

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

CRP.No.911 of 2019

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.22.03.2019 in CMA.No.81 of 2017 of the II Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, confirming the order dt.01.06.2017 in I.A.No.147 of 2017 in O.S.No.17 of 2016 of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

2. Petitioner herein is the 2nd defendant in the above suit.
3. The said suit was filed by respondents 1 & 2 against the 3rd respondent and the petitioner alleging that there is property of an extent of 6,000 sq.yards in Survey No.1 of Hasmathpet village, Balanagar Mandal, R.R.District, which belongs to allegedly one Nawab Luft-Ud-Ul-Dowla (for short 'Nawab'); that the said property is subject matter of C.S.No.14 of 1958 filed by one of the legal heirs of Nawab; that there was a preliminary decree passed therein on 28.06.1963 in CS.No.14 of 1958, but there is no final decree passed therein; that the husband of 1st respondent and father of 2nd respondent are legal heirs of the said Nawab; that other legal heirs of Nawab had filed O.S.No.357 of 2015 before the Senior Civil Judge, Ranga Reddy District, and the 2nd respondent has been arrayed as defendant No.17 in the said suit; and the 1st respondent had not even been impleaded as a party initially, but

later she was impleaded as defendant No.48 therein; that the petitioner herein was granted permission by the 3rd respondent-Corporation on 15.10.2015 to make construction in the said property; and that since there is no final decree passed in C.S.No.14 of 1958 at all, petitioner has no right, title or interest in the property, which is the exclusive property of Nawab. Alternatively, it is also contended that the property did not form part of the schedule property of CS.No.14 of 1958 and the petitioner by way of misrepresentation to the GHMC, which is the 3rd respondent, obtained permission fraudulently, and therefore the said permission ought to be cancelled.

4. The prayer in the suit O.S.No.17 of 2016 is as under:

- “a) To declare Building Permit No.45607/HO/WA/Cir.14/2015 dated 15/10/2015 in file No.86272/28/10/2013/HO as null and void;*
- b) Award costs of the suit; and*
- c) Any other relief/s to which the Plaintiffs are entitled, be granted and in the interest of justice.”*

5. Pending suit, respondents 1 & 2 filed I.A.No.147 of 2016 under Order XXXIX Rules 1 & 2 CPC to restrain the petitioner from changing the nature of land in the said 6,000 sq. yards in Survey No.1 of Hasmathpet village, Balanagar Mandal, R.R. District, within the specified boundaries. They reiterated the contents in the plaint.

6. The GHMC was shown as a nominal party and not a necessary party to the said I.A.,

7. Petitioner filed a counter opposing the said application stating that there are no grounds for grant of such relief to respondents 1 & 2. It is contended that the application should be dismissed on the ground that there cannot be injunction against the owner of the property who got property by virtue of Final Decree in CS.No.14 of 1958 and delivery of possession through Court Receiver. It is specifically contended that respondents 1 & 2 have no right, title and interest over the property. It is alleged that certain orders had been passed in CS.No.14 of 1968 and that pursuant thereto, Receiver-cum-Commissioner appointed by the High Court had filed a Report in Application No.690 of 2005 suggesting for division of lands between the sharers, and survey No.1 of Hasmathpet village, Balanagar Mandal, R.R.District, was also shown therein. According to the petitioner, it was allotted to defendant No.s 157 and 206, who had then sold it out to respondent No.44 and others, who then obtained a final decree on 22.06.2010. It is alleged that said Final Decree was confirmed and Appeal at the instance of the Government was dismissed. It is stated that the final decree holders had entered into Development Agreement with the petitioner and so the petitioner is proceeding with the construction by obtaining permission from the authorities.

8. Petitioners also contended that the property did not belong to Nawab and belongs to another Nawab Kursheed Jah Paigah; that he asserted that the petitioner is in possession of the

property having obtained it from Receiver-cum-Commissioner in CS.No.14 of 1958; and that respondents 1 & 2 did not establish *prima facie* case, balance of convenience and irreparable loss, while the petitioner had done so.

9. Before the trial Court, respondents 1 & 2 had examined PW1 and marked Exs.P1 to P4, and petitioner examined RW1 and marked Exs.R1 to R7. Exhibits on both sides are as under:

“Ex.P1 is building permission.

Ex.P2 is certified copy of Writ Petition Nol.3939/20-15.

Ex.P3 is Certified Copy of Application Nol.356/2014 before
The Hon’ble High Court.

Ex.P4 are photo graphs along with CD.

Ex.R1 is CC of Application No.109, 112/1966 in Civil Suit
No.14/1958 filed before Hon’ble High Court.

Ex.R2 is CC of Appeal No.47/2006 filed before the Hon’ble High Court.

Ex.R3 is CC of report of receiver in Application No.690/2005 filed
before Hon’ble High Court.

Ex.R4 is CC of Supreme Court Order in Spl.Leave Petition No.19811-
19812/2008

Ex.R5 is CC of application No.711/2009 filed before Hon’ble High
Court.

Ex.R6 is order of Hon’ble High court in O.S.AMP.No.147, 146/2013,
716/2012, 1202/12, 1203/12, 1201/13.

Ex.R7 is CC of order n Civil Revision Petition No.5281/2013 before
Hon’ble High Court.”

10. By order dt.01.06.2017, the Court below directed maintenance of *status quo* by the petitioner and restrained the petitioner from proceeding with further construction until disposal of the suit.

