HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. Nos.599 & 681 of 2016

COMMON JUDGMENT:

These two Civil Miscellaneous Appeals are maintained by the defendants 3 & 4 in O.S.No.233 of 2015 on the file of the learned XIII Additional District & Sessions Judge, Rangareddy District at L.B.Nagar, Hyderabad, against the orders, dated 13.04.2016, in I.A.No.131 and 132 of 2015.

2. Respondent No.1 to the present Civil Miscellaneous Appeals is the plaintiff in O.S.No.233 of 2015. The said suit was filed for declaration of title, declaration of the registered Sale Deed bearing document No.1958/2015, dated 09.03.2015, registered before the S.R.O, Rajendranagar, as null and void, and also for perpetual injunction restraining the defendants 3 and 4 and their agents from interfering with the possession and enjoyment of the plaintiff over the schedule property. Pending the suit the plaintiff filed I.A.No.131 of 2015 seeking *ad-interim* injunction restraining defendant No.3 (wife of defendant No.4) and her agents from alienating the schedule property to third parties. Similarly, the plaintiff also filed I.A.No.132 of 2015 seeking *ad-interim* injunction restraining the defendants 3 & 4 and their agents from interfering with the possession and enjoyment of the plaintiff over the

schedule property. The learned XIII Additional District & Sessions Judge, Rangareddy District at L.B.Nagar, Hyderabad, allowed the aforesaid interlocutory applications vide orders dated 13.04.2016. Aggrieved of the same, the defendants 3 and 4-appellants filed the present Civil Miscellaneous Appeals.

3. Learned counsel for the appellants submits that the impugned orders of the Court below are contrary to law, weight of evidence and probabilities of the case. He further submits that the Court below has not considered the fact that defendant No.3 has purchased the property under a valid registered Sale Deed and she was in continuous possession, and the Court below also not considered the documents filed by defendant No.3 under exhibits R1 to R13 showing the right, title and interest in the property. The Court below has also not considered the fact that the injunction cannot be given against the true owner and that defendant No.3 has become the owner of property. The Court below did not give any weightage to exhibits R6 to R13 showing the peaceful possession of the defendants 3 and 4 over the suit property. Learned counsel further submits that the plaintiff did not file any documentary proof to show that he was in possession of the suit property as on the date of the filing of suit. The Court below failed to appreciate the fact that the defendants

3 and 4 are having a valid registered Sale Deed in their favour and enjoying with absolute and alienable rights over the suit property comparatively to the plaintiff. The Court below did not consider the plea of the appellants-defendants 3 and 4 that they had initiated criminal case against the plaintiff and others for trespassing into the suit property and ignored the same. The plaintiff did not file any rejoinder to the counter, filed by the appellants herein, claiming their right over the suit property and ultimately, prayed the Court to set aside the impugned orders of the Court below by allowing the Civil Miscellaneous Appeals.

4. Learned counsel for the appellants-defendants 3 and 4 during the course of hearing reiterated the above by drawing attention to the orders of the lower Court in impugning its correctness, whereas the learned counsel for the contesting respondent No.1-plaintiff, respondents 2 and 3 to the appeals being co-defendants are endorsed as not necessary parties to the appeals, supported the orders of the lower Court in saying merely because some other view possible is not a ground for this Court while sitting in the appeal to interfere and sought for dismissal of the appeals.

5. Heard both sides and perused the material on record.

6. Before the lower Court, in the injunction petitions restraining the defendants 3 and 4 from interfering with the plaintiff's so-called possession and enjoyment covered by I.A.No.132 of 2015, exhibits P1 to P8 on behalf of the plaintiff and exhibits R1 to R13 on behalf of the defendants were referred; of which, Ex.P.2 is the certified copy of Sale Deed, dated 09.03.2015 (Ex.P2=Ex.R2), which is sought for cancellation. The source of title to it is covered by Ex.P1=Ex.R1. Ex.P3 relied on by the plaintiff is the certified copy of Adoption Deed, dated 21.10.1994. Ex.P.4 is the Will Deed dated 14.04.2004 and exhibits P5 and P6 are the bunch of electricity bills and demand notices. Exhibits P7 & P8 are the third-party affidavits. Whereas, Ex.R3 is the market value assistance, Ex.R4 is the Death Certificate of Lalitha Kumari. Ex.R5 is the proceedings of the General Manager, Hyderabad Metropolitan Water Supply and Sewerage Board. Ex.R6 is the proceedings of the Deputy Commissioner, Kukatpally Circle-1. Ex.R7 is the list of family members of Lalitha Kumari issued by the Revenue Department. Ex.R8 is the new electricity connection registration acknowledgment from the Southern Power Distribution Company of Telangana Limited, Kukatpally. Ex.R9 is the complaint registration acknowledgment from the Southern Power Distribution Company of Telangana Limited,

Kukatpally. Ex.R10 is the bunch of electricity bills. Ex.R11 is the customer ledger of the Hyderabad Metropolitan Water Supply and Sewerage Board. Ex.R12 is the letter issued of not to grant service connection and Ex.R13 is the Encumbrance Certificate.

