

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No.10 of 2017

Date: 30th November, 2018

Between:

Mandala Venkata Bhaskara Rao

...

Appellant

And

Jaldu Kasi Visweswara Rao

...

Respondent

Counsel for the Appellant : Sri V.S.R. Anjaneyulu

Counsel for the Respondents: Sri Rama Rao Mavidi

The Court made the following:

JUDGMENT: (per the Hon' ble Sri Justice Gudiseva Shyam Prasad)

This appeal is directed against the order dated 07.09.2016 in I.A.No.620 of 2016 in O.S.No.286 of 2016 on the file of VI Additional District Judge, at Visakhapatnam.

2. The appellant is the plaintiff and respondent Nos.1 to 4 are the defendants in O.S.No.286 of 2016. The appellant filed I.A.No.620 of 2016 in O.S.No.286 of 2016 under Order 39 Rules 1 and 2 and Sections 94 and 151 of C.P.C., for grant of temporary injunction against the respondents from interfering with the appellant's peaceful possession and enjoyment over the plaint schedule property. The trial Court, on consideration of the documents and the material on record, vide impugned order dated 07.09.2016, dismissed the said application holding that the Pattadar Pass Book pertaining to Sy.Nos.255/1 and 255/2 were shown as 'metta' in an extent of Acs.4.99 ½ cents. But the suit schedule property was in an extent of only 868 square yards. Therefore, the trial Court came to the conclusion that the documents filed by the appellant do not pertain to the suit schedule property.

3. The case of the appellant is that he has been in possession and enjoyment of the petition schedule property in Survey No.255/2, and its Door No.18-170 in an extent of 867.88 Sq .yards, situated at Madugula Mandal, Visakhapatnam District, that though, the appellant acquired the same under Gift Settlement Deed dated 09.11.2009 from Mandala Dhanalakshmi and has been in possession and enjoyment of the petition

schedule property, the defendants have been interfering with his possession and, therefore, he filed the above suit.

4. The case of the respondents is that the petition schedule property is non-agricultural land in nature and, therefore, no Pass Books can be issued for non-agricultural lands, that the passbook and 1-B Account filed in the Court are for an extent of Ac.1-10 cents, described as purchased by the petitioner under registered sale deeds bearing Nos.1336/2009 and 1338/2009 whereas the suit registered Gift Settlement Deed bears registration No.1950/2009. Thus, the passbook and 1-B Account filed in the Court as document Nos.2 and 3 with the plaint do not relate to the suit schedule property but relate to an extent of Ac.1-10 cents of dry land situated in the Survey No.255/2.

5. It is the further case of the respondents that the mother of the petitioner executed a Gift Settlement Deed in favour of the petitioner, that she filed O.S.No.9 of 2005 on the file of Junior Civil Judge, V.Madugula, for recovery of possession of the petition B-Schedule property, and also for damages against the respondents, that the said suit was dismissed vide judgment dated 18.10.2008 and the same was confirmed in the appeal in A.S.No.1 of 2009 by the Senior Civil Judge, Chodavaram, vide judgment dated 08.10.2010 and that the judgment of the appellate Court became final and, therefore, the question of transfer of rights under the said Gift Deed to the petitioner does not arise.

6. It is the further case of respondents that their family members have been in possession and enjoyment of the petition schedule property for

more than 75 years in an extent of Ac.10-21 cents of dry land in Survey No.255/1 and 255/2, which originally belonged to one Palakurthi China Appa Rao who had leased out the land to his brother in law Jagani Sanyasayya under a Registered Cowl dated 18.11.1937, that on account of the death of Palakurthi China Appa Rao, all his properties devolved on his son Palakurthi Satya Hara Gowri Shankara Rao as per the terms of Last Registered Will and Testament dated 23.04.1963 executed by him, that after the death of Palakurthi China Appa Rao, the lease holder Jagani Suryanarayana handed over the entire land covered by Survey Nos.255/1 and 255/2 to Palakurthi Satya Hara Gowri Shankara Rao, during the year 1960, and the tenants under Jagani Suryanarayana continued as tenants under Palakurthi Satya Hara Gowri Shankara Rao and used to pay rents to him.

7. The trial Court, on consideration of the pleadings, disposed of the interlocutory application, holding that the petitioner/plaintiff has no prima facie case and balance of convenience in his favour, and dismissed the petition.

8. The point for consideration in this matter is whether the appellant/petitioner-plaintiff has prima facie case, balance of convenience in his favour, and he would be put to irreparable loss if injunction is not granted?

9. The findings of the trial Court reveal that the petitioner has not placed any records before the court to believe that he was in possession of the property. The pattadar pass book and title deed filed by him pertain to

agricultural lands, whereas the petitioner claimed that the petition schedule property is a vacant site with tin roof sheds. Basing on the documents, the trial Court came to the conclusion that the pattadar passbook and title deed filed by the petitioner do not pertain to the suit schedule property. In fact, the petitioner-plaintiff did not get marked any documents in the interlocutory application, in proof of his possession.

10. The burden is on the appellant to prove that he has prima facie case and balance of convenience in his favour, and that in case injunction is not granted in his favour, he would be put to irreparable loss. Admittedly, the petitioner has not filed any documents to prove his prima facie title, and possession over the plaint schedule property. Consequently, balance of convenience and irreparable loss also could not be proved. Therefore, there is no need to interfere with the orders passed by the trial Court in this regard.

11. **IN THE RESULT**, the appeal is dismissed. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

30th November, 2018.

KSM/Msr

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CIVIL MISCELLANEOUS APPEAL No. 10 of 2017

(Judgment of the Division Bench delivered by
Hon' ble Sri Justice Gudiseva Shyam Prasad)

30th November, 2018

KSM