

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**I.A.No.1 OF 2018**  
**AND**  
**C.M.A.No.429 OF 2018**

**JUDGMENT:**

The present appeal is preferred, under Order XLIII Rule 1 C.P.C., questioning the order, dated 20.04.2018, passed in I.A.No.660 of 2018 in A.S.No.109 of 2018 by the learned VII Additional District Judge (Fast Track Court), Visakhapatnam.

2. The appellant herein instituted the suit in O.S.No.273 of 2008 on the file of Principal Junior Civil Judge, Bheemunipatnam, seeking the relief of permanent injunction simplicitor against respondent Nos.1 and 2 over an extent of Ac.3-22 cents of dry land together with a shed thereon comprising in Survey No.223/40, Patta No.310 situated at Ghambiram Village of Anandapuram Mandal. The learned Principal Junior Civil Judge, on appreciation of evidence on record, dismissed the suit with costs. Of course, on behalf of the appellant - plaintiff, PWs.1 to 3 were examined and Exs.A1 to A12 were marked and on behalf of the respondents – defendants, DWs.1 to 5 were examined and Exs.B1 to B11 were marked.

3. Aggrieved over the dismissal of the suit, the appellant – plaintiff preferred a regular Appeal Suit in A.S.No.109 of 2018. Simultaneously, in the appeal, he has also filed I.A.No.660 of 2018 requesting for grant of temporary injunction. During pendency of the Appeal Suit proceedings, the said application was dismissed by the

order impugned assigning certain reasons in paragraph Nos.23 to 26, having formulated the point for determination in paragraph No.22.

4. The learned appellate Judge, by referring to the case of the appellant that he purchased the property from one Sadi Venkanna under Ex.A1 - General Power of Attorney (G.P.A.), dated 12.09.2007, and, since, then he has been in possession and enjoyment of the same; that he has also obtained pattadar pass book and title deed under Exs.A9 and A10; that the orders of Revenue Divisional Officer (R.D.O.), Visakhapatnam, under Ex.B1, is also not in dispute and that against the said orders of R.D.O., Visakhapatnam, respondents approached this Court and the dispute is still pending, observed that the appellant is only a G.P.A. holder and he did not examine the principal, though, he was alive till 2010, as a witness in the suit and not shown his name in the cause title; that the appellant filed the suit in his individual capacity and the suit, as framed, is not maintainable; that none of the family members of the vendor of the appellant were examined; that the respondents – defendants are no other than the sisters of the alleged vendor of the appellant; that during cross-examination of PW.1, as per the observations made and the findings recorded by the learned trial Court, since, it was elicited that some portion of the suit schedule property was alienated already by the time of filing of the suit, filing the original suit for total extent of Ac.3-22 cents makes the suit not maintainable and thereby, held that the

learned trial Court rightly dismissed the suit and, accordingly, dismissed I.A.No.660 of 2018.

5. The learned appellate Judge appears to have made certain definite findings in the order impugned. In fact, the learned appellate Judge ought to have taken the Appeal Suit itself for disposal and recorded the said definite findings. Even otherwise, viewing that the findings recorded and the observations made by the learned appellate Judge would not affect the respective cases of the parties to the Appeal Suit, while disposing of the Appeal Suit finally, the present Civil Miscellaneous Appeal is disposed of.

6. Sri O. Manohar Reddy, learned counsel for the appellant, would submit that the Court below went wrong in refusing to grant interim injunction, despite the proceedings issued by the R.D.O., exhibited as Ex.B1, showing the possession of the appellant over the suit schedule property, and the learned trial Court did not properly appreciate the evidence, while answering the issues settled for trial.

7. Per contra, Sri M.V. Suresh Kumar, learned Senior Counsel appearing for the respondents, would point out the observations made by the learned trial Court in paragraph Nos.11, 11A, 13, 13B and 37. He also places reliance in **H. Siddiqui (dead) per L.Rs. and A. Ramalingam<sup>1</sup>**, for the proposition. The Honourable Apex Court, while observing that mere admission of signature in photocopy of a document does not amount to admitting contents of document and

where original documents were not produced at any time, nor any factual foundation laid for giving secondary evidence, it is impermissible to allow a party to adduce secondary evidence and secondary evidence must be authenticated by foundational evidence and the alleged copy must be, in fact, true copy of the original and that the secondary evidence relating to contents of a document is inadmissible, until non-production of original is accounted for, held in paragraph No.12 thus:

“The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (*Vide Roman Catholic Mission v. State of Madras (AIR 1966 SC 1457); State of Rajasthan v. Khemraj (AIR 2000 SC 1759); LIC v. Ram Pal Singh Bisen (2010) 4 SCC 491; and M. Chandra v. M. Thangamuthu (2010) 9 SCC 712*).”

8. Keeping in view, the submissions made by the learned counsel for both sides, instead of examining the issue in the instant

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<sup>1</sup> (2011) 4 SCC 240

application i.e., I.A.No.1 of 2018 and the controversy in the present C.M.A., since, if any observation that would be made in the instant I.A., would certainly affect the controversy in the main Appeal Suit, it is desirable to direct the learned appellate Court to dispose of the Appeal Suit itself by fixing time line.

9. As already observed in the above, the learned appellate Court, in the order impugned, has made certain definite observations. The learned appellate Court is directed to dispose of the regular Appeal Suit itself within three months from the date of receipt of a copy of this order uninfluenced by any of such observations made in the order impugned. Both the parties are directed to co-operate with the Court below for disposal of the Appeal Suit within the time frame fixed. Since, this Court, by order, dated 02.05.2018, has directed to maintain *status quo* obtaining as on that date, the same shall be continued till the disposal of the Appeal Suit.

10. With the above directions, I.A.No.1 of 2018 and the appeal are disposed of.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

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**A. SHANKAR NARAYANA, J**

June 26, 2018.

Note: Issue C.C. by 28.06.2018.  
B/O.MD