

HON'BLE SRI JUSTICE M.S. RAMACHANDER RAO

AND

HON'BLE SRI JUSTICE K. LAKSHMAN

CIVIL MISCELLANEOUS APPEAL No.207 OF 2019

JUDGMENT: *(Per Hon'ble Sri Justice M.S. Ramachander Rao)*

This appeal is filed by the appellant challenging order dt.09.11.2018 in I.A. No.824 of 2018 in O.S. No.377 of 2018 by the Learned IX Additional Chief Judge, City Civil Court, Hyderabad.

2. The appellant is the plaintiff in the said suit and petitioner in the above I.A. The 1st respondent is the sister of the appellant and the 2nd respondent is the brother of the appellant and the 3rd respondent is the wife of the 2nd respondent.

3. The said suit was filed by the appellant for partition and separate possession of 1/3rd share of A and B schedule properties. It is the case of the appellant that these properties belong to the father of the appellant and the 2nd respondent, by name, late B. Rami Reddy; that during his lifetime, the plaint schedule properties were purchased by late Rami Reddy; that he died on 27.10.2014 and on his death the appellant and respondent Nos.1 and 2 inherited the said properties.

4. It is the contention of the appellant that respondents 1 and 2 were not dividing their A and B schedule properties and were

dragging on the matter; that respondents 4 and 5 are the tenants of the A schedule property; and therefore, the suit was filed for partition.

5. Pending suit, the appellant filed I.A No.824 of 2018 under Order – XXXIX Rules 1 and 2 CPC to restrain respondents 1 to 3 from alienating, selling, mortgaging and gifting A and B schedule properties.

6. The 2nd respondent filed a counter affidavit contending that though the properties were purchased by late Rami Reddy, due to coercion of the 3rd respondent, he executed a registered Gift Settlement Deed in favour of the 3rd respondent in respect of A & B schedule properties under Ex.R-4 dt.05.01.2016. According to him, late Rami Reddy died intestate. He denied the allegations of the appellant that he was colluding with the 3rd respondent and was trying to alienate both the properties.

7. The 3rd respondent filed a counter opposing grant of relief to the appellant in I.A. No.824 of 2018. She took a plea that late Rami Reddy executed a Will Deed dt.27.03.2014 in favour of the 2nd respondent in respect of suit schedule properties and also other properties; that on the basis of the said Will, the 2nd respondent became absolute owner of the properties and thereafter, he executed gift settlement deed Ex.R-4 in her favour. She stated that there were disputes between herself and the 2nd respondent and that the appellant as well as the 2nd respondent have suppressed the real facts. She

stated that she is the absolute owner and possessor of the suit schedule properties and her name was also mutated in the Municipal Records and the suit for partition is not maintainable.

8. Before the Court below, the appellant marked Ex.P.1 to P.8 and the respondents marked Exs.R.1 to R-13.

9. By order dt.09.11.2018, the court below dismissed I.A. No.824 of 2018.

10. After considering the contentions of the appellant it held that whether the Will is executed by late Rami Reddy in favour of the 2nd respondent and whether the 2nd respondent in turn executed the Gift Settlement Deed in favour of the 3rd respondent would be considered at trial, after evidence would be taken on record. It held that at this stage it cannot be said that the plaint schedule properties are the properties of the appellant as well as the respondents 1 and 2 and that balance of convenience is in favour of the 3rd respondent since there is a possibility of the tenants i.e. respondents 4 and 5 having confusion in their minds as to whom they should pay rents.

11. It is also observed by the Court below that if the appellant succeeds in her claim, she may as well seek for rendition of accounts in respect of all the rents received by 3rd respondent from the tenants; that whether the gift settlement deed Ex.R-4 was executed by the 2nd respondent in favour of the 3rd respondent would also be considered in the trial, but *prima facie* Ex.R-4, being a registered gift settlement

deed, and there being a recital therein about the execution of Will by late Rami Reddy, the plea of the appellant and the respondents 1 and 2 that Rami Reddy died intestate appears to be an after thought and *prima facie* shows collusion between them.

12. Assailing the said order, the present appeal is filed.

13. Learned counsel for the appellant contends that the Court below ought to have granted temporary injunction restraining the 3rd respondent from alienating the suit schedule properties since the validity of the Will and the gift settlement deed would have to be gone into only in the suit and it is the contention of the 2nd respondent that because of coercion, he had executed Ex.R-4 gift deed in favour of the 3rd respondent. He also contended that balance of convenience is in favour of the appellant and irreparable injury would be caused to the appellant if the interim injunction as prayed, for is not granted.

14. Sri P. Mehar Srinivasa Rao, learned counsel appearing for 3rd respondent, however, refuted the said contentions and supported the order passed by the Court below.

15. It is not in dispute that in Ex.R-4 Gift settlement deed executed by the 2nd respondent in favour of 3rd respondent, it is specifically recited by the 2nd respondent that a Will was executed by late Rami Reddy bequeathing the suit A and B schedule properties to him and that he is therefore, having title in both the items which he is gifting to the 3rd respondent.

16. This *prima facie* establishes that the plea of the appellant and the 2nd respondent about late Rami Reddy dying intestate may not be correct.

17. As of now, the said document can be relied upon to show that there is a Will dt.27.03.2014 executed by late Rami Reddy and on that basis Ex.R-4 gift deed was executed by the 2nd respondent in favour of 3rd respondent; and *prima facie* the suit schedule properties have to be taken as the properties of the 3rd respondent and not the joint properties of appellant and respondents 1 and 2.

18. No doubt the validity of the Will and the Gift settlement deed would be considered during trial after evidence is let in. The plea of the 2nd respondent that the gift settlement deed was executed exercising coercive measures, is also a matter to be gone into during trial.

19. Interestingly, only A and B schedule properties are indicated in the plaint schedule, which are sought to be partitioned leaving out other properties which are also admittedly owned by late Rami Reddy. The reason for this is not disclosed.

20. In this view of the matter, we do not find any merit in the contention of the appellant that the appellant was entitled to the interim injunction sought by her. We are satisfied that valid reasons have been given by the Court below for refusing the said interim relief sought by the appellant.

21. Accordingly, this appeal is dismissed. As a sequel, miscellaneous applications, if any pending, shall stand closed. No order as to costs.

M.S. RAMACHANDER RAO, J

K. LAKSHMAN, J

December 06, 2019
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