

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.376 OF 2019

J U D G M E N T

(Per Sri Justice Sanjay Kumar)

By order dated 06.03.2019 passed in I.A.No.99 of 2019 in O.S.No.14 of 2019, the learned XV Additional District and Sessions Judge-cum-XV Additional Metropolitan Sessions Judge-cum-II Additional Family Judge, Ranga Reddy District, Kukatpally, granted an interim injunction restraining the eighth defendant company in the suit from alienating the suit schedule property till disposal of the suit. Aggrieved thereby, the eighth defendant company is in appeal under Order 43 Rule 1 CPC.

Having heard Sri D.Prakash Reddy, learned senior counsel appearing for Sri Srinivas Velagapudi, learned counsel for the appellant-eighth defendant company, and Sri P.Amarender Reddy, learned counsel for the first respondent-plaintiff, this Court reserved orders in the appeal on 08.04.2019 and directed *status quo* obtaining as on that date to be maintained by both parties in all respects till pronouncement of orders.

Parties shall hereinafter be referred to as arrayed in the suit.

The case of the plaintiff before the trial Court was as follows: Late Menga Balaiah, her husband, was the owner of the suit schedule property situated at Gopanpally Village, Serilingampally Mandal, Ranga Reddy District, having purchased Ac.1.05 guntas in Survey No.200/part and Ac.0.23 guntas in Survey No.201/199 of Gopanpally Village under registered sale deed dated 25.11.1967, bearing Document No.2197 of 1967, and thereafter, an extent of Ac.2.11 guntas in Survey No.200/part of Gopanpally Village under registered sale deed dated 02.02.1982, bearing Document No.1239 of 1982. While so, the first defendant and Ramaiah Choudary, his business partner,

approached her husband and offered to develop the suit schedule property into plots by obtaining a layout as per the norms of the Hyderabad Urban Development Authority (HUDA). Her husband accepted this proposal and the first defendant took his original sale deeds from him claiming that they were to be produced before the HUDA. Ramaiah Choudary, the partner of the first defendant, was brutally murdered and her husband then came to know that the said Ramaiah Choudary had committed several frauds. He approached the first defendant for return of the documents but in vain. Her husband died on 13.11.2012 leaving her behind with two sons and four daughters.

The plaintiff asserted that she came to know that the first defendant claimed that her husband had appointed him as his GPA *vide* registered Deed of GPA dated 22.01.1994, bearing Document No.129 of 1994, and on the strength thereof, he brought into existence two bogus registered sale deeds dated 17.11.1995 (Document No.10577 of 1995) and 19.07.2000 (Document No.5140 of 2000) in favour of the second and third defendants respectively. She pointed out that the second and third defendants were none other than the father and brother respectively of the first defendant. The second and third defendants, in turn, sold the property to the fifth defendant under registered sale deed dated 10.04.2002, bearing Document No.3036 of 2002. The name of the fifth defendant was mutated in the revenue records, *vide* order dated 01.06.2007 of the recording authority. In turn, the fifth defendant gifted the suit property to his sisters, the sixth and seventh defendants, under registered gift deed dated 22.11.2014, bearing Document No.7061 of 2014, who then sold the property to the eighth defendant company under registered sale deed dated 23.05.2015, bearing Document No.6455 of 2015. She claimed that her sons and daughters had disowned her and were leading independent lives. She further claimed that

in the year 2015, all the legal heirs of her late husband tried to get their names mutated in the land records and came to know that the names of the second and third defendants were already entered therein, *vide* the order dated 05.03.2001. She asserted that her late husband never appointed the first defendant as his GPA or executed any deed of GPA and that the first defendant himself created a false document to knock away her husband's property. She claimed that she continued to remain in possession of the property and upon coming to know of the mutation effected, she got filed an appeal before the Revenue Divisional Officer, Rajendranagar, but the eighth defendant company filed W.P.No.15969 of 2016 challenging the institution of the appeal, claiming that the second and third defendants had sold away the subject land to the fifth defendant who, in turn, gifted the property to the sixth and seventh defendants who, in turn, sold the subject land to it. The Revenue Divisional Officer, Rajendranagar, ultimately dismissed the appeal filed by her by order dated 03.10.2016. Therein, he concluded that the appeal had been filed without impleading proper parties, as the eighth defendant company was not included in the array of respondents. He further held that he was not competent to decide the issue of forgery.

