

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHAVA RAO

+ Civil Miscellaneous Appeal No.1293 of 2018

% 17-12-2018

Inampudi Durga Rani W/o Venkateswara Rao,
Aged 52 years, House Wife, Properties,
R/o Flat No.103, Aishwarya Enclave,
Kaleswara Rao Road, Suryaraopet,
Vijayawada, Krishna District

... Appellant

Vs.

\$ 1. Narra Lakshmi Prasanna W/o Narasimha Rao,
Aged 56 years, House Wife and Properties,
R/o D.No.2-38, Gannavaram Post and Mandal,
Krishna District

2. Cherukuri Jhansi Rani W/o Venkata Subbaiah,
Aged 54 years, House Wife and Properties,
R/o Flat No.707, Garuda Quest, Bible School Road,
Gunadala, Vijayawada Krishna District

3. Madala Ratna Kumari W/o Suresh Babu,
Aged 50 years, House Wife and Properties,
R/o Flat No.202, Srinidhi Enclave (Mamatha Bldg.),
Opp: SLV Manor, 7th Cross, 3rd Lane,
Ramanjaneya Nagar, Chikka Kalla Sandra, Bangalore

4. Gudapati Srinivasa Rao W/o Sambasiva Rao,
Aged 50 years, Finance Business and Properties,
R/o H.No.14-35, Gannavaram Centre,
Gannavaram Post and Mandal, Krishna District

... Respondents

! Counsel for the Appellant: Mr. Narasimha Rao Gudiseva

Counsel for Respondents 1to4: ---

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> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
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Judgment: (per V.Ramasubramanian, J.)

Aggrieved by an order passed by the Trial Court vacating an interim injunction prohibiting the alienation, pending disposal of a partition suit, the plaintiff in the suit has come up with the above appeal.

2. Heard Mr. Narasimha Rao Gudiseva, learned counsel for the appellant.

3. The main suit is admittedly for partition. The appellant wanted an interim injunction restraining alienation. Originally, an interim injunction was granted, but after hearing it was vacated by the order impugned in the appeal.

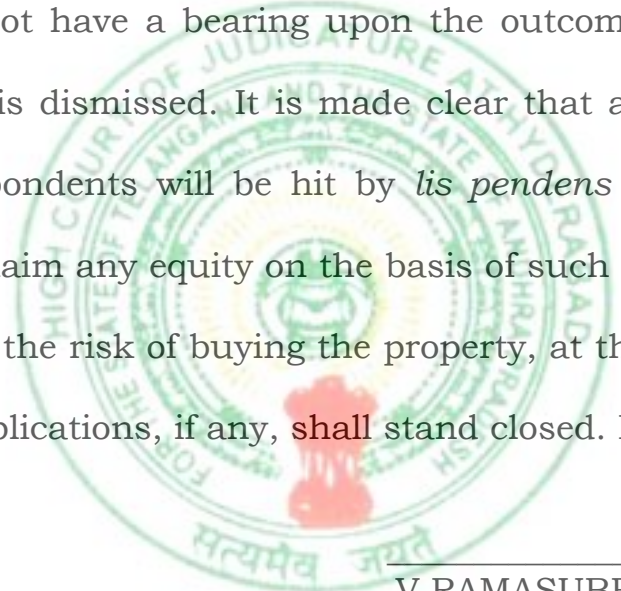
4. The main grievance of the appellant, as projected by Mr. Narasimha Rao, learned counsel, is that the Trial Court has virtually decided the entitlement of the appellant to partition, by recording categorical findings. Moreover, it is his contention that if the respondents are allowed to alienate the suit schedule properties, third party interest will creep in.

5. But the normal rule in a suit for partition is that anything done during the pendency of the suit, will be subject to the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882. Therefore, except under extraordinary circumstances, the Court will not normally grant

an injunction. A party creating alienation and a party purchasing the property pending suit, will be doing so at their own peril.

6. Insofar as the findings recorded by the Trial Court are concerned, they are only *prima facie* findings and they cannot have a bearing upon the merits of the case at the time of final disposal.

7. Therefore, making it clear that the findings recorded in the order of the Trial Court are only *prima facie* findings which cannot have a bearing upon the outcome of the suit, the appeal is dismissed. It is made clear that anything done by the respondents will be hit by *lis pendens* and no third party can claim any equity on the basis of such an alienation, if they take the risk of buying the property, at their own peril. Pending applications, if any, shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

P.KESHAHA RAO, J.

17th December, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHA RAO

Civil Miscellaneous Appeal No.1293 of 2018
(per VRS, J.)



17th December, 2018.
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