

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL Nos.146, 147 & 148 of 2017

COMMON JUDGMENT:

The appellant in the 3 appeals by name Ch. Rajya Lakshmi represented by her son as GPA by name Ch. Rajesh S/o Satyanarayana, is the defendant common in all the 3 suits i.e., O.S.Nos.362, 345 & 349 of 2016. The plaintiff in O.S.No.362 of 2016 is by name N.E. Ratna Kumari W/o Veera Reddy represented by GPA K.Prabhakar Rao. The plaintiff in O.S.No.345 of 2016 is MV. Narasimha Rao and the plaintiff in O.S.No.349 of 2016 is Ch. Vinoda Rao.

All the 3 suits were filed by the plaintiffs for the reliefs of permanent injunction restraining the selfsame defendant and her men from interfering with plaintiffs' peaceful possession and enjoyment of the respective plaint schedule properties and for costs and other such reliefs. The plaint schedule properties consisting of i.e., in O.S.No.362 of 2016 consisting of Ac.6.08 cents out of full Ac.12.08 cents (with D.No.85-3(85-3B) of Didugu Village, Amaravathi Mandal, Guntur District) within the boundaries described therein, in O.S.No.345 of 2016 consists of 2 items i.e., in item No.1 Ac.2-94 cents out of Ac.10.94 cents in D.No.99/3(99/3A1) and Ac.1.28 cents in D.No.86/2A and Ac.1.47 cents out of Ac.3-93 cents in D.No.86/2C (86/2CA) = Ac.2.75 cents as item No.2, both are of Didugu Village within the boundaries described respectively and in O.S.No.349 of 2016 consists of 2 items i.e., in item No.1 Ac.4.00 cents out of Ac.10.94 cents in D.No.99/3 supra and in item No.2 Ac.1.00 cents out of

Ac.11.10 cents in D.No.213 (213/B1) of Didugu Village within the boundaries described.

The claim of the plaintiffs respectively vis-à-vis temporary injunction application averments are that the respective plaintiff schedule properties originally belonging to Manchineni Mahalakshamma W/o Venu Vinoda Rao of Didugu Village, who is the legatee of her late husband vide registered will dated 19.02.1988 bequeathing the plaintiff schedule properties and other properties in her favour vide registered document No.2 of BK III of SRO, Amaravathi and later Vinoda Rao died testate on 19.09.1990 and consequently Mahalakshamma as a legatee came into possession and enjoyment of the properties and while so, enjoying in her lifetime with absolute rights and possession out of love and affection said Mahalakshamma, who is senior maternal aunt of plaintiff-Rajya Lakshmi in O.S.No.362 of 2016, paternal aunt of plaintiff in O.S.No.345 of 2016 and elder sister of mother of plaintiff in O.S.No.349 of 2016, having no children, executed registered settlement deed Nos.511, 512 & 515 of 2009 dated 06.04.2009 of SRO, Amaravathi and respective plaintiffs accepted the gift settlement and Mahalakshamma was in possession and enjoyment as life estate holder therein and after death of Mahalakshamma on 10.03.2016 at Guntur Hospital, the respective plaintiffs came into possession and enjoyment of the property as per the settlement deeds dated 06.04.2009. Said Mahalakshamma also executed on the same date her last will and testament in favour of M.Nageswaramma, who is daughter of her brother M.V. Govinda Rao and Ch.Vinoda Rao vide registered document No.9/2009 Book No.III SRO, Amaravathi, including for