According to the plaintiff, the eight defendant company then illegally occupied the suit property in October, 2016, after the dismissal of the appeal. She claimed that she was given wrong advice by her counsel to the effect that a fresh appeal would have to be filed pursuant to the dismissal of the earlier appeal by the Revenue Divisional Officer, Rajendranagar, *vide* order dated 03.10.2016, and that steps could be taken thereafter to recover possession. She claimed that on account of various reasons, she could not initiate steps for filing a fresh appeal and in the meanwhile, the eighth defendant company continued its construction activities in the suit schedule

property. It is on the strength of these pleadings that she filed the subject suit alleging that the signatures and thumb impression of her husband in the GPA document were forged and that he never executed the same in favour of the first defendant. According to her, all the documents executed and registered on the strength of the said GPA were null, void *ab-initio* and not binding on her as they were vitiated by fraud. She accordingly prayed for the following reliefs:

- i. A decree be passed in favour of the Plaintiff and against the Defendants declaring that the Plaintiff is the absolute owner of the suit property and consequently directing the Defendants, more particularly Defendant No.8 or any person or persons claiming through or under it to handover vacant physical possession of the said property to the Plaintiff;
- ii. A consequential decree be passed in favour of the Plaintiff and against the Defendants declaring that the impugned documents i.e. GPA No.129/94 dated 22.01.1994, Sale Deed No.10577/95 dated 17.11.1995, Sale Deed No.5140/2000 dated 19.07.2000, Sale Deed No.3036/2002 dated 10.04.2002, Gift Deed No.7061/14 dated 22.11.2014 and Sale Deed No.6455/2015 dated 23.05.2015 are null, void *ab-initio* and not binding on the Plaintiff;
- iii. A decree be passed in favour of the Plaintiff and against the Defendants ordering for rectification of entries in the revenue records by incorporating the names of the Plaintiff herein as pattadars and possessors of the suit schedule described land herein by deleting the existing names from the year 2000-2001 to till date;
- iv. Costs of the suit be awarded.'

She filed the subject I.A. in the suit seeking an interim injunction only against the eighth defendant company and the other defendants were shown as not necessary parties thereto. In consequence, it was the eighth defendant company alone who contested the I.A. by filing a counter. Therein, while admitting that the husband of the plaintiff was initially the owner of the suit schedule property, the eighth defendant company asserted that he had executed a registered GPA in favour of the first defendant in relation to the total extent of the suit schedule property empowering him to sell away the said property to prospective purchasers and also execute

registered deeds of conveyance. The eighth defendant company thereafter set out the details as to how the title flowed from the first defendant to the second and third defendants and then to the fifth defendant and then from the fifth defendant to the sixth and seventh defendants and ultimately to itself. The eighth defendant company asserted that possession of the property sold was passed from hand to hand under these registered sale deeds and ultimately came to it. The property was then entrusted to M/s.Invicon Properties Private Limited, a sister concern, for construction of multi-storied buildings and after obtaining of necessary sanctions, construction activity commenced on the suit property in the year 2016. The eighth defendant company asserted that the plaintiff failed to prove either a *prima facie* case or balance of convenience. It claimed that more than 600 flats had already been constructed after receiving substantial amounts from prospective buyers and grant of any interim order would adversely affect their interests though they were not even made parties to the litigation.

Exs.P1 to P17 were marked by the plaintiff in the I.A., while Exs.R1 to R29 were marked by the eighth defendant company.

Dealing with the preliminary issue raised as to payment of Court-fee, the trial Court opined that the plaintiff was entitled to claim exemption from payment of the Court-fee and that, in any event, such payment was only postponed. Thereafter, upon consideration of the rival pleas of the parties and the documentary evidence, except for using the words '*prima facie* case' time and again, the trial Court did not really evaluate the strength of the *prima facie* case, if any, put forth by the plaintiff. Having recorded the fact that the plaintiff was challenging a registered GPA on the ground of fraud, fabrication and forgery, the trial Court baldly summed up that as the plaintiff had been pursuing her rights by filing both civil and criminal cases on the

