

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

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Civil Miscellaneous Appeal No.467 of 2015

Date: 28.08.2018

Between:

Prateek Patny

..Appellant

and

Smt.Tara Devi Patny and 23 others

..Respondents

Counsel for the Appellant : Mr.VVN.Narayana Rao

Counsel for respondent No.1 : Mrs.D.Pramada

Counsel for respondent No.2 : Mr.S.Sridhar

Counsel for respondent Nos.3 & 5 : Mrs.Manjari S.Ganu

Counsel for respondent Nos.4 & 6 : Mr.Rohit Pogula

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Miscellaneous Appeal (CMA) is filed against Order, dated 09-02-2015, in IA.No.58 of 2013 in OS.No.4 of 2013 on the file of the I Additional Chief Judge, City Civil Court at Secunderabad, whereby it has declined to grant injunction in favour of the appellant/plaintiff against the respondents from alienating the suit schedule properties.

We have heard Sri VVN.Narayana Rao, learned Counsel for the appellant, Smt.D.Pramada, learned Counsel for respondent No.1, Sri S.Sridhar, learned Counsel for respondent No.2, Smt.Manjari S.Ganu, learned Counsel for respondent Nos.3 and 5, and Sri Rohit Pogula, learned Counsel for respondent Nos.4 and 6.

The suit, filed by the appellant, for partition is mainly based upon the purported will, dated 14-07-2011, marked as Ex.P.7 subject to objection by the other side. However, respondent No.1 and other contesting respondents have set up a will, dated 04-09-2010, marked as Ex.R.1. The Court below, on appreciation of the elements of *prima facie* case, balance of convenience and irreparable injury, held that, as

the appellant failed to produce the original will, his chances of success are very remote. It has also held that in the event of the appellant/plaintiff succeeding in the suit, his interests will be protected by the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882. While dismissing the IA, the Court below, however, protected the interests of the appellant by directing respondent No.1 to furnish the accounts regarding the 5% share of rent, which the appellant is entitled to receive as per the terms of Ex.R.1- Will, dated 04-01-2010, and pay the same to the appellant from time to time or deposit the same to the credit of the said IA. The lower Court has granted permission to the appellant to withdraw the amount so deposited.

After carefully considering the reasons assigned by the Court below, we are of the opinion that they are sound and do not warrant any interference. Admittedly, the appellant has filed only a photocopy of the will without producing the original document. Since, he failed to make out a *prima facie* case, he is not entitled to the injunction against the contesting respondents, who have set up their own will *vide* Ex.R.1. Further, we are entirely in agreement with the

findings of the lower Court that in the unlikely event of the appellant succeeding in the suit, the doctrine of *lis pendens* would protect his interests. Hence, we have no reason to interfere with the order of the lower Court to the extent of rejection of the relief of injunction.

As regards the direction to respondent No.1 to furnish the accounts from time to time and deposit 5% share of rent payable under Ex.R.1, Smt.D.Pramada, learned Counsel for the said respondent, has undertaken that within six weeks from today, her client will file the accounts and deposit the amount before the lower Court as per the direction issued in the order under Appeal. She further requested for a direction to the lower Court to dispose of the suit, which is of the year 2013.

In the light of the discussion made above, the CMA is dismissed, however, with the direction to respondent No.1 to render the accounts and deposit the arrears of amount payable towards 5% share of rent to the appellant as per the direction of the lower Court within six weeks from today and continue to deposit the appellant's share in future till disposal of the suit. On such deposit, the appellant is

entitled to withdraw the same without furnishing any security. The lower Court is directed to dispose of the suit within four months from the date of receipt of this order. It is made clear that while disposing of the suit, the Court below shall not be guided by any of the observations made either by the lower Court or by us in this order.

As a sequel to dismissal of the CMA, interim order, dated 15-12-2017, is vacated, IA.No.2 of 2018, filed for vacating the same, IA.No.1 of 2018 and IA.No.1 of 2015 (CMAMP.No.936 of 2015) are disposed of as infructuous.



(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 30th August, 2018
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