

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.M.A.No.823 of 2018

JUDGMENT:

This appeal is filed under Order 43 Rule 1 CPC assailing the order dated 20.07.2018 passed in I.A.No.2287 of 2015 in O.S.No.86 of 2015 on the file of the Court of Principal District Judge, Srikakulam.

2. Heard the learned counsel appearing for both the parties.
3. The parties will be hereinafter referred to as they are arrayed before the trial Court to avoid confusion.
4. The facts leading to filing of the present appeal in brief are as follows:

The petitioner filed the suit seeking perpetual injunction in respect of the plaint schedule property. During pendency of the suit, the petitioner filed I.A.No.2287 of 2015 under Order XXXIX Rule 1 CPC seeking ad-interim injunction restraining the respondents from interfering with the suit schedule property. The respondent filed counter opposing the claim of the petitioner. The trial Court after affording reasonable opportunity to both parties, arrived at a conclusion that the petitioner is entitled for ad-interim injunction and allowed the petition. Hence, the appeal.

5. Learned counsel for the respondents (appellants herein) strenuously submitted that the Court below ought not have placed any reliance on the revenue records to establish the title of the party. He further submitted that the findings recorded by the Court below are not sustainable either on facts or in law, therefore, it is a fit case to allow the appeal. Per contra, learned counsel for

the petitioner (respondent herein) submitted that the findings recorded by the Court below are based on material available on record, therefore, it is not a fit case to allow the appeal. He further submitted that the revenue records filed by the petitioner *prima facie* proves that he has been in possession and enjoyment of the suit schedule property.

6. Now, the point that arises for consideration in this appeal is whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court.

7. To substantiate the arguments, learned counsel for the respondents has drawn the attention of this Court to the following decisions:

(1) **MARIA MARGARIDA SEQUERIA FERNANDES AND OTHERS v. ERASMO JACK DE SEQUERIA (DEAD) THEIR LRs¹**
 (2) **BEHRAM TEJANI AND OTHERS v. AZEEM JAGANI²** (3) **YELURI VIJAYABHARATHI AND OTHERS v. YELURI MANIKYAMMA AND OTHERS³** (4) **SAMMETA TULASI RAM AND OTHERS v. STATE OF A.P. AND OTHERS⁴** and **A.P.NEELIKULA SANGHAM, HYDERABAD v. A. LAKSHMIKANTH RAO AND OTHERS⁵**.

8. From the above decisions, the following principles can be deduced:

(i) The Court cannot declare the title of the party basing on the pattadar passbook and title deed;

¹ 2012 (4) ALD (SC)

² 2017 (3) ALD 1 (SC)

³ 1998 (2) ALT 623

⁴ 2004 (3) ALT 200

⁵ 2017(1) ALD para 13

(ii) The Court can *prima facie* place reliance on the pattadar pass book and title deed books in view of Section 6 of ROR Act and 114 of the Indian Evidence Act, unless a contrary is proved.

9. Let me consider the facts of the case on hand in the light of the submissions made by both counsel and the legal principles enunciated in the cases cited supra.

10. The petitioner and the first respondent are sons of late Narannaidu. Respondents 2 and 3 are the children of first respondent. The father of the petitioner and the first respondent is the owner of the suit schedule property and other properties. The mother of the petitioner and first respondent by name Appalanarasamma @ Santhamma, who is second wife of Narannaidu is no more. It is the case of the petitioner that in the presence of village elders, they have partitioned the suit schedule property and other properties. Again they were reunited. It is the further case of the petitioner that once again they orally partitioned the properties. As rightly pointed out by the learned counsel for the respondents, the petitioner has taken the plea of partition as well as reunion. It is not in dispute that due to employment, the petitioner is not residing in the village.