the fixed deposits which she invested in SBI and Andhra Bank respectively of Amaravathi Branches. After the death of Mahalakshamma, all the donees under the 3 settlement deeds (who are the plaintiffs) and beneficiaries under the will came into possession of the respective properties and revenue passbooks and title deeds issued by the Tahsildar, Amaravathi, in favour of Mahalakshamma handed over by her to them in her lifetime for the respective properties as per the Records of Rights Act and the Tahsildar after conducting enquiry entered their names for the respective properties in the revenue records and Pahanies of Fasli 1426 and Form 1-B of ROR of that fasli also reflect their names and pattadar passbooks and title deeds prepared in favour of respective plaintiffs, but for handing over. The defendant Rajya Lakshmi with political support and malafide intention set up a rival claim based on a forged will saying as if the plaint schedule properties respectively of the 3 suits were bequeathed by Mahalakshamma by her so called unregistered will and testament dated 23.12.2015, though Mahalakshamma never executed any such will set up by the defendant and with the political influence the defendant prevails upon Tahsildar, Amaravathi not to handover pattadar passbooks and title deeds to the plaintiffs respectively. It is further averred that basing on the forged alleged will set up by the defendant she filed a caveat against the 3 plaintiffs and M.Nageswaramma, the settlees and legatees under 3 settlements and registered will of Mahalakshamma dated 06.04.2009 and as trying to influence the police and revenue authorities, the plaintiffs cause issued legal notices and letters addressed consequently by District

Collector and RDO to the Tahsildar, Amaravathi, to verify relevant documents and to submit action report. The claim of the defendant is baseless and without any right and she is trying to occupy the plaint schedule properties respectively by force and if she is allowed to do so, the plaintiffs will be put to irreparable injury and hardship having prima facie title and possession and thereby injunction is to be granted.

The written statement of the defendant vis-à-vis her counter which is common in all the 3 suits in opposing the plaintiffs suit claim is with contest that Mahalakshamma and her husband Venu Vinoda Rao @ Chinnabbai for having no biological children adopted the defendant Rajya Lakshmi, that was given adoption by her natural parents Ponnamm Lingaiah and Kamamma of Gumadiduru Village of Krishna District in the year 1957 while the defendant was 3 years old and they brought her up and given in marriage to Satyanarayana in the year 1968 and the same is known to the plaintiffs and other relatives of Vinoda Rao and Mahalakshamma and the plaintiffs suppressed this factum knowingly in the plaint pleadings by mentioning as if the defendant is a stranger, with some oblique motive and to obtain some equitable relief of injunction therefrom. There was Datta Homam and other ceremonies of adoption by duly giving and taking and the school records also reflect the name of Mahalakshamma and Venu Vinoda Rao as her parents and gift deeds were also executed by Venu Vinoda Rao in favour of defendant's sons Ch.Rajesh and Naveen in the year 1980 which all clearly show that the defendant is daughter of Vinoda Rao @ Chinnabbai and Mahalakshamma being a class I heir

succeeded the properties of her said parents. The plaintiffs in the 3 suits are no way concerned with family of the defendant's father Vinoda Rao, the defendant and her husband Satyanarayana were looking after Mahalakshamma after death of Vinoda Rao by attending to the medical needs during her ill-health and sickness having spent huge amounts. Mahalakshamma applied and obtained passport at the address of the defendant at Hyderabad. The defendant and her husband performed funeral rites and obsequies of Venu Vinoda Rao and Mahalakshamma. The plaintiffs of the 3 suits never looked after Venu Vinoda Rao and Mahalakshamma and this fact is known to all the villagers of Didugu. The children of the defendant used to stay with adopted parents of the defendant supra since before they were admitted into primary school and they were staying during summer vacations in Didugu Village. Mahalakshamma while in sound and disposing state of mind executed will dated 23.12.2015 in favour of the defendant bequeathing all the properties to avoid any future claims or disputes though otherwise defendant being class-I legal heir entitled. Mahalakshamma while was in hospital at Vijayawada for treatment to leg due to diabetics was under the care of the defendant in 2015 December, when she expressed her desire to execute will in favour of the defendant and she did so. Mahalakshamma had no knowledge of the alleged settlements and will dated 06.04.2009 set up by the plaintiffs in their favour and another and will dated 23.12.2015 is only the last will and testament of Mahalakshamma and the defendant alone is in possession and enjoyment of the property and plaintiffs or others never in possession and enjoyment of the

