

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No. 397 OF 2018

JUDGMENT:

1. The appeal is directed against the order and decretal order dated 15.03.2018 in I.A. No.779 of 2017 in O.S. No.55 of 2017 on the file of the XIII Additional District Judge, Guntur at Narasaraopet, whereby the petition filed by the appellant/petitioner/plaintiff for grant of temporary injunction restraining the respondents from interfering with his possession and enjoyment of the schedule property pending disposal of the original suit, was dismissed.

2. The petitioner filed Original Suit No.55 of 2017 before the Court below for permanent injunction restraining the respondents and their men from interfering with possession and enjoyment of the plaint schedule property viz. land admeasuring Ac.13.39 cents in survey No.436/1 and an extent of Ac.9.38 cents in survey No.826, situated at Agnigundala village, Ipuru Mandal, Vinukonda sub-district, Narasaraopet Revenue District, Guntur district. He filed Interlocutory Application No.779 of 2017 in the said suit seeking temporary injunction pending disposal of the suit. The averments, in brief, in the affidavit filed in support of the petition may be stated as follows:

Petitioner purchased the suit schedule property on 25.10.2008 under document No.7373 of 2008 from one I.Ramachandra Reddy and his son I.Venkata Krishna Reddy, and has been in possession

thereof since the date of purchase. His vendors purchased the said land in 1958 under an agreement of sale and subsequently obtained registered sale deed No.1499 of 1975 dated 16.07.1975, which contains reference of the earlier agreement of sale of 1958, and they were in possession and enjoyment thereof till the sale in favour of petitioner.

Respondent No.2 is daughter, and respondent No.3 is son-in-law, of respondent No.1. Respondent No.1 tried to take forcible possession of the schedule land by engaging unsocial elements in October, 1998, used criminal force against first vendor of petitioner and caused bleeding injuries with knife, and in this connection, a criminal case was also registered against respondent No.1 and his followers by Epuri police in crime No.147 of 1998.

Respondent No.1 filed Original Suit No.98 of 1998 on the file of the Additional Senior Civil Judge, Narasaraopet against vendors of petitioner and the same was decreed on 22.9.2003. Challenging the same, his vendors filed A.S.No.4141 of 2003 before this Court. During pendency of the said suit, he got impleaded himself in the appeal as a party. The appeal was allowed setting aside the judgment and decree of the trial Court clearly holding that the petitioner and his predecessors are in possession of the land. Civil Appeal No.5817 of 2012 filed before the Hon'ble Supreme Court was dismissed vide judgment dated 13.4.2017.

After due enquiry, the Revenue Divisional Officer, Narasaraopet issued pattadar passbook and title deeds in favour of the

petitioner. The revision filed by respondent No.1 against issuance of the same, was dismissed by the Joint Collector, Guntur. Writ Petition No.12925 of 2014 filed by respondent No.1 challenging the order of the Joint Collector, is pending before this Court.

In the absence of petitioner, his brother-in-law K.Yerukal Reddy was cultivating and managing the lands. In the night of 19.09.2009, the respondents damaged red gram crop in the land with the support of unsocial elements. In this regard, on a report lodged by said Yerukal Reddy, a case in crime No.76 of 2009 was registered against respondents and others.

Petitioner filed Receipt & Transmit petition No.26 of 2009 before this Court during vacation for perpetual injunction and damages, and this Court granted ad-interim injunction against the respondents in respect of schedule property, and later it was converted as O.S. No.338 of 2009 on the file of the Additional Senior Civil Judge, Narasaraopet. But, at the request of the respondents, the said suit was not prosecuted by the petitioner leading to dismissal of the same for default.

Petitioner got installed electric transformer in the schedule lands by obtaining permission from competent authority for sanction of five agricultural service connections each 5 HP and also got drilled five bore wells in the said land. He has been paying electricity consumption charges and revenue cess regularly since his purchase. He fenced boundaries of schedule lands with barbed wire and stone pillars, and planted teak and red sandal plants in 2013. Hence, from

1975 onwards, the petitioner and his predecessors-in-title have been in continuous possession and enjoyment of the schedule lands.

