

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
And
THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

C.M.A. No.123 of 2018

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

This appeal is filed under Order 43 Rule 1(r) CPC challenging the order dt.22.11.2017 passed in I.A. No.1211 of 2017 in O.S. No.753 of 2017 of XXV Additional Chief Judge, City Civil Court at Hyderabad.

2. Appellants herein are the defendants 1 and 2 in the suit.

3. The said suit was filed by the respondents 1 to 10 against the appellants and respondents 3 and 4 for a declaration that the respondents 1 to 10 are the owners and possessors and entitled for physical possession of the suit schedule property, and for a direction to the appellants and respondents 11 and 12 to vacate and handover peaceful physical possession of the suit schedule property to them or to their nominees. They also claimed mesne profits of Rs.5,00,000/- per month from the date of the suit till the date of realization.

4. It is the contention of the respondents 1 to 10/Plaintiffs in the suit that their predecessor is one B.Kishanlal; that he floated a proprietorship concern under the name and style of M/s.Hari Prasad Memorial Hospital (respondent No.1/plaintiff No.1) with an aim to set up a memorial hospital for the poor persons on charitable basis and give them medical help; and that B.Kishanlal designated himself as a Secretary of the said proprietorship concern; that he purchased under a registered sale deed Doc.No.4935/1985 dt.13.08.1985, the 'A' schedule property and that he also purchased the

‘B’ schedule property under another registered sale deed Doc.No.2589/1986, dt.24.10.1986. It is alleged that the total sale consideration for purchase of these two properties was paid by Sri B.Kishanlal and they were his sole properties and no other person had contributed for the purchase of the said properties; that Sri B.Kishanlal created a Trust by name Hari Prasad Memorial Hospital Trust (Appellant No.1/Defendant No.1) under a Trust deed bearing Document No.1651/1985, dt.23.12.1985 and the said Trust was also created for betterment of the Hari Prasad Memorial Hospital, but no immovable properties were transferred to it; that the ‘A’ and ‘B’ schedule properties continued to be part and parcel of the property of the proprietorship concern of M/s.Hari Prasad Memorial Hospital and were never part of the appellant No.1/Defendant No.1 Trust. It is alleged that the hospital was closed in 2008. It is further contended that Sri B.Kishanlal died on 15.11.1995 and respondents 2 to 10/plaintiffs 2 to 10 are his legal representatives. It is contended that the appellants/Defendants 1 and 2 in the suit, are denying the ownership of respondents 2 to 10 in respect of the suit schedule properties; that appellants have no right, title or interest over the same and their rights were terminated by issuing a notice dt.08.02.2017 wherein the consent of the appellants was also sought for dissolution of the appellant No.1 Trust.

5. Along with the plaint, respondents 1 to 10 also filed under Order 39 Rule 1 and 2, CPC I.A. No.1211 of 2017 seeking a temporary injunction restraining the appellants and respondents 3 and 4 from alienating, encumbering, entering into any sort of transaction including agreement for

sale, power of attorney, gift, Will etc., or changing nature of the suit schedule properties in any manner reiterating the contents of the plaint.

6. Written statement was filed by the appellants opposing the suit claim. They contended that the suit was an attempt to claim property of a charitable Trust as the property of an individual and is an abuse of process of Court. It was denied that there was proprietorship concern floated by Sri B.Kishanlal under the name and style of the 1st respondent/plaintiff No.1. It was denied that the 'A' and 'B' schedule properties were purchased by him in his individual capacity and it is contended that the sale deeds themselves indicate that the properties were purchased in the name of M/s.Hari Prasad Memorial Hospital, which is a Trust and out of the funds of the said Trust. It is also contended that during his life time B.Kishanlal never claimed the suit schedule property as his individual properties and they were not his properties. It is contended that the 1st appellant Trust was found in the year 1968 and started functioning since then though it was registered subsequently on 03.12.1985. Other allegations leveled in the plaint were also contested.

7. Taking a similar stand counter affidavit was filed in I.A. No.1211 of 2017 by the appellants.

8. In the Court below the respondents 1 to 10 marked Exs.P.1 to P.14 while the appellants marked Exs.R.1 to R.10.

9. By order dt.22.11.2017, the Court below allowed I.A. No.1211 of 2017 and granted relief of interim injunction as prayed for, during pendency of the suit. Having noticed that respondents 1 to 10 admitted that they were

not in possession of the suit schedule properties and they were seeking temporary injunction, it held that the appellants did not put forth any undertaking that they would preserve the property pending the suit. It observed that there is a possibility of alienation or creation of encumbrance over the suit schedule properties furnishing a reason to pass a restraint order. Though it noted that arguments were advanced on the question whether M/s.Hari Prasad Memorial Hospital is a proprietary concern as is contended by the respondents 1 to 10 or is a Trust as is contended by the appellants, it declined to express any opinion on the said aspect and was of the view that these aspects would be gone into the suit.

