

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL MISCELLANEOUS APPEAL No.88 of 2019

JUDGMENT:

This appeal is filed by the appellant/3rd defendant challenging the order dt.29-11-2018 in I.A.No.153 of 2017 in O.S.No.56 of 2017 of the V Additional District Judge at Bhongir.

2. Respondent Nos.1 to 5 had filed the said suit against the appellant and two others in respect of 7 plots of land located in Sy.Nos.187/B/3, 188/B/3, 189/B/3, 164/G/3, 165/B/4, 188/D, 187/B/3, 188/B/3, 189/B/3, 189/B/3, 164/g/3, 165/B/4 and 188/D, total admeasuring 1880 sq. yds situated at Datherpally village, Yadagirigutta Mandal, Yadadri Bhongir District. They claimed that they are in possession of the said land and the appellant, who has no concern with the suit schedule property, is trying to grab the suit schedule property with the collusion of unsocial elements.

3. Along with the plaint, the respondent filed I.A.No.153 of 2017 under Order XXXIX Rule 1 and 2 C.P.C. for grant of *ad interim* injunction restraining the appellant and other defendants from interfering with the peaceful possession and enjoyment of respondent Nos.1 to 5 reiterating the contents of the plaint.

4. Counter-affidavit was filed by appellant opposing the said application, and contending that he had purchased Ac.1.00 of land in Sy.No.188 from defendant Nos.1 and 2 and also got it mutated by the

Revenue authorities and obtained pattadar pass books and title deeds. He alleged that the land claimed by respondent Nos.1 to 5 is incapable of identification and the plots claimed by respondent Nos.1 to 5 are not available on the spot and respondent Nos.1 to 5 only intended to occupy his land.

5. Before the Court below, respondent Nos.1 to 5 marked Es.P-1 to P-20 while appellant and other respondents marked Exs.R-1 to R-32.

6. By order dt.29-11-2018, the Court below granted temporary injunction in favour of the respondent Nos.1 to 5 restraining the appellant from interfering with the peaceful possession and enjoyment of respondent Nos.1 to 5 over the plaint schedule property. It held that the documents filed by respondent Nos.1 to 5 establish their right and title over the plaint schedule property and the appellant is not in possession of the land in Sy.No.188 though he has title in view of the Ex.P-16 report of the Tahsildar.

7. Assailing the same, this appeal is filed.

8. Learned counsel for appellant sought to contend that the Court below could not have relied on Ex.P-16 report of the Tahsildar and granted relief to respondent Nos.1 to 5 and the Court below ought to have first directed localization of the properties claimed by respondent Nos.1 to 5 and petitioner by appointing an Advocate-Commissioner

since there is a dispute about the existence of the suit schedule properties itself.

9. Learned counsel for respondent Nos.1 to 5 however pointed out that the land claimed by petitioner is in Sy.No.188/C1 and 188/C2 and even according to appellant, he is not claiming any land in the survey numbers which are mentioned in the schedule and the appellant is not aggrieved by the order under appeal since it does not relate to the land in Sy.No.188/C1 and 188/C2.

10. From the facts narrated above, it is clear that there is a serious dispute about the location of the suit schedule property. During the course of submissions in this Court, it is contended by the learned counsel for appellant that by showing wrong survey numbers, respondent Nos.1 to 5 wish to grab the property of the appellant.

11. Assuming this to be correct, the appellant ought to have sought for appointment of an Advocate-Commissioner to localize the property claimed by respondent Nos.1 to 5, but he has not chosen to do so. However, he is granted liberty to take recourse to such a course of action.

12. As things stand, the appellant is claiming land in Sy.No.188/C1 and 188/C2 while respondents Nos.1 to 5 claim land in different survey numbers mentioned in the plaint schedule which are referred to above. Therefore, any injunction obtained by respondent Nos.1 to 5

would only operate in respect of the land in those survey numbers and it cannot operate in respect of land in Sy.No.188/C1 and 188/C2.

13. In this view of the matter, it cannot be said that the appellant is aggrieved by the impugned order.

14. Therefore, the appeal at the instance of the appellant is rejected granting liberty to the appellant to take proper steps in the Court below for localization of the land claimed by respondent Nos.1 to 5 and his own land with reference to the documents. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-03-2019
Vsv