properties covered by the 3 suits. Few days before death of Mahalakshamma, defendant came to know about false claim of plaintiffs and immediately when she enquired into the matter it is shocked to know about their illegal claim through the alleged settlement deeds and will and she submitted and came to know about the application submitted by the plaintiffs in 3 suits and another before Tahsildar, Amaravathi, for mutation in their names in revenue records in the place of late Mahalakshamma. The defendant having come to know filed objections and submitted the will dated 23.12.2015 executed by Mahalakshamma bequeathing her properties and the alleged settlement deeds and will dated 06.04.2009 are fake and forged and those are brought into existence by the plaintiffs inter se with the support of their henchmen fraudulently and tried to enter into possession if possible without any right based on the so called stale documents and fake documents, stage managed documents obtained with fraud and misrepresentation and the alleged signatures thereon are not that of Mahalakshamma, but forged one which can be revealed if compared to a naked eye and the revenue record on which the plaintiffs choose to rely are also brought into existence in collusion with the Tahsildar, Amaravathi. The will dated 19.02.1988 alleged to have been executed by Venu Vinoda Rao is also not beyond suspicion for he had no necessity to execute the second will from already executed original will dated 14.08.1975 in favour of the defendant and it is his last testament. The defendant came into possession of the property immediately after death of her adopted mother Mahalakshamma and she erected fencing poles to the property,

she raised cotton crop and subabul plantation as internal crop in Ac.2-74 cents item No.2 of plaint schedule in O.S.No.345 of 2016 and cotton and mirchi crop in Ac.6-94 cents item No.1 in O.S.No.345 of 2016 and cotton crop with subabul in Ac.4-00 cents, which is item No.1 in O.S.No.349 of 2016 and equal to B-schedule property in the alleged will dated 06.04.2009 and also from the damage of the crop of subabul in the Ac.6-08 cents due to heavy rains from the low lying now made ready to raise some other crops. The boundary particulars mentioned in the plaint schedule for Ac.2-75 cents, Ac.2-94 cents, Ac.4-00 cents and Ac.6-08 cents etc., are not correct and for Ac.6-08 cents is in L-shaped holding with 6 boundaries. The defendant also reserves a right against plaintiffs and others for withdrawal of the bank deposits amount etc., as nominees under the forged will dated 06.04.2009. All the plaintiffs in the 3 suits are close relatives and their claims are replica of one to the other even though they never in possession and enjoyment. The defendant is cultivating the lands personally and with the assistance of one Kadiyala Kishore and the medical record submitted by plaintiffs does not relate to Mahalakshamma. The suits filed are not maintainable. None of the plaintiffs got prima facie or balance of convenience nor suffer any irreparable injury for never in possession nor got any right under the so called documents and the suit claims are liable to be dismissed so also the temporary injunction applications.

It is pursuant to the respective contest and after hearing, the trial Court with reference to third party affidavits though not specifically referred in the respective orders, but filed by both parties and also mentioning in the appeal grounds of the third

party affidavits filed before the lower Court, and with reference to Exs.P1 to P20 and Exs.R1 to R9 in I.A.No.1056 of 2016 in O.S.No.362 of 2016 (CMA.No.146 of 2017), Exs.P1 to P21 and selfsame documents Exs.R1 to R9 in I.A.No.977 of 2016 in O.S.No.345 of 2016 (CMA.No.147 of 2017) and Exs.P1 to P14 and selfsame documents Exs.R1 to R9 in I.A.No.998 of 2016 in O.S.No.349 of 2016 (CMA.No.148 of 2017) granted temporary injunction restraining the respondent from interfering with the plaintiffs/petitioners possession and enjoyment vide separate orders in the 3 suits dated 30.01.2017.