ground that a fraudulent GPA was created in the name of her husband and so as to avoid further litigation, the eighth defendant company had to be restrained from making further alienations. According to the trial Court, the averments made in support of the I.A. categorically showed that the plaintiff had raised strong grounds alleging that the GPA in the name of her husband was a fraudulent document and therefore, the plaintiff had proved a *prima facie* case. Except for this statement, no reason was offered by the trial Court as to how it came to the conclusion that the plaintiff had made out a *prima facie* case. The trial Court went on to state that if further alienations take place, it would be the plaintiff who would suffer irreparable loss as she may not be in a position to recover the suit schedule property if it was ultimately proved that the alienations that took place were not valid. In consequence, the trial Court opined that the balance of convenience was also in her favour. Holding that the issue of limitation was a mixed question of law and fact and could not be looked into at this stage, the trial Court concluded that the plaintiff had proved a *prima facie* case, balance of convenience and irreparable loss in her favour and was therefore entitled to an interim injunction as prayed for.

Be it noted that by Certificate dated 10.12.2018, the Secretary (FAC), District Legal Services Authority, Ranga Reddy District, certified that the plaintiff was entitled for legal services under Sections 12 and 13 of the Legal Services Authorities Act, 1987 and that she was entitled to exemption from payment of Court-fee as per G.O.Ms.No.73 dated 19.06.2007 and G.O.Ms.No.86 dated 27.07.2007. Copies of these Government Orders were not produced before this Court and going by the order under appeal, the trial Court also did not look into them. *Prima facie*, the material placed before the trial Court indicated that the first respondent-plaintiff along with her children

filed joint proceedings before the revenue authorities in the year 2015. There is no indication of any fallout in the family after the said date and it appears that an averment was made to the effect that the plaintiff had been disowned by her children only for the purpose of securing exemption from payment of Court-fee. As the suit schedule property is situated in Gopanpally Village, where real estate values are rapidly escalating, it appears that the exemption from payment of Court-fee of over Rs.9 lakh granted to the plaintiff requires to be revisited. The trial Court shall therefore endeavour to examine this aspect before proceeding to trial and take necessary steps to secure the State's interest in relation to collection of Court-fee, if warranted.

The plaintiff filed a counter-affidavit before this Court. Therein, she reiterated the case put forth by her before the trial Court. According to her, her husband was in possession of the suit schedule property till his death and there was no delay on her part thereafter. She claimed that there was no suppression of facts on her part and that she had not obtained exemption from payment of payment of Court-fee under false pretences.

In his written arguments, Sri P.Amarender Reddy, learned counsel, stated as follows: The first defendant claimed that the husband of the plaintiff executed the registered GPA dated 22.01.1994 and it was on the strength of this document that the eighth defendant company traced its title to the suit schedule property. However, if the original GPA document and the resulting sale deeds are found to be fictitious, the claim of the eighth defendant company would also stand demolished. Reference was made to the latin maxim '*nemo dat quod non habet*', i.e., no one can give what he does not have, in this regard, and it was asserted that the eighth defendant company could not trace its title to these sham and fictitious documents.

However, this argument is a self-serving one and unless the plaintiff succeeds in proving that the registered documents were sham, the question of the title created thereunder standing demolished does not arise.

The second and third arguments advanced by the learned counsel relate to the registered sale deeds dated 17.11.1995 and 19.07.2000. These documents are attacked on the ground that they are sham, bogus and nominal. The specific attack is with regard to the sale consideration allegedly paid under these documents. He further contended that under Regulation 25(b)(ii)(a) of the Telangana State Legal Service Authority Regulations, 1996, Court-fee exemption was a species of legal services that could be provided. However, perusal of the said provision reflects that legal services under this provision would translate into payment to the entitled person or on his behalf of the Court-fee that is payable and not a total exemption. The other issues raised by the learned counsel in his written arguments deal with the aspects of limitation and fraud and do not require to be gone into at this stage for the purpose of adjudicating this appeal.

Sri P.Amarender Reddy, learned counsel, relied upon case law:

In CENTRE FOR LEGAL RESEARCH V/ s. STATE OF KERALA¹, the Supreme Court observed that legal aid is not a charity or bounty but was a social entitlement of the people and those in need of legal assistance could not be looked upon as mere beneficiaries but should be regarded as participants in the legal aid programme.

