

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

C.M.A.No.944 of 2018

Date: 14.11.2018

Between:

Maradani Srinivasa Rao

....Petitioner

And:

Maradani Babu Rao and 2 others

....Respondents

Counsel for the petitioner: Mr.Subba Reddy.S

Counsel for the respondents: Mr.P.S.P.Suresh Kumar

The Court made the following:



Order: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Feeling partly aggrieved by Order and Decree, dated 19.06.2018, in IA.No.1006 of 2017 in OS.No.99 of 2017 on the file of XI Additional District Judge, Krishna at Gudivada, the plaintiff filed this CMA.

We have heard Mr.S.Subba Reddy, learned Counsel for the appellant, and Mr.PSP.Suresh Kumar, learned Counsel for the respondents.

The appellant and respondent Nos.2 and 3 are the sons of respondent No.1. The appellant filed the aforementioned suit for partition and allotment of 1/4th share in the plaint A and B schedule properties. He pleaded that all the plaint schedule properties were either ancestral properties or acquired on behalf of the joint family led by their father *i.e.*, respondent No.1. Respondent No.1 filed a detailed counter-affidavit denying the claim of the appellant for partition except in respect of items 1 to 14 of the plaint A schedule properties. In his counter-affidavit, he has *inter alia* pleaded as under:

“The plaintiff knowing fully well about sales made by grandfather and his father *i.e.*, D.1 intentionally incorporate those properties to mislead the Honourable court. Item No.6 of plaint A schedule is part and parcel of item No.2 of plaint A schedule. Originally, Ac.1.76 cents in R.S.No.294/E and F was purchased under document No.1502/1969 by 1st defendant with his self acquisition prior to partition deed in

the year 1971. Out of Ac.1.76 cents an acquisition was made by the Government for laying bypass road after that the remaining extent of Ac.1.43 cents was sold by division of plots to various purchasers. The defendant No.1 sold the entire extent to one Donepudi Nageswara Rao. Said Nageswara Rao for his convenience obtained a Regd. General Power of Attorney dt.31.5.1991 from 1st defendant and sold the property Ac.1.43 cents along with some other property of Nageswara Rao dividing into plots as per L.P.No.139/93. The property covered under 1502/1969 is self acquired property of D1. Hence question of partition does not arise. The property was sold and handed over to Donepudi Nageswara Rao in the year 1991 itself. The 1st defendant out of his self earnings and sale proceeds he purchased item No.3 an extent of Ac.1.06. ½ cents of plaintiff A schedule property and item No.5 Ac.1.00 of plaintiff A schedule under document No.3500/91 and 1082/92 respectively, as these properties are self acquired properties of D1 hence the plaintiff is not entitled for partition.”

Having considered the respective pleadings of the parties and the documentary evidence produced by them, the Court below has granted injunction restraining the respondents from alienating items 10 to 14 of the plaintiff A schedule properties, while rejecting the application for injunction in respect of other items of properties. Admittedly, the appellant has not filed rejoinder to the counter-affidavit. Thus, the averments in Para 8 of the counter-affidavit as reproduced above remained uncontroverted till date. The said averments show that items 2 and 3 were already sold. It is also the case of respondent No.1 that the plaintiff B schedule

properties were not partitioned at all and that the appellant/plaintiff has not impleaded the other co-parceners, who have shares in the plaint B schedule properties. This stand of respondent No.1 also remained uncontroverted. The Court below, having weighed the elements of *prima facie* case, balance of convenience and irreparable injury, dismissed the application for injunction in respect of the items other than item Nos.10 to 14 of the plaint A schedule properties.

Having carefully considered the reasons assigned by the lower Court, we do not find any reason to interfere with its order under Appeal. At any rate, Section 52 of the Transfer of Property Act 1872, which posits of the doctrine of *lis pendens*, protects the interests of the appellant in the event of his success in the suit. In the premises as above, we do not find any merit in this CMA and the same is, accordingly, dismissed.

As a sequel to dismissal of the CMA, IA.No.1 of 2018, filed by the appellant for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Dt: 14th November, 2018
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