The lower Court in granting injunction in the 3 matters observed that the only document respondent relied upon is Ex.R8 endorsement dated 02.11.2016 issued by Tahsildar, Amaravathi of possession of schedule property as mentioned from so called report of VRO saying respondent raised certain crops in certain lands of Didugu Village though nature of crop raised not mentioned in respect of any particular land and VRO report not even filed, thereby on such Ex.R8 no reliance can be placed much less to say respondent is in possession of the respective plaint schedule properties as such the bills for seeds and pesticides allegedly purchased by respondent do not establish possession of plaint schedule property by respondent/defendant as on date of suit. The electricity bill filed by respondent is in the name of Venu Vinoda Rao and not in the name of respondent in the passport. It is mentioned that in the event of death of Mahalakshamma it is to be informed to Satyanarayana, who is husband of the defendant and therefrom it cannot be inferred that Mahalakshamma got love and affection towards

defendant/respondent. Venu Vinoda Rao executed a registered will way back in the year 1988 bequeathing properties in favour of Mahalakshamma, where but for mentioned as the defendant was brought up, not mentioned as adopted daughter and the 1975 will of Venu Vinoda Rao cancelled by him later in 1988 and having regard to all the circumstances, the temporary injunction is granted where prima facie and balance of convenience in favour of plaintiffs who will suffer otherwise irreparable injury.

The contentions common in the grounds of 3 appeals are that in the granting of injunction by the impugned orders of the lower Court are contrary to law, illegal and arbitrary and without proper appreciation of the 3 requirements of prima facie case, balance of convenience and irreparable injury to the entitlement of injunction which is lacking and lower Court ought to have dismissed the injunction application by appreciating Ex.R8 endorsement of the Tahsildar showing the defendant is in possession of the plaint schedule properties and the trial Court should not have been gone into disputed questions of fact and legality of statements etc., that could be decided only in trial of the suit and the trial Court erred in concluding of respective plaintiffs are absolute owners in possession without any basis and trial Court erred in concluding that the will Ex.P17 executed by Mahalakshamma in favour of the defendant is unreliable and not even compared the signature on the Ex.R3 passport with Ex.P1 so called statement and also went wrong in saying Venu Vinoda Rao cancelled the earlier will of 1975 in subsequent will in February 1988. The trial Court also did not appreciate the nominee of the bank deposit is not entitled, but for trustee to the

person entitled to act and defendant mentioned reserving a right to take action for recovery of the bank deposits. The lower Court failed to consider the third party affidavits in regard to the possession of the defendant over plaint schedule properties and should have been considered the photographs of the property that also supports the possession of the defendant of the property as on date of suit and trial Court should have been held that the will dated 23.12.2015 is last will and testament of Mahalakshamma who has not executed and no knowledge of the so called settlements and will of 06.04.2009 and should have considered in holding the defendant is in possession and plaintiffs not in possession and should have been dismissed the injunction applications and committed wrong in allowing the same, hence to set aside the temporary injunction orders granted by lower Court by allowing the appeals by dismissing the injunction applications before the lower Court.

Whereas it is the submission of the learned counsel for the respondents/plaintiffs respectively that merely because some other view is possible that is also not a ground for this Court while sitting in appeal to interfere with the well considered and reasoned orders of the lower Court and lower Court rightly considered the registered documents and the pattadar passbooks and title deeds, revenue adangals and 1B ROR Namuna, which revenue record shows acts of possession of plaintiffs as on the date and the endorsement under Ex.R8 as rightly concluded by the lower Court will not establish any act of possession of defendant and the so called will relied on by the defendant dated 23.12.2015 copy of which came to the hands of the plaintiffs filed

clearly shows it is a forged and fabricated and set up for defence of defendant for impossible to believe from the said unregistered will executed on Rs.100/- stamp paper purchased from stamp vendor of Bowenpally, Secunderabad on 23.12.2015, whereas it shows as if executed at Didugu Village of Guntur District on the even date and there is no name of the scribe who scribed and written the so called contents of the will and among the 3 attestors, 1st attestor is no other the son of the defendant-cum-GPA of the defendant and there are no signatures of the executant, but for on the last page No.4, in the first 3 pages if at all duly executed and that itself falsifies and it is a forged will set up by the defendant and a fabricated entry managed to obtain from revenue authorities managed to obtain to set up an untenable and false claim to come on the way of plaintiffs entitlement of the suit reliefs if possible by using her political cloud and the so called seeds and pesticides receipts as concluded by the lower Court no way establishes that those related to plaint schedule properties respectively in question much less acts of possession and equally when third party affidavits filed by plaintiffs so also by defendant, the trial Court rightly referred to the revenue records showing acts of possession in granting injunction and sought for dismissal of the appeals.

