by filing counter-affidavit, wherein he has pleaded that the sale deeds, dated 04.04.1983, are fake and bogus and that, he is still the owner of the suit schedule property. He has further pleaded that he has filed O.S.No.14 of 2014 in the Court of the Senior Civil Judge, Rajampet, against the appellant and some other third parties for declaration of title and permanent injunction in respect of the entire extent of Ac.8.50 cents of land and obtained *ex parte* decree on 07.7.2014.

Mrs. Nimmagadda Revathi, the learned counsel for the appellant, has brought to the notice of the Court that I.A.No.11 of 2016 was filed by the appellant for setting aside the *ex parte* decree, dated 07.7.2014, in O.S.No.14 of 2014, along with an

application for condonation of delay in filing the said application and that the said I.A. was still pending. By the order under appeal, the lower Court dismissed I.A.No.607 of 2017 mainly on the reasoning that as O.S.No.14 of 2014 filed by respondent No.1 was decreed, grant of injunction in the present case would come into conflict with the injunction already obtained by respondent No.1.

The appellant has filed I.A.No.2 of 2018 in the present appeal for receiving additional material. In the affidavit filed in support of this application, the applicant/appellant stated that the lower Court has allowed I.A.No.11 of 2016, filed under Order-IX Rule-13 C.P.C. by order, dated 29.8.2018, by setting aside the *ex parte* decree and permitted the appellant to file written statement. A copy of the said docket order has been filed by the appellant along with the said I.A.

Mr. Emani Srinivas, learned counsel for respondent No.1, has not disputed the fact that the *ex parte* decree granted in favour of respondent No.1 by the Court of the Senior Civil Judge, Rajampet, in O.S.No.14 of 2014 has been set aside and the suit is restored to file.

Inasmuch as the main basis for dismissal of I.A.No.670 of 2017, filed by the appellant in her suit, was the *ex parte* decree passed in favour of respondent No.1 in O.S.No.14 of 2014, with

the setting aside of the said decree, the entire basis of the impugned order passed by the lower Court ceases to exist.

Learned counsel for respondent No.1 submitted that though the *ex parte* decree has been set aside, the interim injunction granted in favour of respondent No.1 in O.S.No.14 of 2014 is still in subsistence. This submission is not disputed by the learned counsel for the appellant.

So long as the injunction order obtained by respondent No.1 remains in force, the appellant being a party to the suit and the interlocutory application filed by respondent No.1, cannot claim counter injunction.

In these facts and circumstances of the case, we are of the opinion that the order under appeal is liable to be set aside and the same is accordingly set aside. I.A.No.670 of 2017 in O.S.No.28 of 2017 is restored to the file of the III Additional District Judge, Rajampet. The appellant is permitted to move an application for vacating the interim injunction granted in favour of respondent No.1 in O.S.No.14 of 2014. Till disposal of the said application, I.A.No.670 of 2017 filed by the appellant in O.S.No.28 of 2017 shall be kept pending. On the disposal of the injunction application in O.S.No.14 of 2014 and depending upon its result, the appellant is entitled to pursue I.A.No.670 of

2017 in O.S.No.28 of 2017 on the file of the III Additional District Judge, Rajampet.

The appeal is allowed to the extent indicated above.

As a sequel to disposal of the Civil Miscellaneous Appeal, I.A.No.2 of 2018 is allowed and I.A.No.1 of 2018 is disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

26th September, 2018

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