7. Before coming to discuss the documents; come to the pleadings, as per the plaintiff, he is the adopted son of his maternal aunt Kum. Lalitha Kumari and his natural mother is R.C. Sudha Rani. The said Lalitha Kumari and defendants 1 and 2 are natural sisters and brother. The schedule property was claimed allotted to Lalitha Kumari by the Andhra Pradesh Housing Board and she is the owner and possessor therefrom. As the plaintiff was adopted by Lalitha Kumari under the original Ex.P3-Adoption Deed on 21.10.1994, while he was 12 years old, his adopted mother Lalitha Kumari made a bequeath in his favour under Ex.P4-Will Deed dated 14.04.2004. Prior to her demise on 20.05.2010 (Ex.R4) and even during her life time Lalitha Kumari let out the suit property and the rents were being deposited to the account of plaintiff. The plaintiff came to know that the defendants 3 and 4 are claiming as purchasers from the defendants 1 and 2 under the Sale Deed dated 09.03.2015 (Ex.P2=Ex.R2) and started threatening the tenant to vacate the property, from

which the plaintiff was constrained to file the suit and as the plaintiff is the absolute owner with possession and enjoyment and the defendants have no manner of right or possession and enjoyment over the suit property, the plaintiff is entitled to the temporary injunction as prayed for.

8. The contest of defendants 3 and 4 being the wife and husband from the counter of respondent No.3-defendant No.3 is while denying all the plaint and petition averments including any adoption or right and title over the property to the plaintiff, their contention is that the schedule property was allotted in the name of third-parties under the low income group housing scheme, who did not come forward and thereby, defendant No.2 got the schedule property and registered in the name of his sister Lalitha Kumari, who was the spinster. However, all the family members are enjoying the said property. There was no adoption of the plaintiff by Lalitha Kumari and the document is a fabricated one. The contention that Lalitha Kumari nominated the mother of plaintiff to get the service benefits from the Government is also denied, so also about her execution of the alleged Will, dated 14.04.2004, in favour of the plaintiff by contending that after the death of Lalitha Kumari, the original title deeds of the schedule property are lying with the plaintiff and the

schedule property was let out to third-parties and at the request of the mother of plaintiff, the defendants 1 and 2, who are no other than the sister and brother of the plaintiff's mother, allowed her to collect the rents, as she is the widow without any support and also allowed the mother of plaintiff to pay property tax; so that, the property will be divided equally among the mother of plaintiff and the defendants 1 and 2 later. After the death of Lalitha Kumari, the plaintiff fraudulently obtained the legal heir certificate in the name of his mother R.C. Sudharani stating that she is the only legal heir of Lalitha Kumari and under the guise of the said certificate obtained from the Mandal Revenue Officer, Saroornagar, the plaintiff has taken away the service benefits of Lalitha Kumari by showing his mother as the sole legal heir of Lalitha Kumari, and on coming to know by the defendants 1 and 2 when they questioned the plaintiff and his mother about their mischievous acts, they informed that the schedule property can be enjoyed by the defendants 1 and 2, since the mother of plaintiff has taken away the service benefits and the bank account of Lalitha Kumari and accordingly, the defendants 1 and 2 sold the property to defendant No.3 being the legal heirs of Lalitha Kumari and defendant No.3 is the *bona fide* purchaser for consideration and she is in possession

and enjoyment. The plaintiff is not entitled to any equitable relief and the injunction petitions sought for are liable to be dismissed.

9. Even from the said averments in the counter, what the defendants 3 and 4 claim title to defendant No.3 under the Sale Deed dated 09.03.2015, original of Ex.P2=Ex.R2, is from that day and not prior to that. Even from the counter averments of what they came to know through defendants 1 and 2 of the so-called arrangement between defendants 1 and 2 and the plaintiff and the plaintiff's mother for defendants 1 and 2 can have the property absolutely, since the plaintiff and his mother taken away the service benefits of late Lalitha Kumari, even the counter refers the property tax was paying in the name of R.C.Sudharani, mother of plaintiff, by collecting rents by plaintiff's mother. Once such is the case, it shows Lalitha Kumari and after that the plaintiff's mother R.C.Sudharani are in possession and enjoyment of the property by payment of property taxes and collection of rents. Once such is the case, under the Sale Deed covered by the original of Ex.P2=Ex.R2 the defendants 3 and 4 must show how the defendant No.3 as vendee from the defendants 1 and 2 get possession from the plaintiff and his mother also. In the absence of which and also from the original title deed for the

property covered by Ex.R1=Ex.P1 with plaintiff, once the trial Court came to the conclusion in entitlement of injunction by the plaintiff pending disposal of the suit by restraining the defendants' interference including not to alienate, pursuant to Ex.P2=Ex.R2, which is the subject matter of *lis* in the suit for declaration of registered Sale Deed as null and void, that requires adjudication for this Court, there is nothing to interfere, but for to direct the plaintiff to furnish security for an amount of Rs.2,00,000/- (Rupees two lakhs only) in the event of the plaintiff's non-success in the suit, if at all any compensation out of it, entitlement by the defendants to consider with reference to Order XXXIX and Sections 94 and 95 C.P.C. It is made clear that none of the observations herein or of the lower Court in any way influence the mind of the trial Court in deciding the suit on own merits as what are the observations made for existence of the *prima facie* case, which involves only something more than the *bona fide* contention and the tribal issue along with irreparable injury and balance of convenience are different to the parameters required in deciding the suit *lis* on trial as to the plaintiff proved his entitlement or not from own merits thereof.

10. Accordingly, and in the result, both the Civil Miscellaneous Appeals are disposed of, while not interfering with the impugned orders of the Court below granting injunction, however, by directing the plaintiff with such a modification to furnish security for Rs.2,00,000/- (Rupees two lakhs only) for the injunction orders obtained in the event of the plaintiff's non-success ultimately to compensate the defendant No.3, and none of the observations herein will influence the mind of the trial Court in deciding the suit.

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Dr. B. SIVA SANKARA RAO, J

03.01.2018
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