Heard both sides and perused the material on record.

Before coming to the discussion of the facts, the grant of temporary injunction pending suit under Order XXXIX Rules 1 & 2 or Sections 94 & 151 CPC as the case may be is discretionary relief and even all the 3 pre-requisites of the prima facie case, balance of convenience and irreparable injury made out that itself

is not a ground to grant injunction, if otherwise not entitled by a party. However, the 3 pre-requisites which required in grant or refusal of injunction of which prima facie case means not mere bonafide contention or triable issue, but for something more than that should be made out as held by the Apex Court in **M.Gurudas V. Rasaranjan**¹ of a serious question to be tried should be made out besides the claim is not frivolous or vexatious as held in **Series 5 Software v. Clarke**² referring to and explaining earlier expression in **American Cynamid V. Ethicon Ltd**³ that was referred and relied in **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.**⁴ and quoted with approval in S.M. Dyechem Limited Vs. Cadbury (India) Limited [(2000) 5 SCC 573] and **Cadila Health Care Limited Vs. Cadila Pharmaceuticals Limited**⁵ and apart from the other expressions referred of **M/s.Transmission Corporation of A.P. Ltd V. M/s.Lanco Kondapalli**⁶ besides **Dalpat Kumar and Another v. Prahlad Singh and Others**⁷, **Gujarat Bottling Co. Ltd. and Others v. Coca Cola Co. and Others**⁸ and quoted with approval in **Ramdev Food Products Pvt. Ltd. V. Arvindbhai Rambhai Patel**⁹. So far as balance of convenience in **Morgan Stanley Mutual Fund V. Karthik Das Public Issues**¹⁰, **Gujarath Bottling Company supra** it was held the Court has to weigh the balance in whose favour tilts the scale in weighing pros and cons and convenience and inconvenience and mischief by not granting injunction whether

¹ AIR 2006 SC 3275=(2006)8 SCC 36

² (1996) 1 All ER 853

³ 1975(1) ALL. E R-504

⁴ (1999) 7 SCC 1

⁵ (2001) 5 SCC 73

⁶ JT 2005(10) SC 542

⁷ (1992) 1 SCC 719

⁸ (1995) 5 SCC 545

⁹ 2006(7) Supreme Today-224

¹⁰ (1994)4 SCC 225

greater than granting of injunction and so far as irreparable injury the expressions supra clearly says it does not mean there must be no possibility of repairing injury, but injury must be material one. It is also held in **Balco Employees Union Regd. V. Union of India**¹¹ that the Court must obtain security while granting injunction. Thus from that legal position as to the considerations for existence or not of the prima facie case, balance of convenience and irreparable injury, the 3 requirements to be made out to grant injunction else not under equitable jurisdiction. Coming to the facts, which no way require repetition, but for to say the plaintiffs placed reliance upon registered will of February 1988 of late Venu Vinoda Rao bequeathing the properties of him in favour of his wife Mahalakshamma there he referred that the defendant as not adopted daughter, but for saying he brought up or fostered at best to call as foster daughter. No doubt there is earlier will of 1975 executed by him by making some bequeaths to the defendant or her sons. The law is settled that it is last will and testament proved that would prevail and the proof of will that too when there is a denial, leave about irrespective of denial required is by examination of at least one of the attestors as per Section 63 of Indian Succession Act either even under Section 68 of the Indian Evidence Act for registered settlement/gift which is also compulsory attestable document from there is a denial examination of one of the attestors is required. There is nothing to show neither by the defendant nor by the plaintiffs filed any of the affidavits of any attestors of any of the said settlement deeds in question, leave

¹¹ (2002)2SCC 333

about the same not even considered by the trial Court though in an injunction petition it is material to be considered and not strictly the evidence outcome of trial nor the ultimate chance of success to make out the prima facie case and that is thereby even third party affidavits are also relevant for consideration if show any relevancy in deciding the lis from the said statement of personal knowledge of facts by the deponent, leave about subject to cross examination if chosen and permitted if any.