After losing the suit, respondent No.1 and his family members developed grudge against petitioner and creating nuisance by illegal interference into the possession of land with the support of unsocial elements and tried to encroach into the land on 12.5.2017, 28.5.2017, 18.6.2017, 10.9.2017 and 22.9.2017 . They started frequently obstructing the agricultural operations and also damaged the crops. Though reports were lodged with police, no action is being taken. Hence, the suit is filed for perpetual injunction and the present petition therein for temporary injunction.

3. Respondent No.1 filed counter denying the material averments in the petition and stating *inter alia* as follows.

Schedule property is his ancestral property and he filed declaration before the Land Ceiling Authority. In 1975, said I.Ramachandra Reddy approached and requested him to sell the schedule property, but he made it clear that the property is surplus land and filed his declaration, and subject to the verdict of the Land Reforms Tribunal, he has no objection to sell the land. As the said I.Ramachandra Reddy agreed for the same, he executed the sale deed without receiving consideration. As the land ceiling authorities rejected the sale as it was executed during prohibitory period and as such he did not deliver physical possession of the schedule property to the vendee, but continued his possession over the property. After

due enquiry by the land ceiling authorities, he surrendered some other lands to the ceiling authorities. After lapse of many years, the said vendee returned to the village and in collusion with the revenue authorities, got struck off name of his name in pattadar pass book and title deed. On filing a revision, the Revenue Divisional Officer restored entries for the land in his pass books vide order dated 02.06.1998. The said vendee challenged by way of revision before the Joint Collector, Guntur and the said was dismissed on 21.1.2000 and it has become final. As the said vendee was trying to interfere with his possession, he filed O.S. No.98 of 1998 seeking permanent injunction. The said suit was decreed on 22.9.2003. Against the same, the said vendee filed and obtained *status quo*. The very sale deed obtained by the petitioner during pendency of the litigation is void and no right or title will pass to the petitioner.

After the judgment of the Hon'ble Supreme Court, he made a representation to the registration authorities with a request to cancel the sale deed No.1499 of 1975, dated 16.7.1975 and its consequential sale deed as the same was declared as void document attracting the provisions of Section 17 (1) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. The Sub Registrar, by making a negative entry, cancelled the sale deed bearing No.1499 of 1975 and subsequent sale deed in favour of petitioner dated 18.5.2017, which is clear from the encumbrance certificate. Writ Petition No.1499 of 1975 filed against the said order of cancellation of sale deed is pending before this Court.

Pattadar pass book and title deed granted in favour of respondent No.1 are still subsisting. The petitioner has no *prima facie* title. He is not in legal possession of the schedule property. Tenants of respondent No.1 raised jowar crop in the schedule property. Having fully aware of the pending litigation, the petitioner, being an Advocate, purchased the schedule property. Hence, it is prayed to dismiss the petition for temporary injunction.

4. After hearing both sides, the trial Court dismissed the petition filed for grant of temporary injunction pending disposal of the suit. Challenging the same, the present appeal is filed by the appellant/petitioner/plaintiff.

5. Heard Sri B.V.Subbaiah, the learned senior counsel appearing for the appellant, Sri P.Venugopal, the learned senior counsel appearing for respondent No.1 and Sri Munnikanti Laxmi Prasad, learned counsel appearing for respondents 2 and 3, and perused the record.

6. Learned senior counsel appearing for the appellant would submit that the findings of the court below are contrary to law and facts of the case; that the court below carried away by the observation made by the Hon'ble Supreme Court in C.A. No.5817 of 2012 with regard to possession; that respondent No.1 sold away the suit schedule property much prior to filing of the suit in O.S. No.98 of 1998 to the vendors of the appellant, and so, he has no interest in the said