11. Establishment of *prima facie* case, balance of convenience and irreparable loss likely to be caused to the petitioner is *sine quo-non* to grant interim injunction under Order XXXIX Rules 1 and 2 of CPC. It is equally a settled principle of law that a person, who approaches the Court seeking equitable relief has to come with clean hands. In order to establish the *prima facie* case, the

petitioner mainly relied on Exs.P1 to P20. On behalf of the respondents, no documents were marked. Ex.P1 is the settlement deed purported to have been executed by Santhamma in favour of the petitioner. Exs.P2 to P5 are the parradar pass books and title deed books. Ex.P6 and P7 are certified copies of Form-1B under ROR issued by Tahsildar, Polaki in favour of the petitioner. Exs.P8 to P12 are the adangals. Exs.P13 to P19 are the land revenue receipts. Ex.P20 is the proceedings issued by Joint Collector. The trial Court granted ad-interim injunction in favour of the petitioner basing on the above documents.

12. At the time of arguments, both the counsel submitted that the present suit is confined to certain properties of the family. The predominant contention of the learned counsel for the appellants is that the trial Court committed grave error while placing reliance on Ex.P2 to P5. As rightly pointed out by the learned counsel for the appellants, the Court cannot declare title of party basing on the entries made in the revenue records.

13. It is needless to say the Court cannot grant relief of declaration so far as the title is concerned basing on the entries made in the revenue records. In a suit for declaration the plaintiff may succeed or fail basing on the strength or weaknesses of his case. The plaintiff is not entitled for the relief of declaration basing on the weaknesses or lacunas on the part of the defendants. The nature of evidence to be adduced in a suit for declaration is entirely different to that of a suit for injunction. In a suit for injunction, the Court has to consider who was in possession of the property as on the date of filing of the suit. Suffice it to say, in a

suit for injunction, the Court may incidentally look into the title of the party. A perusal of Exs.P2 to P20 at a glance reveals that the revenue authorities issued a pattadar passbook and title deed in favour of the petitioner. The adangals also *prima facie* reveals the petitioner is in possession of the property. A perusal of Ex.P20 reveals that after conducting due enquiry, the Settlement Officer-cum-Collector issued Ex.P20, which also *prima facie* support the version of the petitioner.

14. The predominant contention of the learned counsel for the appellants-respondents is that the petitioner taking advantage of his employment in connivance with the revenue people created Exs.P2 to P20. He further submitted that Ex.P1 is only a sham and nominal document.

15. Whether the documents in question are fabricated one or not has to be decided at the time of full-fledged trial only. The Court ought not express any opinion touching the merits of the main case while deciding interlocutory applications. If this Court expresses any opinion with regard to validity or otherwise of Exs.P1 to P20, the same would cause prejudice to one of the parties to the proceedings. The validity or otherwise has to be decided at the time of full fledged trial. The trial Court granted interim injunction in favour of the petitioner basing on these documents. Various decisions cited by the learned counsel for the appellants are no way helpful to substantiate their case.

16. As observed earlier, the trial Court granted interim injunction in favour of the petitioner basing on these documents. The *prima facie* case and balance of convenience are in favour of

the petitioner. If no injunction is granted, it may cause untold hardship to the petitioner when compared to the respondents. The findings recorded by the trial Court are basing on material available on record. Therefore, I am fully agreeing with the findings of the trial Court.

17. At the time of arguments, learned counsel for the petitioner has drawn the attention of this Court to the observations made by the trial Court at Paras 12 and 13 are not sustainable. In order to appreciate the contention of the learned counsel for the petitioner, it is apposite to extract hereunder relevant portion:

“.....the defence taken by the respondents is opposite to public policy and the same cannot be believable to come to a conclusion that the petitioner is not in possession of schedule properties.....”

18. As observed earlier, while deciding the interlocutory applications, the Court has to restrain itself in giving its opinion touching the merits of the main case. As rightly pointed out by the learned counsel for the appellant, the above observations made by the trial Court are unwarranted. In civil matters, each party may set up his own defence in order to substantiate their respective stands.

19. Viewed from any angle, the observations made by the trial Court are not sustainable. Therefore, this Court is inclined to set aside the observations of the Court below so far as ‘the defence set up by the respondents is opposite to public policy’.....

20. In the light of the foregoing discussion, there are no grounds much less valid grounds to allow the appeal.

21. Accordingly, the C.M.A. is dismissed. As a sequel, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

21st July 2018,
Rns