Leave it as it is, the expression of the Apex Court in **Prem Singh Vs. Birbal**¹² at Para 27 is clear that once there is a registered document, the Court can draw a presumption of the same was duly executed by the executant for consideration. Here compared to the unregistered will placed reliance on by the defendant of 23.12.2015 a copy of which even wanted to place reliance to attack the genuineness of the same by the plaintiffs respectively while disputing the said will claimed by the defendant as executed by Mahalakshamma of not executed from the improbabilities referred supra raised in the arguments of the successful petitioners before the lower Court and respondents to the appeals there are registered will and registered settlements all the 4 executed on 06.04.2009 relied by the respective plaintiffs for the respective plaint schedule properties as executed by Mahalakshamma. Though it is the contention of the revision petitioner/defendant that the trial Court should have been compared with reference to the signature in the passport of Mahalakshamma to the signatures on the registered settlement deed and registered will, it is premature to form any opinion

¹² 2006 (5) SCC 353

therefrom, but for during trial and the presumption can be drawn is duly executed since registered from the expression in **Prem Singh Supra** and thereby so far as the right and title for entitlement concerned in weighing the balance of convenience between the competing claims between the plaintiffs and defendant respectively, the balance of convenience highly lies in favour of the plaintiffs rather than that of defendant though the conclusions beyond it by the trial Court are unsustainable. It is sufficient to say it is the plaintiffs that suffer irreparable injury rather than that of the defendant if not granted injunction from the above, however these 2 requirements are the considerations provided there is sine quo non of existence of prima facie case or not. It is not a case to draw presumption of possession from title for not a waste land from the contention of both parties, it is cultivable land. Both parties filed third party affidavits with competing claims of possession, thereby the trial Court did not given credence to the third party affidavits. So far the possession concerned, other than from third party affidavits to decide it is none of the case of the parties that any of them were in possession and enjoyment during lifetime of Mahalakshamma, leave about Mahalakshamma died testate even from the claims of both parties for plaintiffs placed reliance on registered will dated 06.04.2009 besides 3 registered settlements of even date and defendant placed reliance on unregistered will dated 23.12.2015 which is shown executed on Rs.100/- stamp paper and covers 4 pages and no signatures of Mahalakshamma on all pages, but for on last page and but for the attestation by 3 witnesses there is no mention of the person who scribed for hand

written document, which is also necessary to mention with identity and the stamp paper purchased shown Bowenpally, Secunderabad and the will of even date claimed executed at Didugu Village, Guntur District or elsewhere of Guntur District for not a case of defendant of executed at Hyderabad or executed while under treatment for diabetics at the hospital, but for saying at that time expressed her idea in later execution by her that too when unregistered for no reason of non-registration when earlier document of 2009 registered though all the 3 settlement deeds and one will.

From that the pattadar passbooks and title deeds, the Mahalakshamma was in possession and enjoyment in her lifetime and coming to who came into possession among the defendant or plaintiffs was one of the plaintiffs are at abroad and the defendant is at Hyderabad though she claims cause cultivating through another person and when the 1B record of ROR and the pahanies show in favour of the plaintiffs respectively and endorsement of Tahsildar on the application of the defendant by cause enquired through VRO saying respondent/defendant raised crop and it is with no particulars of which crop raised in which extent and what is stage of yield and estimation even. It is therefrom to consider whether the plaintiff got prima facie case of possession as on the date of suit or not concerned, this Court in **KG Krishnamurthy Vs. Balappa**¹³ referring to Section 35 and 114 of Evidence Act observed that certified copy of revenue extracts are not conclusive of title even or right to the land such entry prima facie evidence of possession. The expression later of

