

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

CRP.No.811 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.18.03.2019 in CMA.No.23 of 2018 of XVI Additional District & Sessions Judge, Ranga Reddy District modifying the order dt.19.06.2018 in I.A.No.231 of 2018 in O.S.No.204 of 2018 passed by the Addl. Junior Civil Judge, Malkajgiri, Ranga Reddy District.

2. Petitioners herein are the Plaintiffs in the said suit, which they had filed seeking perpetual injunction against the respondent to restrain the respondent from interfering with their alleged peaceful possession and enjoyment of the suit schedule property.

3. Petitioners pleaded that they acquired the suit schedule property bearing plot No.5 in Survey No.146(part) of Nagaram village, Keesara Mandal, Medchal-Malkajgiri District under a registered Sale Deed dt.22.09.2017 executed in their favour by one V.Goverdhan Reddy and others. They contended that construction permission was obtained by V.Goverdhan Reddy and others from Grampanchayat Nagaram on 10.03.2014; that he constructed a house, which was allotted House No.12-48/8/1; that he got regularization under the Layout Regularization Scheme by the HMDA on 11.10.2017 and he is also paying property tax thereon, apart from obtaining electricity connection.

Petitioners alleged that the respondent was trying to dispossess them from the suit schedule property and so they filed the suit.

4. Written statement was filed by the respondent opposing the suit claim and contending that the suit schedule property itself does not exist; that petitioners are not in possession thereof on the date of filing of the suit; and the respondent is in possession thereof. The respondent not only disputed the title of the petitioners, but also of the petitioners' vendors and claimed that the suit schedule property was plot No.127 and Sale Deed has been executed by him as per GPAs given to him by the legal heirs of one Govindaraju Suryanarayana Rao in favour of his partner on 27.12.2017 covering 444 sq. yards in plot No.127; and later the respondent got a sale deed in his name for plot No.s 92 and 128 under two documents No.5440/2018 and 5399/2018.

5. According to the respondent, G.Suryanarayana Rao purchased plot No.s 92 and 128 in Survey No.s 146, 147 and 148 from one Ghanapuram Balakistaiah and Smt Guduru Narasamma under a registered Sale Deed dt.23.07.1968 through one Cheekoti Bhikshapathi, who was the Special Power of Attorney Holder of Ghanapuram Balakistaiah and Smt Guduru Narasamma.

6. Pending suit, petitioners filed I.A.No.231 of 2018 under Order XXXIX Rules 1 and 2 CPC to restrain the respondent from

interfering with their alleged possession and enjoyment of the suit schedule property reiterating the contents of the plaint.

7. Counter affidavit was filed by the respondent opposing the same and reiterating the stand taken in the written statement.

8. Before the trial Court, petitioners examined Ex.s P1 to P21 and respondent marked Ex.s R1 to R15.

9. After examining the evidence of both sides, the trial Court opined that the documents Ex.s P5, P6, P9, P14, P17, P18 and P20 show clear flow of title of the suit schedule property from the original pattadar G.Balakrishna Reddy to the petitioners, whereas the documents filed by the respondent appear to relate to totally a different property and not the suit schedule property. It observed that Ex.s R1 to R15 do not invalidate the title of the petitioners and therefore *prima facie* case and balance of convenience are in favour of the petitioners and irreparable injury would be caused to the petitioners if interim injunction is not granted pending the suit.

10. Assailing the same, the respondent filed CMA.No.23 of 2018 before the XVI Additional District & Sessions Judge, Ranga Reddy District.

11. By order dt.18.03.2019, while specifically holding that possession of the petitioners over the suit schedule property as on the date of the suit is established, the lower Appellate Court held that there is a cloud on the title of the petitioners and so the order

of injunction granted by the trial Court should be modified to an order of *status quo* till disposal of the suit. It also made an observation that Ex.R1, the certified copy of the Sale Deed produced by the respondent, is not visible and an endorsement was given to the respondent by the Sub-Registrar Office at Medchel that the said document's copy in their records is totally damaged and so certified copy cannot be issued. It observed that the layout, on which both the parties are relying upon has not been filed and that the names of G.Balakrishna Reddy and Ghanapuram Balakrishna Rao are only different in the suffice 'Reddy' and 'Rao' but the surname is the same; that Ex.P10 filed by the petitioners have 13 sheets; and this creates a cloud on the title of the predecessors in title of the petitioners and also of the predecessor in title of the respondent.