10. It then referred to the sale deeds Exs.P.2 and P.3 under which 'A' and 'B' schedule properties were purchased and recorded that they show Sri B.Kishanlal purchasing the properties. It then referred to Ex.P.4 Trust deed and a sentence in the said document stating that "immovable properties were not transferred" under the said document, and a Government Order Ex.R.2 dt.22.09.1986 (G.O. Ms.No.32), and stated that this material will also be considered during trial on the ground that there is a possibility of alienation or encumbrance of the properties and creation of third party interest. It thus granted the interim order in I.A. No.1211 of 2017.

11. Assailing the same, this appeal is filed by the appellants.

12. Heard Sri Pramod Kumar Kedia for the appellants and Sri Sharad Sanghi for respondents 1 to 10.

13. Though the respondents 1 to 10 had pleaded that Sri B.Kishanlal had floated a proprietorship concern under the name Hari Prasad Memorial

Hospital (plaintiff No.1/respondent No.1 herein), it is not disputed by counsel for the respondents 1 to 10 that material proving *prima facie* the existence of the said proprietorship concern was not placed before the trial Court.

14. Further to buttress the contention of the respondents that the purchase of 'A' and 'B' schedule properties under Exs.P.2 and P.3 sale deeds was on behalf of the alleged proprietary concern or by Sri B.Kishanlal in his individual capacity also, no material has been produced by the respondents 1 to 10 *prima facie*. The recital in Ex.P.4 Trust deed creating the first appellant Trust by Sri B.Kishanlal and others shows that such a Trust had been in existence in the name and style of M/s.Hari Prasad Memorial Hospital from 03.12.1968 itself. No doubt it is the contention of the respondents 1 to 10 that the Trust deed itself contains a recital that "no immovable property was transferred" under the said document.

15. Be that as it may, in Ex.P.2 sale deed dt.12.08.1985 it is stated that the purchaser is "M/s.Hari Prasad Memorial Hospital, Rikabgunj, Hyderabad, represented by Sri B.Kishanlal, Son of Sri Jagdish Pershad, aged about 62 years, R/o. Osmangunj, Hyderabad – A.P. (Hereinafter called THE PURCHASER which term shall mean and include the said institution and its trustees or successors-in-interest etc.,)"

16. In Ex.P.3 sale deed, the recital in relation to the purchaser reads as under:

"Secretary, Hari Pershad Memorial Hospital".

17. If really the 'A' and 'B' schedule properties were purchased under these two documents by Sri B.Kishanlal in his individual capacity, he would not have mentioned the name of the Hospital at all in both the deeds nor would he mention in Ex.P.2 that the purchaser would include the institution as well as its Trustees. *Prima facie* therefore, the recitals in Ex.P.2 and P.3 would indicate that it was the Trust, which purchased 'A' and 'B' properties and it was represented by Sri B.Kishanlal and he was not making the purchase on behalf of the alleged proprietary concern as is being contended by the appellants.

18. Having regard to the above facts and circumstances, we are of the opinion that *prima facie* the respondents 1 to 10 have failed to establish either the existence of the first respondent/first plaintiff proprietary concern or that the purchase of 'A' and 'B' schedule properties was by Sri B.Kishanlal in his individual capacity, and not for the first defendant Trust.

19. In the absence of the respondents 1 to 10 having any *prima facie* case, the question of considering balance of convenience or irreparable loss or injury to the respondents 1 to 10 would not arise. **Kashi Math Samsthan & Another Vs. Shrimad Sudhindra Thirtha Swamy & Another**¹.

20. We are also of the opinion that the trial Court did not evaluate the evidence on record in the proper perspective. Therefore, the impugned order cannot be sustained.

¹ AIR 2010 SC 296

21. Accordingly, this Appeal is allowed; order dt.22.11.2017 passed in I.A. No.1211 of 2017 in O.S.No.753 of 2017 of XXV Additional Chief Judge, City Civil Court at Hyderabad is set aside; and the said I.A. is dismissed. There shall be no order as to costs.

22. As a sequel, interlocutory applications, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

JUSTICE T.VINOD KUMAR

Date: 27.08.2019
LSK