¹³ AIR 1985 NOC 6 (A.P.)

another single judge of this Court in **Mahendra C. Mehta And Others Vs. Kousalya Co-Op. Housing Society Limited**¹⁴ speaks that entries in revenue records as well settled do not confer title, title to the property of a person would not be lost merely because his name is not mutated in the revenue records entries showing the name of the person as owner of the property, in the column relating to owner does not confer title on him in relation to that property if he is not the real owner of that property. Similarly because the name of the individual entered in column No.16 of pahani relating to person in actual possession while land is kept fallow that entry would not help in establishing possession during that year. The question as to who in possession or the land was kept fallow or vacant mainly has to be decided on title. In respect of land kept fallow or vacant or the like merely because the owner is not physically present there on the land, or merely because somebody else may use of the land for a short span for temporary purpose, it cannot be said that the owner lost his possession over such land. Pahanies are maintained mainly for purpose of revenue collection and statistics as to who raised what crop on what extent of land. There is another subsequent expression of another single Judge of this Court in **J. Balakrishna Raju Vs. J.Radhakrishna Raju**¹⁵ at Para 7 that in an application for temporary injunction from the initial burden of proof as well as legal burden of proof prima facie case of lawful possession of plaintiff over the suit land is on plaintiff, in the absence of oral evidence it is necessary to refer the pattadar passbooks and the revenue title deeds and the ROR proceedings in relation to

¹⁴ 2001 (5) ALT 197¹⁵ 2014 (4) ALT 570

whether plaintiff is in lawful possession ex facie of lawful possession of the property or not. In another single Judge expression of this Court in **Makineni Srinivas Rao Vs. Manthena Prabhakar Reddy**¹⁶ it is observed referring to the expression of the Apex Court in **Maria Margarida Sequeria Fernandes Vs. Erasmi Jack de Sequeria**¹⁷ of the obligation of the Court to critically examine the pleadings and documents as to unequivocally established possession to grant injunction or not, the learned Single Judge at Para 14 observed that the revenue pahani shows name of the appellant that was issued one week after issue of NOC in the name of respondents and said pahani evidently referred to nature of possession as source of purchase taken as establishing possession. These expressions show revenue documents are not documents of title and nor even reliable evidence of cogent of establishing title and right, but for in the absence of other material prima facie to say that entry shows possession with other supporting material.

Having regard to the above, the case of the plaintiffs with reference to the 1B register and pahani when compared to the case of the defendant with reference to the endorsement of the Tahsildar in the rival claims of the possession, thereby falls short to some extent to hold prima facie case, though otherwise from the overall consideration of the material as referred supra, the balance of convenience and otherwise shows irreparable injury lies in favour of the plaintiffs. The trial Court did not advert to these aspects, thereby this Court even otherwise cannot, but has to sit against the order of the lower Court. As held by this Court

¹⁶ 2014 (6) ALD 261

¹⁷ AIR 2012 SC 1727

way back in **Saraswathi V. Dr.Jaganmohana Rao**¹⁸ that where Court came to the conclusion of material falls short to grant injunction can impose terms and can even appoint receiver or party receiver and this Court referring to the said expression and several expressions of the Apex court referred supra in **Dasaralaxmi Vs. Bejjenki Sathi Reddy** in CRP.No.76 of 2014 dated 21.10.2014 held that in a temporary injunction application, the Court can appoint a party receiver.

Having regard to the above, the three Civil Miscellaneous Appeals are allowed in part by setting aside the grant of temporary injunction orders by the trial Court and by appointing the respective plaintiffs as party receivers with a direction to the respective plaintiffs by virtue of this order to manage and cultivate the properties and realize the income and deposit the same to the credit of the suit by furnishing account for the income and expenditure and the net proceeds and the trial Court shall make every endeavour for early disposal of the 3 suits preferably by common disposal and subject to other priorities.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.01.2018
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¹⁸ 1985 (1) ALPJ 277