property; that the court below had not considered Ex.P2-sale deed dated 16.7.1975 wherein respondent No.1 delivered possession of the suit schedule property in favour of vendors of the appellant. He further contended that the subject property was mortgaged to State Bank of India, Vinukonda by vendor of the appellant I.Ramachandra Reddy in 1976, and respondent no.1 herein stood as guarantor to the said mortgage; that the Bank filed Original Suit No.14 of 1980 against respondent No.1 and vendors of the plaintiff, obtained a decree and filed Execution Petition, and pending execution proceedings, vendor of the appellant I.Ramachandra Reddy paid the E.P. amount and got the mortgage redeemed in the year 1999. He further contended that the finding recorded by the court below that respondent No.1 is in possession of the land, is contrary to the material placed on record; that the lower court had not considered the admission made by respondent No.1 before the Land Reforms Tribunal that he sold away the suit land to I.Ramachandra reddy on 16.7.1975 pursuant to agreement in 1958; that respondent No.1 is not in possession of the subject property; that the alienation of the land by the land holder is not void *ab initio*, but it does not bind the Government that too for the purpose of determining the holding under the land ceiling Act; that the court below had not brought the factum of surrender of excess land by respondent No.1 to the notice of the Hon'ble Supreme Court of India and that the Hon'ble Supreme Court, under the impression that the proceedings before the Land Reforms Tribunal have not become final and surrender of excess extent of land of Ac.4.00 cents has not been

made, directed the Land Reforms Tribunal to pass final order; that in fact, the final orders were already passed by the Land Reforms Tribunal. He further contended that since it is a suit for injunction, possession of the subject property is the essential point to be considered; that in the year 1975 under registered sale deed (Ex.P2), respondent No.1 parted with the possession of the property to the vendors of the appellant and his son on receipt of entire sale consideration; that the respondents have not filed any document to show their possession over the suit land as on the date of filing of the suit; that there are number of documents to show the possession of the appellant over the suit schedule property; that the Registration authorities have no right to cancel sale deed of the vendors of the appellant; that the court below should have seen the factum of denial of the injunction order sought by respondent No.1 in an earlier round of litigation; that the appellant alone is in possession of the subject land, and ultimately, allow the petition filed for grant of temporary injunction pending adjudication of the suit.

7. On the other hand, learned senior counsel appearing for respondent No.1 would contend that the subject property is ancestral property of respondent No.1, who filed declaration before the land ceiling authority including the subject property in the year 1975; that at that time, I.Ramachandra Reddy approached and requested respondent No.1 to sell the schedule property; that on that, respondent No.1 made it clear that the subject property is surplus land and he

filed declaration, and that he has no objection to sell the land subject to result of the land reform proceedings and accordingly executed sale deed without receiving consideration; that he did not deliver physical possession of the land to I.Ramachandra reddy and continued his possession over the subject land; that after due enquiry, respondent No.1 surrendered some other land to the ceiling authority. He further contend that I.Ramachandra reddy in collusion with the revenue authorities, obtained pattadar pass books and title deeds in respect of subject land; that aggrieved by the same, respondent No.1 filed a revision before the Revenue Divisional Officer, Narasaraopet, who after due enquiry, restored name of respondent No.1 in pattadar pass books, etc. by order on 02.06.1998; that thereafter, I.Ramachandra Reddy filed a revision before the Joint Collector, Guntur and it was dismissed vide order dated 21.1.2000, which has become final; that when I.Ramachandra Reddy was interfering with possession of the property, respondent No.1 filed O.S. No.98 of 1998 seeking permanent injunction and obtained decree on 22.9.2003, and aggrieved by the same, I.Ramachandra Reddy preferred appeal. He further contended that the very sale deed obtained by I.Ramachandra Reddy pending land reforms proceedings is void, and no right or title was conferred on him including the appellant herein. He further contended that the Hon'ble Supreme Court of India was pleased to declare sale deed bearing No.1499 of 1975, dated 16.7.1975 (Ex.P2) as null and void in view of the provisions of Section 17 (1) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, and the

review petition filed before the Hon'ble Supreme Court by the appellant was dismissed vide order dated 23.11.2017; that the Sub Registrar concerned made relevant entries canceling the said sale deed, and respondent No.1 is granted pattadar pass book and title deeds and they are subsisting; that the appellant has no *prima facie* case and he is not in possession of the schedule land. He further contended that respondent No.1 raised jowar crop in the schedule property, and no mirchi crop was raised by the appellant; that the appellant being practicing advocate, purchased the subject land knowing fully well of the litigation, and ultimately prayed to dismiss the appeal.