12. Challenging the same, this Revision is filed.

13. Counsel for the petitioners contended that in an application for interim injunction, order of *status quo* cannot be granted and having found that petitioners are in possession of the suit schedule property on the date of filing of the suit, the Court below could not have modified the order of temporary injunction granted by the trial Court into one of *status quo*. He also contended that in a suit for injunction, aspect of title can only be gone into incidentally; that a suit for bare injunction without seeking declaration of title is also maintainable; and so the order passed by the Court below requires to be set aside.

14. Counsel for the respondent on the other hand refuted the said contentions and supported the order passed by the lower Appellate Court. According to him, in 1968 itself under Ex.R1 there was a sale in favour of G.Suryanarayana Reddy by Ghanapuram Bala Krishnaiah and Smt Guduru Narasamma of Plot No.127 in Survey No.s 146, 147 and 148 and the layout, on which reliance is placed by the petitioner, is obtained allegedly by Guduru Anji Reddy in 1982, though the said Anji Reddy according to the petitioners had purchased the property from G.Balakrishna Reddy only in 2002.

15. I have noted the contentions of both sides.

16. From the facts narrated above it is clear that both the Courts have concurrently found that petitioners are in possession of the suit schedule property on the date of filing of the suit. No doubt, certain observations had been made by the lower Appellate Court on the aspect of title, but it is settled law that title to property can only be incidentally gone into in a suit for injunction and a detailed examination on the question of title is normally not undertaken in a suit for injunction, and more particularly in an application for temporary injunction.

17. This Court in **Chirapareddi Veeramma and others v. Sk.Mahaboob Subhani and others**¹ and **Shakeela Jamali and**

¹ 1991(1) ALT 366

others v. Zareena Begum and another² held that Court should avoid granting *status quo* orders in applications for temporary injunction filed to restrain the opposite party from interfering with their alleged possession and enjoyment of the suit schedule property because such *status quo* orders are ambiguous, unless the Court specifies what it means by such a *status quo* before ordering the same.

18. In **Chirapareddi Veeramma's** case(1 supra) this court held that:

“In matters relating to disputes regarding possession it is the duty of the Court to decide one way or the other as to which party is *prima facie* in possession of the property. Unfortunately, in several cases coming up before the lower Courts instead of giving a categorical finding as to which party is in possession, the Courts frequently resort to granting orders for maintenance of ‘*status quo*’. Before the Court passes such an order, it is incumbent on the Court to give a finding as to the particular *status quo* that it wants to be maintained *viz.*, whether the plaintiff or the defendant is in possession and whose possession is to be maintained. The Court cannot escape its duty by merely saying that *status quo* is to be maintained”.

19. The lower Appellate Court ought to have kept in mind this fundamental principle of law and could not have modified the order of temporary injunction granted by the trial Court to one of *status quo* in spite of reiterating that the petitioners are in possession of the suit schedule property on the date of filing of the

² 2018(1) ALD 54

suit. Therefore, the order passed in CMA.No.23 of 2018 cannot be sustained.

20. Accordingly, this Civil Revision Petition is allowed; order dt.18.03.2019 in CMA.No.23 of 2018 of XVI Additional District & Sessions Judge, Ranga Reddy District, is set aside; and the order dt.19.06.2018 in I.A.No.231 of 2018 in O.S.No.204 of 2018 of the Additional Junior Civil Judge, Malkajgiri, Ranga Reddy District is confirmed. However, the trial Court shall proceed to decide the suit uninfluenced by any observations made by it in its order in I.A.No.231 of 2018, or in CMA.No.23 of 2018 or by this Court in this order. No order as to costs.

21. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

08th July, 2019.

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