

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR**

CMA.No.s 205 and 206 of 2019

COMMON ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

Both these appeals arise between the same parties, out of the same suit and so they are being disposed of by this common order.

2. The appellants in both these appeals are plaintiffs in O.S.No.112 of 2016 on the file of the III Additional District Judge, Ranga Reddy District at L.B.Nagar.

3. The said suit has been filed by the appellants against the respondents for recovery of possession of an extent of 13¾ guntas in Sy.No.208 of Kokapet Village, Rajendranagar Mandal, Ranga Reddy District within specified boundaries mentioned in the schedule thereto.

4. It was the contention of the appellants in the suit that their family owned Acs.9.20 guntas in Sy.No.208; that they have sold, except the suit schedule property, everything else to the third parties; that the respondents claimed to have purchased land in Sy.No.s 208, 209 and 210 from the vendees of the appellants; and are proceeding to make

construction by encroaching into the property retained by the appellants.

5. Along with the suit, I.A.No.s 115 of 2016 and 329 of 2016 were filed by the appellants under Order XXXIX Rules 1 and 2 CPC for grant of *ad-interim* injunction restraining the respondents from developing or alienating the suit schedule property to third parties during the pendency of the suit, and restraining the respondents from making any sort of construction or development in the suit schedule property during the pendency of the suit.

6. These applications were opposed by respondents, who contended that the 1st respondent had entered into the Development Agreement with respondents 2 to 10 for developing an extent of Ac.7.18 guntas in various survey numbers of Kokapet Village including the Sy.No.208. They denied the plaint averments and stated that the 1st respondent even obtained sanction from HMDA on 30.05.2014 for development of Acs.7.18 guntas mentioned above. It was denied that the respondents encroached the suit schedule property of the appellants. It was contended that the 1st respondent was put in possession by respondents 2 to 10 and only to harass the respondents, the said suit has been filed.

7. By separate orders dt.26.04.2018, both these applications were rejected by the Court.

8. One of the grounds of rejection by the Court below is the fact that relief was sought by the appellants only against the 1st respondent in these applications and not against respondents 2 to 10. It was of the opinion that this indicates lack of bonafides on the part of the appellants and the relief of *ad-interim* injunction, being an equitable relief, can only be granted to persons who seek equity and who do equity.

9. *Prima facie*, we find that this reasoning of the Court below is unacceptable. Since it is the 1st respondent who is proceeding with the construction, the cause of action to seek these interim reliefs only against the 1st respondent is warranted, because it is not even the case of the respondents that other respondents are developing the suit schedule property.

10. That apart, we have also noticed that there is a necessity to demarcate the suit schedule property in Sy.No.208 of Kokapet Village since even according to the appellants out of Acs.9.20 guntas originally owned by them, they had sold Acs.9.06¼ guntas and they have retained only

the suit schedule property, which consists of 13¾ guntas in Sy.No.208 and it is important to know where exactly this land is located in Sy.No.208. Therefore, unless there is localization of the suit schedule property by way of appointment of an Advocate-commissioner, it might be difficult for the parties to prove their respective cases or for the Court to decide the suit at a later point of time.

11. Therefore, both these Civil Miscellaneous Appeals are allowed; and both the impugned orders dt.26.04.2018 in I.A.No.s 115 of 2016 and 329 of 2016 are set aside; and the said I.A.s are remanded back to the Court below for reconsideration. The Court below is directed to get an Advocate Commissioner appointed to localize the suit schedule property within a period of three (03) weeks from the date of receipt of a copy of this order and then proceed to decide these applications in accordance with law within three (03) weeks of submission of Advocate-Commissioner's report. Any development/Construction activity being carried on by the 1st respondent during this period would be at the risk of the 1st respondent and he shall not claim any equities for the constructions carried out by him in the suit schedule property, which is found to be not belonging to the 1st respondent or respondents 2 to 10. No order as to costs.

12. Consequently, miscellaneous petitions pending if any shall stand cancelled.

M.S. RAMACHANDRA RAO, J

T.VINOD KUMAR, J

13th September, 2019.

Note: Issue CC in three days.

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