8. Learned counsel for the respondents 2 and 3 also submitted similar arguments and brought to the notice of this Court the principle governing the *doctrine of merger* and relied upon number of citations.

9. The appeal was reserved for judgment on 05.07.2018. On 31.07.2018, learned counsel for respondent No.1 filed a Memo stating that respondent No.1 passed away on 20.07.2018. Learned counsel for the appellant contended that in view of the mandate under Order XXII Rule 6 CPC, since the matter is reserved for judgment, the proceedings against the deceased respondent No.1 would not abate. He also placed reliance on a decision in *Golla Krishna Murthy v. Golla Yellaiah (died) per LRs*, in support of his contention. In view of the said provision and the decision relied on by the learned counsel for the appellant, more over, since it is a suit for perpetual injunction,

bringing legal representatives of deceased respondent No.1 is not necessary in this appeal.

10. In view of the rival contentions put forth by both the parties,, the points that arise for consideration are –

- i) Whether the appellant has made out a *prima facie* case;
- ii) Whether there is balance of convenience in favour of the appellant, and in the event of not granting interim injunction as prayed for, whether the appellant would be put to irreparable loss ?
- iii) Whether the appellant is entitled for interim injunction as prayed for by setting aside the impugned order ?

11. Learned senior counsel appearing for the appellant contended that inspite of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, though the holding is an excess, the parties can enter into contract of sale and they are enforceable between the parties, and that the only exemption is that the agreement does not bind the Government to decide the declarant's holding. In support of his contention, he relied on the following decisions.

- (a) the Apex Court decision in *Jambu Rao Satappa Kocheri v. Neminath Appayya Hanamannayar*¹;
- (b) a Full Bench of this Court in *Shankerlal Gupta v. V.Jagadishwar Rao*²;

¹ AIR 1968 Supreme Court 1358

² AIR 1980 Andhra Pradesh 181

(c) decision rendered by a single Judge of this Court in *Rapeti Veerinaidu (died) by LRs. V. Thota Gangadhara Rao & another*³;

12. The learned senior counsel appearing for the appellant also relied on a decision of a Division Bench decision of this Court in *the State of A.P. through Special Tahsildar, Land Reforms, Karimnagar v. K.Raji Reddy & others*⁴, wherein it is held thus:

“The jurisdiction vested in all the authorities is to determine the holding with reference to the various provisions of the Act and declare surplus land for the purpose of giving it to the landless poor. Therefore, every error of law which is committed by the authorities in the exercise of their jurisdiction would be very vital and it must be held that it is an error of law which touches the jurisdiction of the Tribunal. If an authority commits an illegality and determines the holding incorrectly and if the same cannot be corrected in revision, then the revisional jurisdiction of the High Court would be rendered nugatory and purposeless.”

He also relied on a Full Bench decision of the Hon’ble Supreme Court in *State of A.P. v. Mohd. Ashrafuddin*⁵, wherein while interpreting ‘holding’ under Section 3 (i) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, it is held that ‘holding’ connotes ownership as well as possession, and that when the land transferred under an unregistered sale deed pursuant to an agreement of sale, the transferor holds the subject land as owner although he is not in possession.

³ 2006 (3) ALD 581

⁴ 1989 (3) ALT 187 (D.B.)

⁵ AIR 1982 Supreme Court 913

13. It is settled principle that a person has to make out a *prima facie* case, which is *sine qua non*, for grant of temporary injunction. It is an admitted case of both the parties that vendor of the appellant I.Ramachandra Reddy obtained registered sale deed under original of Ex.P2 on 15.6.1975 in his favour in respect of the suit schedule property. It is appropriate to state that the Hon'ble Supreme Court vide judgment dated 13.04.2007 in Civil Appeal No.5817 of 2012, the sale deed executed by respondent No.1 herein in favour of the vendor of the appellant I.Ramachandra Reddy (original of Ex.P2) was declared null and void. There is also record produced before the lower court that the review application filed by the appellant before the Hon'ble Supreme Court against the said judgment, was dismissed vide order dated 23.11.2017. Ex.A26- certified copy of the order passed in the review application reveals the same. The Hon'ble Apex Court, vide its judgment dated 13.04.2017 in C.A. No.5817 of 2012 held as follows: (paras 29 & 34)

