

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.M.A.No.868 of 2018

JUDGMENT:

This appeal is filed under Order 43 Rule 1 CPC assailing the order dated 30.07.2018 passed in I.A.No.377 of 2018 in O.S.No.372 of 2018 on the file of the Court of XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar.

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. A perusal of the record reveals that the petitioner filed O.S.No.372 of 2018 against the respondents for declaration and consequential perpetual injunction in respect of an open land admeasuring 250 sq. yards in plot No.398 in Sy.No.147 of Kismathpur village, Ranga Reddy District. Along with the suit, the petitioner filed I.A.No.377 of 2018 under Order 39 Rules 1 and 2 seeking ad-interim injunction restraining the respondents from interfering with the suit schedule property. The respondents filed counter *inter alia* contending that they purchased an extent of 250 sq. yards in plot No.398 in Survey No.149 of Kismathpur village of Ranga Reddy District. The trial Court, after affording reasonable opportunity to both parties, arrived at a conclusion that the petitioner is entitled to ad-interim injunction and accordingly allowed the petition. Hence, the appeal.

5. Learned counsel for the respondents (appellants herein) strenuously submitted that the finding of the Court below that burden of proof lies on the respondents to establish that the suit

schedule property is situated in Sy.No.149 is not sustainable under law. He further submitted that the findings recorded by the Court below are not sustainable on facts, hence, it is a fit case to allow the appeal. Per contra, learned counsel for the petitioner (respondent herein) submitted that the respondents without any right whatsoever are interfering with the suit schedule property. He further submitted that the trial Court granted interim injunction in favour of the petitioner basing on the documentary evidence, therefore, it is not a fit case to interfere with the impugned order.

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. 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 settled principle of law that a person, who approaches the Court seeking equitable relief, has to come to Court with clean hands. It is the case of the petitioner that he purchased the petition schedule property under a registered sale deed. A perusal of Ex.P1 sale deed *prima facie* supports the version of the petitioner. Exs.P2 to P5 are the sale deeds of vendors of the petitioner. Ex.P7 is the receipt issued by the Gram Panchayat, Kismathpur village. Ex.P8 and P9 are encumbrance certificates in respect of petition schedule property. Ex.P12 is the original permission granted in favour of the petitioner. As per the recitals of Exs.R1 to R5, the respondent purchased an extent of

250 sq.yards in plot No.398 in Survey No.149 of Kismathpur village. The petitioner seeks interim injunction in respect of Sy.No.147. The claim of the respondents is that they are the owners of an extent of 250 sq. yards in Sy.No.149, no doubt, the plot number is one and the same i.e. 398. While deciding the interlocutory applications, the Court has to consider the documents filed by both parties. A perusal of Exs.P1 to P5 *prima facie* reveals that the petitioner purchased the suit schedule property, whereas, the respondents purchased the property in Sy.No.149, which is not the subject matter of the suit. It is the case of the respondents that the petitioner, taking advantage of the interim injunction granted by the Court below, may encroach their property.

8. In a suit for declaration, the plaintiff may succeed or fail basing on the strengths or weaknesses of his case. It is needless to say that the plaintiff is not entitled to the relief of declaration basing on the weaknesses or lacunae on the part of the defendants. The trial Court made an observation that the burden of proof is on the respondents to establish that the suit schedule property is in Sy.No.149. The trial Court failed to consider that the burden of proof lies on the plaintiff to establish his case. Once the plaintiff establishes his case, then only the onus of proof shifts on the defendant. The observation made by the trial Court that 'in a suit for declaration the burden of proof lies on the defendant' is not correct. Ultimately, the plaintiff has to establish whether the suit schedule property is situated in Sy.No.147 or not. Therefore, the finding of the court below that the burden of proof lies on the

defendants to establish that the suit schedule property is situated in Sy.No.149 is not sustainable.

9. Various documents filed by the petitioner *prima facie* establishes that he has been in possession and enjoyment of an extent of 250 sq. yards in plot No.398 in Sy.No.147 of Kismathpur village of Ranga Reddy District. A person, who is in possession of the property, is entitled to seek interim injunction. By filing Exs.P1 to P12, the petitioner established *prima facie* case. The balance of convenience is also in favour of the petitioner. If no injunction is granted, it may cause untold hardship to the petitioner, when compared to the respondents. The trial Court rightly considered the documents filed by both parties and arrived at a *prima facie* conclusion that the petitioner is in possession of the suit schedule property. The findings recorded by the Court below are based on material much less legally admissible material. I am fully endorsing the findings recorded by the Court below except the finding that the burden of proof lies on the respondents to establish that the suit schedule property is situated in Sy.No.149. There are no grounds much less valid grounds to interfere with the findings recorded by the Court below. Therefore, it is not a fit case to allow the appeal and the same is liable to be dismissed.

10. 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

27th July 2018,
Rns

