

THE HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.M.A.No.696 of 2018

ORDER: (Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has challenged the order dated 07.03.2018 passed in I.A.No.119 of 2016 in O.S.No.78 of 2016 by the V Additional District Judge at Karimnagar, whereby the petition filed under Order 39 Rules 1 and 2 read with Section 151 of CPC to restrain the respondents/defendants from alienating the suit schedule item Nos.1 to 9 properties to the third parties, has been dismissed.

2. The counsel appearing on behalf of the appellant contended that the trial Court failed to see that the father of respondents 1 and 2, namely, Kashetti Venkata Ramaiah, was cultivating the lands by entering his name in the pahanies with the influence of the Revenue Officers and that the appellant is entitled to half share in all such properties. He further contended that respondent No.3 is the daughter of respondent No.2, respondent No.4 is the husband of respondent No.3. Respondents 1 and 2 have registered the joint family properties through gift deeds and sale deeds in the name of respondents 3 and 4 and got the entries in the revenue records. He further contended that the trial Court failed to consider that respondents 1 and 2 are not only accounting the income of joint family properties but also the joint family funds. Respondent No.1 sold out the land to an extent of Ac.0.06 gts in Sy.No.325/E to

respondent No.4 along with some other properties shown in the plaint as well as the petition. The appellant came to know the said fact when respondents 1 and 2 have transferred/sold the joint family properties and therefore, the appellant filed the present suit for partition. Learned counsel further contended that as respondents 1 and 2 are managing the properties since several years, their names would be shown in the revenue records in stead of the name of the appellant and that he has got every right to demand his share of property so far there is no partition deed between them. Therefore, the appellant has every right to demand partition in item Nos.1 to 9 of suit schedule properties. Thus, the learned counsel contended that the order passed by the Court below is liable to be dismissed and the appeal deserves to be allowed.

3. The undisputed facts are that respondents 1 and 2 are own brothers and sons of late Kashetti Venkata Ramaiah, respondent No.3 is the wife of respondent No.4 and the daughter of respondent No.2. The father of appellant, namely, Kashetti Rajamallaiah and father of respondents 1 and 2, namely, Kashetti Venkatramaiah, are own brothers and sons of late Kashetti Narsaiah.

4. The appellant herein filed the suit in O.S.No.78 of 2016 for partition of the properties described in the schedule of plaint and for recovery of actual possession of his half share in the said properties. He also sought for declaration to the effect that the sales of the ancestral suit properties made by respondent No.1 as null and void and be declared as cancelled.

5. In I.A.No.119 of 2016, the appellant/petitioner sought to restrain the respondents/defendants from alienating suit schedule item Nos.1 to 9 properties to the third parties, till disposal of the main suit.

6. The trial Court perused the pahanies filed by petitioner and held that the respondents/defendants 1 to 4 are owners and possessors of the petition schedule properties. Further, the pahanies from the year 1985-86 onwards show the names of Rajamallaiah and Venkatramaiah and the mode of acquisition shows as self-acquired and as such, the properties are not in joint possession.

7. It is not in dispute that an injunction being discretionary equitable relief cannot be granted when equally efficacious relief is available in any other usual mode or proceeding. It is further well settled that for grant of temporary injunction, three factors have to be satisfied, i.e., *prima facie* case, balance of convenience and irreparable loss.

8. Considering all these facts mentioned above, the trial Court opined that the *prima facie* case does not mean that the petitioner has to prove his case in all probabilities as it will succeed after trial. *Prima facie* case means that the contentions raised by petitioner would require consideration on merit and are not liable to be rejected summarily. The trial Court also opined that the pahanies filed by the petitioner/plaintiff show that respondents 1 to 4 are in possession

since 2000 and even on the date of filing the suit, there is no joint possession of properties by the parties.

9. In view of the facts recorded above, we are not inclined to interfere with the impugned order passed by the trial Court and there is no merit in the present appeal.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

12th July, 2018

sj