“29) Secondly, the Tribunal having rightly held in the order dated 21.08.1976 that the sale deed dated 16.07.1975 executed by the appellant in favour of the respondents was null and void because it was made in contravention of the provisions of the Act and secondly, having held that the appellant's total holding was in excess of the ceiling limits prescribed in the Act, the suit land was not available to the appellant for its disposal. Indeed its disposal could be done only in accordance with the provisions of the Act with the intervention of the State.

34) Fifthly, the Trial Court and the High Court having held on the strength of Tribunal's finding recorded in the order 21.08.1976 which has attained finality that the appellant was not the owner of the suit land, the respondents too did not acquire any right, title and interest in the suit land through sale deed dated 16.07.1975. It being a settled principle of law that a person can transfer only those rights, which he has

in the property and cannot transfer any rights, which he does not have would apply to this case.”

The finding of the Hon'ble Supreme Court in the aforesaid judgment clearly demonstrates that the vendors of the appellant viz. I.Ramachandra Reddy and another, had not derived any title in respect of suit schedule property, under Ex.P2-sale deed. So, the sale deed bearing document No. 7373 of 2008, dated 25.10.2008 executed in favour of the appellant herein by Sri I.Ramachandra Reddy and another (Ex.P1) is of no use to the appellant. The said document does not confer any title in favour of the appellant herein. More over, Ex.P1-sale deed was obtained by appellant during pendency of the litigation before this Court. On the date of execution of Ex.P1-sale deed, order of *status quo* was subsisting. So, delivery of possession under Ex.P1 becomes doubtful. However, till date, the original of Ex.P2 is not filed in the subject proceedings. No single document is filed to show the possession of said I.Ramachandra Reddy i.e. vendor of the appellant, over the suit schedule property. Ex.P11-xerox copy of pattadar pass book and title deed dated 08.03.2013 were cancelled by the revenue authorities. Ex.R10 is Xerox copy of pattadar pass book issued in favour of respondent No.1 herein. It covers the suit schedule land. Though the appellant filed copies of number of documents showing electricity connection, digging of borewell, etc., these documents do not establish possession of the appellant over the suit schedule property. Ex.R11-copy of order dated 02.06.1998 reveals possession of respondent No.1 over the suit schedule property.

The order passed under Ex.R11 was confirmed by the Joint Collector, Guntur vide order dated 21.1.2000 marked as Ex.R12, wherein also there is mention that respondent No.1 is in uninterrupted possession over the suit schedule property. Ex.R8-adangals for fasli years 1410, 1412, 1414, 1415 and 1416 show physical possession of respondent No.1 over the suit schedule property. Basing on the decision of the Hon'ble Apex Court dated 13.04.2017 in C.A. No.5817 of 2012, the Sub Registrar concerned was pleased to cancel Ex.P1 and original of Ex.P2. When the original of Ex.P2 is declared as null and void, recitals in Ex.P2 cannot be looked into for any purpose. Consequently, Ex.P1-sale deed dated 25.10.2008 would be of no use to the appellant including to hold the delivery of possession as mentioned therein.

14. When the Hon'ble Apex court has given a specific finding declaring the original of Ex.P2 as null and void, vide judgment dated 13.04.2017 in C.A. No.5817 of 2012, the decisions relied on by the learned counsel for the appellant (1 to 5 *supra*) are of no help to the appellant, more over, when the review filed by the appellant herein against the said order was dismissed by the Apex Court vide order dated 23.11.2017. It is apt to refer to the decision relied on by the learned counsel for respondents 2 and 3 in *Omprakash Verma & others v. State of Andhra Pradesh & others*,⁶ relating to *doctrine of merger*, wherein it is held thus: (para 49)

⁶ (2010) 13 Supreme Court Cases 158

“It is clear that once leave was granted by this Court in the special leave petitions filed against the Division Bench of the High Court in the earlier round of litigation and the consequent civil appeals arising therefrom filed by the State Government is allowed by this Court, the judgment of the Division Bench lost its identity and merged with the judgment of this Court. The said judgment of the Division Bench of the High Court, therefore, cannot be relied upon for any purpose whatsoever.”