In MANOHARAN V/ s. SIVARAJAN², the issue was with regard to condonation of delay in the context of payment of Court-fee. As the plaintiff in the present case obtained total exemption from payment of Court-fee, this judgment has no relevance.

¹ (1986) 2 SCC 706

² (2014) 4 SCC 163

In PYLA BANGARRAJU V/ s. PYLA VENKATA RAMAKRISHNA³, the Andhra Pradesh High Court observed that a member of the Scheduled Castes was entitled to exemption from payment of Court-fee. As the plaintiff is not a Scheduled Caste person, this judgment does not come to her aid.

In DAYA SINGH V/ s. GURDEV SINGH⁴, the Supreme Court was dealing with the issue of limitation in a suit filed 18 years after a compromise. On facts, the Supreme Court held that the Courts below ought to have looked into whether the compromise had been acted upon and whether delivery of possession of the suit property had taken place, to arrive at a proper conclusion before dismissing the suit as barred by limitation. As this Court does not propose to go into the issue of limitation at all for the purpose of adjudicating this appeal, this judgment has no relevance.

Again, in MUSTI GULLA @ NAMASWAMY HEMANTH KUMAR V/ s. ABHAYA INFRASTRUCTURES PVT. LTD.⁵, the combined High Court of Telangana and Andhra Pradesh dealt with the issue of limitation in relation to a suit arising out of ouster from property. As already pointed out *supra*, this Court does not propose to go into the issue of limitation and therefore, this judgment has no relevance to the present adjudication.

In B.K.MUNIRAJU V/ s. STATE OF KARNATAKA⁶, the Supreme Court dealt with the issue of interpretation of a document so as to know its real nature. As this aspect of the matter would also have to be looked into by the trial Court after a full-fledged trial, it is wholly irrelevant for purposes of this appeal. So too, the decision of the Supreme Court in VIDHYADHAR V/ s. MANI KRAO⁷, which dealt with inadequacy of sale consideration.

³ 2010 (5) ALD 728 (DB)

⁴ (2010) 2 SCC 194

⁵ 2016 (6) ALD 598 (DB)

⁶ (2008) 4 SCC 451

⁷ (1999) 3 SCC 573

As pointed out by the Andhra Pradesh High Court in AKULA MADHAVA RAO V/ s. P.RUKMINI BAI⁸, a recital in a registered sale deed as to payment of consideration would lead to a presumption that such a sale deed is duly supported by consideration but such a presumption would be a rebuttable one. It is therefore for the plaintiff to address this aspect, if at all it is relevant, before the trial Court in the suit proceedings.

Reference was also made to the observations of the combined High Court of Telangana and Andhra Pradesh in PATTAMSETTY VITAL SRINIVASA RAO V/ s. PATTAMSETTY VENKATESWARA RAO⁹, reiterating the principle laid down by the Supreme Court in SKYLINE EDUCATION INSTITUTE (INDIA) PRIVATE LTD. V/ s. S.L.VASWANI¹⁰ that when the Court of first instance exercises its discretion to grant a temporary injunction and the said exercise is based upon objective consideration of the material placed before the Court and was supported by cogent reasons, the appellate Court would be loath to interfere. However, this Court finds that the order under appeal was neither based on objective consideration of the material placed before the trial Court nor supported by cogent reasons.

In E.LAXMI DEVI V/ s. K.KRISHNA CHARY¹¹, the combined High Court of Telangana and Andhra Pradesh found, on the strength of the record and the facts and submissions in that case, that the *status quo* granted by the trial Court interdicting raising of constructions pending disposal of the suit was justified. However, each case would have to turn upon its own facts and the observations made in the aforesaid judgment on the individual facts of that case do not in any manner further the case of the plaintiff.

⁸ 1995 (3) ALD 275 (DB)

⁹ 2017 (2) ALD 102

¹⁰ 2010 (2) SCJ 344

¹¹ 2016 (5) ALD 369

In AHMED BIN SAYEED V/ s. KAMALA BAI¹², the combined High Court of Telangana and Andhra Pradesh observed on the strength of the facts of that case that the trial Court rightly granted an injunction not to change the nature of the property by making constructions in the suit property as the sale of such constructed apartments would affect the interest of the general public who would purchase them and it would be difficult for the plaintiffs in that suit to recover possession in case they succeeded. Be it noted that the injunction in the aforestated case was granted at the time of changing the nature of the property itself and before the construction was made unlike the case on hand. The aforestated observations would therefore have no application.

