

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL MISCELLANEOUS APPEAL No.182 of 2019

JUDGMENT :

This appeal is filed challenging the order dt.04-01-2019 in I.A.No.306 of 2017 in O.S.No.113 of 2017 of the V Additional District Judge at Bhongir granting injunction to 1st respondent.

2. Appellants are defendant Nos.5 and 6 in the suit. They are sailing with defendant Nos.1 to 4 and 7 to 12.

3. The 1st respondent/plaintiff filed the said suit for perpetual injunction restraining the petitioners and other defendants from interfering with his possession and enjoyment of the plaint schedule property in Sy.No.358 of Choutuppal Revenue Village and Mandal, Yadadri-Bhongir District.

4. The 1st respondent contended that he purchased the property under two registered sale deeds both dt.04-09-1984 and was in possession and enjoyment thereof and has also built a house therein. He alleged that appellants and other defendants, without any right over the property, tried to interfere with his possession.

5. 2nd defendant filed a written statement opposing the suit claim.

6. Appellants also filed a written statement opposing the suit claim and denied the contentions of the 1st respondent. Appellants contended that the mother of 1st appellant and grand mother of

2nd appellant purchased a residential open plot measuring 328 sq. yds within the specified boundaries under a registered sale deed dt.03-07-1984; that the grand mother of the 2nd appellant obtained permission from the Gram Panchayat on 07-06-1985 for construction of house and the petitioners are residing therein. They alleged that 1st respondent has no right in relation to the property claimed by appellants and so the suit be dismissed.

7. The 1st respondent filed I.A.No.306 of 2017 under Order XXXIX Rule 1 and 2 C.P.C. for interim injunction against appellants and other defendants pending suit. Initially, on 01-09-2017 interim injunction was granted in his favour.

8. Before the Court below, the 1st respondent marked Exs.P-1 to P-16 and the petitioners marked Exs.B-1 to B-19.

9. After counter-affidavit was filed by defendants reiterating the contents of their written statements, the Court below made the interim injunction absolute on 04-01-2019.

10. After considering the evidence on record, the Court below held that 1st respondent had filed not only the sale deeds executed in his favour, but also pahanis from 1420 Fasli to 1427 Fasli and these establish the possession and enjoyment of 1st respondent over the suit schedule property, but none of the documents filed by petitioners, which are tax receipts and electricity bill payments, establish either the title or possession of the petitioners. It also made observations

that neither the petitioners nor their vendors had any right over the suit schedule property and that 1st respondent had established his right, title and possession over the suit schedule property.

11. Assailing the same, this appeal is filed.

12. Learned counsel for appellants contended that the Court below could not have gone into the title to the property since it was the suit for bare injunction and the Court below could not have ignored the documentary evidence filed by petitioners and given finding in favour of the 1st respondent.

13. I have perused the order of the Court below. The Court below had considered the pahanis from 1420 fasli to 1427 fasli filed by 1st respondent apart from sale deeds filed by 1st respondent, and gave a finding about possession of 1st respondent over the suit schedule property. It commented that petitioners did not file any material other than tax payment receipts and electricity connection receipts to establish their possession. These findings are *prima facie* made on appreciation of evidence and do not appear to be erroneous. However, the observations of the Court below regarding title to the plaint schedule property and particularly regarding claim raised by respondents are not warranted, since it is not necessary to make any such comments while deciding the temporary injunction application.

14. Therefore the Civil Miscellaneous Appeal is dismissed, and the Court below is directed to decide the suit uninfluenced by the

observations made by it in the impugned order or by this Court in this judgment. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-04-2019

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