Therefore, the decision rendered by this Court in A.S.No.4141 of 2003 is also of no use to the appellant and ultimately the judgment dated 13.04.2007 in Civil Appeal No.5817 of 2012 rendered by the Hon’ble Apex Court prevails and this Court cannot ignore the findings rendered by the Hon’ble Apex Court in the said Civil Appeal and in review application filed by the appellant.

15. The learned senior counsel appearing for the appellant contended that the appellant, being the transferee under Ex.P1-registered sale deed, is entitled to benefit under Section 43 of the Transfer of Property Act, 1882 when there is fraudulent or erroneous representation by the transferor. In support of the said contention, he relied on a decision in *Veeraswami & others v. Durga Venkata Subbarao & others*⁷. In the instant case, in view of the judgment of the Hon’ble Apex Court dated 13.04.2007 in Civil Appeal No.5817 of 2012 declaring original of Ex.P2-sale deed as null and void, the

⁷ AIR 1957 Andhra Pradesh 288

appellant is not entitled to benefit under Section 43 of the Transfer of Property Act, 1882.

16. The appellant filed Exs.P14 to P17 showing that he lodged a complaint against respondent No.1 and others. These documents do not establish possession of the appellant over the suit schedule property. He also relied on Exs.P3, P4, P5 and P18, which are copy of decree in O.S. No.14 of 1980, copy of auction notice in E.P. No.122 of 1989 in O.S. No.14 of 1980, copy of judgment of this Court in A.S. No.4141 of 2013 and certified copy of plaint in O.S. No.98 of 1998 respectively. But, in view of the judgment of the Hon'ble Apex Court dated 13.04.2007 in Civil Appeal No.5817 of 2012 declaring original of Ex.P2-sale deed as null and void, the decisions rendered by the subordinate courts including the High court, get merged in the decision of the Hon'ble Apex Court. The appellant also filed copies of correspondence made with the Sub Registrar, the District Registrar, the Revenue Divisional Officer, copies of orders passed in suits, copies of written statement, etc. which are marked as Exs.P19 to P37. These documents also do not establish the possession of the appellant over the suit schedule property.

17. On the other hand, learned counsel for respondents 2 and 3 relied on the following decisions.

a) in *Badireddy Avatar Maher Baba v. Tallapu Nagaraju*⁸,

wherein it is held thus: (para 3)

“Undisputedly, respondent no.1 purchased the land comprised in survey nos. 14/2 and 13/4 after the appointed date, i.e., 1.1.1975. Therefore, the Land Reforms Tribunal and Land Reforms Appellate Tribunal did not commit any illegality by invoking Section 17(1) of the Act and holding that the transfer was void.

This being the position, the appellant is right in contending that respondent no.1 had no right to object to surrender of particular parcels of land by the declarant and the High Court was not justified in giving the impugned direction. The question relating to the locus of a person, who purchased the land after the appointed date was considered by this Court in *Appineni Vidyasagar vs. State of A.P. & Ors.* [2004(11) SCC 186], and was answered in negative. In that case it has been held that in the absence of a valid transfer of title, the transferee does not have the right to object to a surrender by the holder and Section 10(5) does not confer locus upon him to do so.”

(b) in *Rajendra Singh v. State of Uttar Pradesh*,⁹ the Hon’ble Apex Court while dealing with the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, held thus: (paras 10 & 16)

“The relevant date under the Act which constitutes the basis for determining the ceiling or surplus area of a tenure-holder is 24th January, 1971. Whatever land was held by a tenure-holder on that date will have to be indicated by him in the statement required to be submitted under Section 9 of the Act.”