As rightly pointed out by Sri D.Prakash Reddy, learned senior counsel, the trial Court completely lost sight of the fact that the GPA document executed in favour of the first defendant was a registered one. The said document was stated to have been executed and registered by Menga Balaiah, the plaintiff's husband, as long back as in the year 1994. Further, the fact that Menga Balaiah died on 13.11.2012 is not in dispute. By that time, on the strength of the registered GPA dated 22.01.1994, the registered sale deeds dated 17.11.1995 and 19.07.2000 in favour of the second and third defendants and the registered sale deed dated 10.04.2002 in favour of the fifth defendant had already been executed and registered. Though it is the case of the plaintiff that her husband tried to get back his title documents from the first defendant during his life time but failed to do so, she has no explanation to offer as to why he took no further steps whatsoever during his lifetime. So much so, that he did nothing at all even when so many documents were being executed and registered in relation to

¹² 2014 (6) AKD 505 (DB)

the suit property, one after the other. The plaintiff herself admitted that mutation in the revenue records was initially effected in favour of the second and third defendants and thereafter, in favour of the fifth defendant. It is not believable that Menga Balaiah would have remained a silent spectator, had he been aggrieved by these registered transactions and the consequences that flowed therefrom. Therefore, except for the *ipse dixit* statement of the plaintiff that her husband never executed the registered GPA, there is no evidence of Menga Balaiah having ever disowned the said GPA or the transactions that emanated therefrom, during his lifetime. In any event, the entire case of the plaintiff is built upon allegations of fraud and forgery. Unless she adduces evidence during the course of the trial and establishes these allegations, there can be no presumptions at this stage in relation to either of these allegations. All the more so, when such allegations are being made in the context of registered documents of some vintage.

In *VIMAL CHAND GHEVARCHAND JAIN V/ s. RAMAKANT EKNATH JADOO*¹³, the Supreme Court observed that a registered sale deed would carry a presumption that the transaction was a genuine one and the onus of proof would be upon the opposing party to show that the document was in fact not executed or otherwise did not reflect the true nature of the transaction. Earlier, in *JANARDHANAM PRASAD V/ s. RAMDAS*¹⁴, the Supreme Court observed that the registration of a document would constitute notice in terms of Section 3 of the Transfer of Property Act, 1882. Again, in *SURAJ LAMP AND INDUSTRIES PRIVATE LIMITED V/ s. STATE OF HARYANA*¹⁵, the Supreme Court observed that registration provides safety and security to transactions relating to immovable property as it gives publicity and public exposure to documents, preventing forgeries

¹³ (2009) 5 SCC 713

¹⁴ (2007) 15 SCC 174

¹⁵ (2009) 7 SCC 363

and frauds in relation to transactions and execution of documents. It was further pointed out that registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, *per* the Supreme Court, it enabled people to find out whether any particular property with which they were concerned, had been subjected to any legal obligation or liability and who were the persons presently having right, title and interest therein. The Supreme Court held that it would give solemnity of form and perpetuate documents which are of legal importance or relevance by recording them so that people could see the record and ascertain as to what the particulars were and as to what obligations existed. According to the Supreme Court, it ensured that every person dealing with immovable property could rely with confidence upon the statements contained in the registers as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies, duly certified.

Further, the photographs filed by the eighth defendant company (Ex.R27) before the trial Court clearly manifest that multi-storied buildings have already come up on the suit schedule property. There is no indication of any steps having been taken by the plaintiff while this construction activity was in progress. Be it noted that Menga Balaiah died as long back as on 13.11.2012 but even according to the plaintiff, she and her children took no steps till 05.09.2015 when they filed an appeal before the Revenue Divisional Officer, Rajendranagar, in relation to the mutation proceedings dated 05.03.2001. Significantly, the plaintiff herself disclosed that mutation was effected in favour of the fifth defendant in June, 2007, but she took no steps in relation thereto. The delay all through on the part of the plaintiff and her husband, late Menga Balaiah, if at all her claim that her husband never

