

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.799 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 31.12.2015 passed in C.M.A.No.8 of 2015 on the file of the XXIV Additional Chief Judge, City Civil Court at Hyderabad, wherein and whereby the order dated 29.12.2014 passed in I.A.No.830 of 2014 in O.S.No.1578 of 2014 on the file of the Court of the IV Senior Civil Judge, City Civil Court, Hyderabad, dismissing the petition filed by the first petitioner under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C., was confirmed.

2. Heard the learned counsel for both parties.
3. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed before the trial Court, to avoid confusion.
4. The facts leading to filing of the present revision are briefly as follows:

The petitioner filed I.A.No.830 of 2014 in O.S.No.1578 of 2014 on the file of the Court of the IV Senior Civil Judge, City Civil Court, Hyderabad, against the respondents for perpetual injunction in respect of the suit schedule property i.e., an extent of 795 square yards including the built up area bearing premises No.8-2-120/76/RG-10 (Ground Floor) and 8-2-120/76/RG-10/A (First Floor) situated at Road No.2, Banjara Hills, Hyderabad. The respondents filed counter *inter alia* contending that the suit filed by the petitioner is not maintainable; therefore, it is not a fit case

to grant interim injunction. On behalf of the petitioners, Exs.P.1 to P.20 were marked. On behalf of the respondents, Exs.R.1 to R.4 were marked. The trial Court, after affording a reasonable opportunity to both parties, dismissed I.A.No.830 of 2014 on 29.12.2014. Feeling aggrieved by the order of the trial Court, the petitioner preferred C.M.A.No.8 of 2015 on the file of the XXIV Additional Chief Judge, City Civil Court at Hyderabad. The first appellate Court, after reappraising the material available on record, arrived at a conclusion that the petitioner is not entitled for interim injunction and consequently, dismissed the appeal. Hence, the revision.

5. Learned counsel for the petitioner submitted that the Courts below failed to consider that the respondents sold the property during pendency of the partition suit. He further submitted that the Courts below have not properly appreciated the recitals of Ex.P.3-Memorandum of understanding. He also submitted that the findings recorded by the Courts below are not based on material much less legally admissible material; therefore, it is a fit case to allow the revision.

6. *Per contra*, learned counsel for respondent No.2 submitted that this Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below, while exercising the jurisdiction under Article 227 of the Constitution of India. He further submitted that the petitioner is not entitled for the entire suit schedule property even as per the averments made in the plaint; therefore, this revision is liable to be dismissed.

7. The point that arises for consideration in this revision is:

Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court?

8. The following admitted facts can be culled out from the pleadings:

The petitioner and the first respondent are own brothers. The petitioner purchased an extent of 360 square yards of vacant site under a registered sale deed dated 01.03.1985-Ex.R.2. The first respondent purchased an extent of 435 square yards under a registered sale deed dated 28.02.1985-Ex.R.1. The petitioner and first respondent jointly submitted an application to the Greater Hyderabad Municipal Corporation for construction of the house-Ex.P.12. The first respondent filed O.S.No.3676 of 1996 against the third parties seeking perpetual injunction and the same was decreed. The first respondent filed O.S.No.533 of 2009 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad, against the petitioner for perpetual injunction. The first respondent filed an interlocutory application, under Order XXXIX Rules 1 and 2 C.P.C., seeking interim injunction and the same was dismissed. The first respondent filed O.S.No.699 of 2012 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, against the petitioner for partition of the suit schedule property. The first respondent sold half of the suit schedule property to the second respondent under a registered sale deed dated 14.07.2014-Ex.R.3.

9. The predominant contention of the learned counsel for the petitioner is that the suit schedule property is the joint family property of the petitioner and first respondent; therefore the first

respondent is not entitled to alienate the property. A perusal of Exs.R.1 and R.2 clearly reveals that the petitioner and first respondent purchased the vacant site under two different sale deeds. Simply because the petitioner and first respondent submitted the joint application-Ex.P.12 for construction of the house that itself will not create any right in favour of the petitioner on the entire extent of vacant site. As per Clause (6) of Ex.P.3, the first respondent is not entitled to sell his share of house to third parties without the consent of the petitioner. Whether Ex.P.3-Memorandum of understanding is legally enforceable or not has to be considered at the time of full-fledged trial. While deciding the interlocutory application, the Court ought not to have expressed any opinion on any document touching the merits of the main case. Hence, this Court is not inclined to express any opinion with regard to the enforceability of Ex.P.3.

10. The predominant contention of the learned counsel for the petitioner is that during pendency of O.S.No.669 of 2012, the first respondent sold the property in favour of the second respondent that itself is a valid ground to grant interim injunction in favour of the petitioner.

11. A perusal of the record reveals that the petitioner filed the suit in the month of November, 2014. The first respondent sold half of the suit schedule property under a registered sale deed dated 14.07.2014-Ex.R.3 in favour of the second respondent. A perusal of Ex.R.3 *prima facie* reveals that possession was delivered to the second respondent much prior to filing of the suit. A perusal of the record *prima facie* reveals that by the time of filing

of the suit, the petitioner was not in possession of the entire suit schedule property. The validity of the sale deed dated 14.07.2014 will be decided in O.S.No.669 of 2012 after full-fledged trial. Establishment of *prima facie* case, balance of convenience and irreparable loss likely to be caused to the petitioner is a *sine qua non* to grant an interim injunction. As observed earlier, the petitioner *prima facie* failed to establish that as on the date of filing of the suit, he was in possession of the entire suit schedule property. On the other hand, the record *prima facie* reveals that the second respondent was in possession of half of the suit schedule property as on the date of filing of the suit. The balance of convenience is also not in favour of the petitioner. If an injunction is granted in favour of the petitioner, it may cause untold hardship to the second respondent, who purchased the property under a registered sale deed. For the reasons best known, the first respondent, who is the own brother of the petitioner, did not choose to appear either before the trial Court or before this Court. This aspect also cast a cloud on the version put forth by the petitioner. The trial Court considered the various documents filed by both parties and arrived at a conclusion that the petitioner is not entitled for the equitable relief of interim injunction. The first appellate Court, after reappraisal of the documents produced by both parties, without being influenced by the findings recorded by the trial Court, arrived at a conclusion that the petitioner is not entitled for the relief of interim injunction. It is needless to say that this Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below, while exercising the jurisdiction under Article 227 of the Constitution of

India. The Courts below have assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the Courts below. There is no illegality, irregularity or impropriety in the orders of the Courts below warranting interference of this Court.

12. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

13. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 03.10.2018
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T.SUNIL CHOWDARY, J

