

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL MISCELLANEOUS APPEAL No.181 OF 2019

ORDER:

This appeal is filed challenging the order dt. 31.01.2019 in IA.No.406 of 2018 in OS.No.151 of 2018 of the V Additional District Judge, at Bhongir.

2. The appellant herein is the defendant in the suit.
3. The respondent/plaintiff filed the suit against the petitioner for a perpetual injunction restraining the petitioner from interfering with his alleged possession and enjoyment of the suit schedule property.
4. The respondent claimed to have purchased the plaint schedule property under a registered Sale Deed dt. 12.11.2014 from original pattedars by name Barla Uppari Krishna Reddy and others. He contended that he is in possession of the plaint schedule property and that his name was also mutated in the revenue records. He filed Pahanies for 2016-17 and 2017-18 as well as the Sale Deed dt. 12.11.2014 executed in his favour by his vendors.
5. The petitioner herein is opposing the suit claim and contending that the suit schedule property had been sold by the vendors of the respondent to the petitioner on 18.03.2011 itself and that she is in possession and enjoyment of the property. It was also contended that OS.No.111 of 2012 was filed by the vendors of the petitioner against the petitioner for reconveyance of the suit schedule property and for recovery of amount; that the

said suit was later dismissed for default on 18.09.2018; and pending the said suit, they appear to have executed Sale Deed on 12.11.2014 in favour of the respondent.

6. Along with the suit, the respondent filed IA.No.406 of 2018 under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, 1908, seeking a temporary injunction against the petitioner and to restrain the petitioner from interfering with his alleged peaceful possession and enjoyment over the suit schedule property. She reiterated the contents of the plaint.

7. The petitioner filed a counter reiterating the contents of his written statement.

8. The respondent marked Exs.P-1 to P-17 while the petitioner marked Ex.R-1.

9. By order dt. 31.01.2019 the Court below made the ad-interim injunction granted by it earlier on 11.09.2018 absolute.

10. After recording the contentions of both sides, it held that both parties have pleaded acquisition of title to plaint schedule property under different Sale Deeds from the same vendor. Exs.P-2 & P-3 Pahanies for 2016-17 and 2017-18 show the possession of the respondent over the plaint schedule property as on the date of filing of the suit. It also referred to Ex.P-6, a joint enquiry and survey report of the Tahasildar, Bhongir, on an application submitted by the respondent for implementation of Sale Deed in the revenue record, and noted that the said report also showed the possession of the respondent.

11. Assailing the said order, this appeal is filed.

12. Counsel for petitioner contended that the revenue authorities had wrongly mutated the name of the respondent in the revenue records; that he had challenged the same before the Revenue Divisional Officer and the Revenue Divisional Officer passed orders stating that civil suit OS.No.111 of 2012 was pending; that petitioner then challenged it in revision before the Joint Collector, Nalgonda, which is pending and the Court below therefore could not have placed reliance on the entries in the pahanies and granted temporary injunction in favour of the respondent.

13. From the facts narrated above, it is clear that both parties are claiming through the same group of vendors. While the respondent had filed pahanies Exs.P-2 and P-3 for 2016-17 and 2017-18 to show his possession of the plaint schedule property on the date of filing of the suit, the petitioner did not file any document and admittedly no mutation of the petitioner's name has been affected as of date.

14. In a suit for mere temporary injunction, possession on the date of filing of the suit is relevant and Exs.P-2 & P-3 filed by the respondent showed the respondent's possession of the suit schedule property.

15. Therefore, it cannot be said that the Court below had committed any error in placing reliance on the same in making the ad interim injunction granted by it absolute on 11.09.2018.

16. Accordingly, CMA fails and is dismissed. However, the Court below is directed to decide the suit uninfluenced by any observations made in this order or in the order passed by it strictly in accordance with law. The trial Court shall endeavour to dispose of the suit as expeditiously as possible preferably within six (06) months from the date of receipt of copy of the order. No costs.

17. Miscellaneous petitions, if any, pending in this civil miscellaneous appeal shall stand closed.

M.S.RAMACHANDRA RAO, J

Date: 11th March, 2019

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