⁸ LAWS (SC) 2008 12 191

⁹ LAWS (SC) 1998 10 49 = (1998) 7 Supreme Court Cases 654

“The contention of the learned counsel for the appellants that the surplus area may not be taken out of the land covered by the Sale Deeds cannot, therefore, be accepted, as it would mean that the Sale Deeds, though void, are still being given effect to indirectly which is positively impermissible. The land covered by the aforesaid Sale Deeds shall, therefore, be treated to be part of the land held by the respondent No.4 and it would be within the exclusive jurisdiction of the Prescribed Authority to take or carve out the surplus area from any land of respondent No.4, notwithstanding that any portion of that land was covered by Sale Deeds allegedly executed in favour of the appellants.”

(c) in *Premji Ratansey Shah & others v. Union of India & others*¹⁰, wherein the Hon’ble Apex Court held thus: (paras 4 & 5).

“4. It is seen that in a suit as originally framed, they sought for a declaration that the award made in respect of the land was void, inoperative and does not bind the petitioners. But that relief had been given up. Thereby, the title of the land of the railways have not been questioned. With the award made under Section 30, the vendors of the petitioners got themselves bound by the above award under Section 12 of the Act. It is also seen that the two awards had become final and possession was delivered to the railways by the Land Acquisition Officer on 24-2-1960. Thus Defendants 3 and 4 had no ghost of right, title or interest in the lands acquired from the original owner Maibai. The said sale is a void sale and the petitioners, therefore, cannot derive any interest under the agreement of sale to resist the possession of the lawful owner nor could the declaration sought for be given. The question, therefore, is whether an injunction can be issued against the true owner. Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be

¹⁰ 1994 (3) ALT 25

given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41 (j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction.

5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.”

In view of the aforesaid decisions relied on by the learned counsel for respondents 2 and 3, it is settled law the injunction would not be issued against the true owner. Respondents filed number of documents which were discussed supra, to show possession of respondent No.1 over the suit schedule property. In the circumstances, it cannot be held that the appellant is in possession of the suit schedule property.

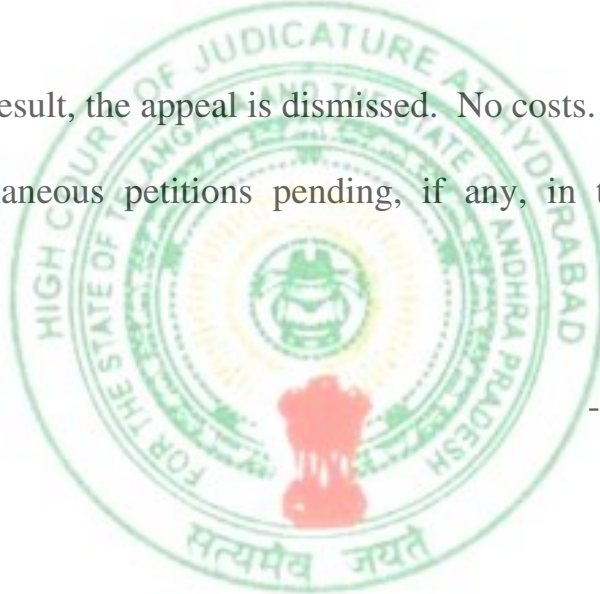
18. In the case on hand, no *prima facie* case is made out by the appellant, which is *sine qua non* to grant an injunction. There is no balance of convenience in favour of the appellant for grant of interim injunction order. When the appellant is not in possession of the suit

schedule property, no irreparable loss would be caused to him if the injunction is refused. Injunction is an equitable remedy. It cannot be granted against the true owner of the property. Further more, in view of the number of documents filed by the respondents, the respondents are successfully able to show their possession over the schedule property. The Court below analyzed the entire material on record and thoroughly discussed each and every document to come to the above conclusions. There is no infirmity to take a different view. The appeal is devoid of merit and is liable to be dismissed.

19. In the result, the appeal is dismissed. No costs.

Miscellaneous petitions pending, if any, in the appeal shall stand closed.

14.08.2018
DRK



(Dr.SA, J.)

THE HON'BLE DR JUSTICE SHAMEEM AKTHER



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