

3. The trial Court heard application Exhibit 5 filed by plaintiffs for injunction. The trial Court by order dated 05/11/2014 granted injunction in favour of the plaintiffs and restrained the defendant from making any construction and encroaching upon the suit property till the decision of the Suit. The Appellate Court for the reasons recorded in the order dated 18/02/2017 refused to interfere with the discretionary order passed by the trial Court and it found that exercise of discretion by the trial Court is correct, legal and proper.

4. Learned Counsel for the petitioner would submit that the plaintiffs approached the trial Court by suppressing the details as regards compromise decree passed in Regular Civil Suit No.664 of 1992 wherein it is stated that wall between city survey No. 129 & 130 is kept common. He would further submit that he has not encroached on any portion of the suit property belonging to the plaintiffs and in fact he is ready to carry out construction in the suit property belonging to him. According to him, Suit has been filed by suppressing material document and

therefore the proceedings initiated by plaintiffs are vitiated by fraud. He relied upon decision of the Supreme Court in the case of **S.P.Chengalvaraya Naidu Vs. Jagannath reported in AIR 1994 Supreme Court 853** in support of his submission that the injunction deserves to be vacated.

5. He would submit that he is not able to construct on the properties which have been purchased by him only because of the injunction which has been granted by the Courts below contrary to the documentary evidence on record.

6. Learned Counsel for the respondents supported the impugned order and invited my attention to the findings recorded by the Appellate Court. He emphasized on paragraph 20 of the Appellate Court's order.

7. Heard learned Counsel for the parties. The Appellate Court has taken into consideration the contention of the defendant in respect of compromise decree in Regular Civil

Suit No. 664 of 1992. The compromise is in respect of city survey nos. 129 and 130. However, present Suit is in respect of city survey number 152 which is not the subject matter of Regular Civil Suit No. 664 of 1992. It is the specific case of the plaintiffs that the defendant has also excavated the portion of city survey no. 152 and by making construction is encroaching on city survey 152 and city survey no. 130. The Appellate Court has directed the trial Court to expedite the Suit. For the cogent reasons recorded by the Courts below, I am not inclined to interfere with the order passed by the Appellate Court. As the Appellate Court has already directed the Suit be expedited, since Suit is of 2010, the trial Court is requested to hear and decide the Suit as expeditiously as possible and preferably within a period of one year from today.

8. With these observations, Petition stands dismissed.

(M.S.KARNIK, J.)