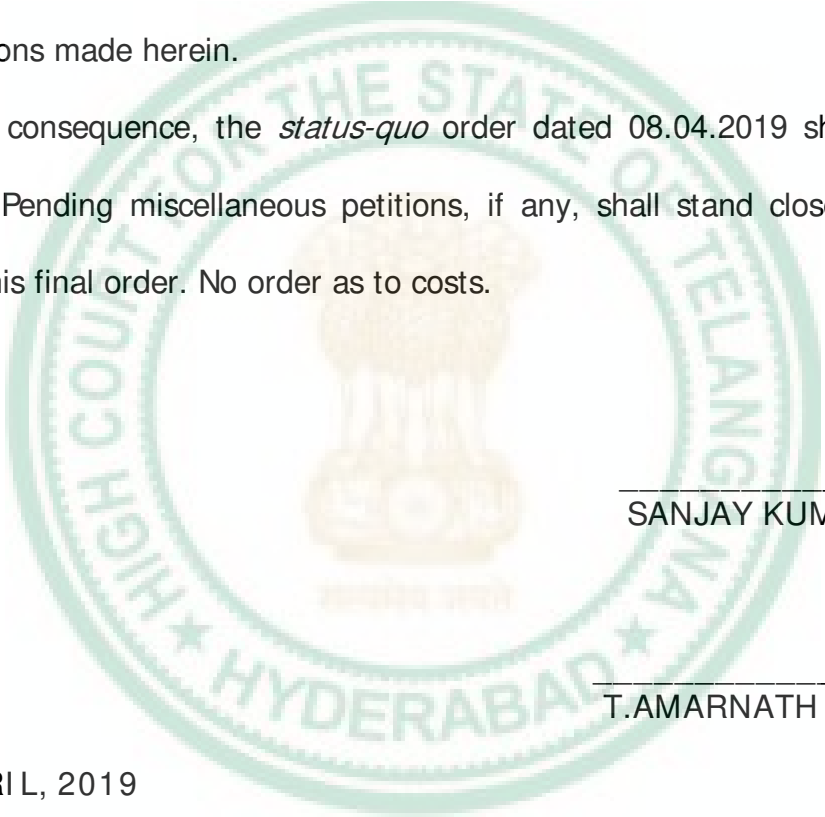
executed the registered GPA dated 22.01.1994 and that a fraud was played by the first defendant is accepted, remains unexplained. This unexplained lassitude on the part of the plaintiff and her husband, during his lifetime, would be fatal and no *prima facie* case can be inferred in favour of the plaintiff in the light thereof. Having slept over the matter for decades and having allowed multi-storied buildings to come up on the suit schedule property, the plaintiff cannot claim any balance of convenience in her favour at this belated stage or that she would suffer irreparable loss. It is for her to lead evidence in proof of the allegations of fraud, fabrication and forgery leveled by her against the defendants and unless and until she establishes the same, she would not be entitled to any interim relief. The trial Court unfortunately lost sight of these crucial aspects and baldly accepted the averments made by the plaintiff and concluded that all the three necessary ingredients for grant of an injunction were made out by her.

This failure on the part of the trial Court must be viewed in the light of the law laid down in SEEMA ARSHAD ZAHEER V/ s. MUNICIPAL CORPN. OF GREATER MUMBAI ¹⁶, wherein the Supreme Court observed that where the lower Court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate Court would interfere as exercise of discretion while granting a temporary injunction when there is no material would be an instance of an arbitrary, capricious or perverse act. The Supreme Court elaborated that when it referred to acting on 'no material', it was referring not only to cases where there was dearth of material but also to cases where there was no relevant material or where the material, taken as a whole, was not reasonably capable of supporting the exercise of such discretion.

¹⁶ (2006) 5 SCC 282

The appeal is accordingly allowed setting aside the order dated 06.03.2019 in I.A.No.99 of 2019 in O.S.No.14 of 2019 passed by the learned XV Additional District and Sessions Judge-cum-XV Additional Metropolitan Sessions Judge-cum-II Additional Family Judge, Ranga Reddy District, Kukatpally. It is however made clear that the observations made hereinabove on the merits of the matter are only for the purpose of adjudication of this appeal in the context of the I.A. and the trial Court shall independently try and decide the suit on the strength of the oral and documentary evidence adduced before it, uninfluenced by this order and the observations made herein.

In consequence, the *status-quo* order dated 08.04.2019 shall stand vacated. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

23rd APRIL, 2019

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