11. Referring to the contentions on both sides, the Court below recorded that the burden is on the respondents 1 & 2 to prove

their contention that the suit schedule property is not part and parcel of the property in CS.No.14 of 1958 and that they need to be given a chance to prove their case in the suit. It observed that before the respondents 1 & 2 are given such an opportunity, if the petitioner is allowed to proceed with construction and change the nature of the property, it would create multiplicity of proceedings, and therefore it is necessary to grant *status quo* against the petitioner to stop further construction till disposal of the suit.

12. Challenging the same, petitioner filed CMA.No.81 of 2017 before the II Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

13. Before the said Court, respondents 1 & 2 adduced additional evidence by filing I.A.No.933 of 2018 under Order XLI Rule 27 CPC.

14. Petitioner herein filed I.A.No.s 934 and 1028 of 2018 to mark other documents.

15. Both applications were allowed and the lower Appellate Court marked Exs.P5 to P9 for respondents 1 & 2 and Exs.R8 to R30 for petitioner.

16. Thereafter, on 22.03.2019 the lower Appellate Court confirmed the order dt.01.06.2017 in I.A.No.147 of 2016 in O.S.No.17 of 2016. It referred to certain orders passed by this Court in WP.No.s 11032, 11034 and 11037 of 2018 on

16.08.2018 dealing with C.S.No.14 of 1958 as well as the order dt.05.10.2018 in SLP.No.s 24590-24592 of 2018 and came to a conclusion that no Final Decree was passed in CS.No.14 of 1958. It observed that unless a Final Decree is passed, nobody can claim right, title or interest whatsoever over the schedule property in CS.No.14 of 1958 and no revenue authorities can pass orders on mutation and so the order passed by the Court below requires to be confirmed.

17. Challenging the same, this Revision is filed.

18. Sri V.Venkat Ramana, Senior Counsel for N.M.Krishnaiah, counsel for petitioner, contended that neither the trial Court nor the lower Appellate Court considered the question whether respondents 1 & 2 had even a *prima facie* case, and when the material placed on record by respondents 1 & 2 did not show that they had a *prima facie* case, there could not have been any adverse order passed against the petitioner.

19. According to the learned Senior Counsel no document referring to the title of the respondents 1 & 2 or the Nawab had been placed on record and it was incumbent on the part of the respondents 1 & 2 not to rely on the weaknesses in the case of the petitioner, but on the strength of their case.

20. Counsel for the respondents 1 & 2, Sri C.B.Ram Mohan Reddy, for Sri V.Venkata Mayur, refuted the said contentions and supported the order passed by the Court below.

21. In ***Kashi Math Samsthan & Anr. v. Srimad Sudhindra Thirtha Swamy & Anr.***¹ the Supreme Court had held that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he had made out a *prima facie* case to go for trial, and that balance of convenience is also in his favour and he will suffer irreparable loss and injury, if injunction is not granted. It laid down that when a party failed to prove *prima facie* case to go for trial, question of considering balance of convenience or irreparable loss and injury to the party concerned would not be material at all. It explained that if that party fails to prove *prima facie* case to go for trial, it is not open for the Court to grant injunction in his favour, even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury, if no injunction order is granted.

22. Keeping in mind the above legal position, I shall first consider the material being relied upon by respondents 1 & 2 in support of their claim that they are entitled to an interim order of temporary injunction/*status quo* order in I.A.No.147 of 2016.

23. No doubt, PW1 was examined by respondents 1 & 2 and Exs.P1 to P4 as mentioned above have been marked in the trial Court. It is their case that the property in question belongs to Nawab Luft-Ud-Ul-Dowla, but no document in support of the said plea had been filed before the trial Court. Admittedly, even

¹ AIR 2010(1) SCC 296

according to them, O.S.No.357 of 2015, a suit for partition filed by the legal heirs of said Nawab of this land, is pending before the Senior Civil Judge, Ranga Reddy District, wherein respondents 1 & 2 are also parties. It is not in dispute that proceedings in O.S.No.357 of 2015 have been stayed on 09.11.2018 in I.A.No.124 of 2018 filed therein relying upon the observations made by this Court in CS.No.14 of 1958, though it is stated that there is a Revision pending against the said order before this Court.

24. Merely because respondents 1 & 2 have claimed a share in the subject property in that suit, without there being any final decree therein, they cannot *prima facie* claim title to the subject property.

25. The trial Court in its order in I.A.No.147 of 2016 merely recorded the contentions of respondents 1 & 2 but did not say anywhere that respondents 1 & 2 have a *prima facie* case for grant of an order of interim injunction. On the contrary, it stated that respondents 1 & 2 should be given an opportunity to prove the allegations leveled by them in the suit O.S.No.17 of 2016. Without giving any finding that respondents 1 & 2 have a *prima facie* case, even assuming for the sake of argument that balance of convenience is in their favour and they would suffer irreparable loss and injury if no injunction order is granted, it could not have granted any *status quo* order in favour of respondents 1 & 2.

26. In fact, when no *prima facie* case is made out by respondents 1 & 2, the question of considering balance of convenience and irreparable injury to respondents 1 & 2, does not arise at all.

27. Coming to the Appellate Court's order, in entire discussion made in the said order, there is no mention about the basis of the claim of respondents 1 & 2 in the suit and no finding is recorded that they have a *prima facie* case, to sustain the order of *status quo* granted by the trial Court in I.A.No.147 of 2016.

28. Whether there is a Final Decree in CS.No.14 of 1958(*on the basis of which the petitioner is entitled to oppose the grant of relief in the suit*) or not, is not relevant, while deciding an application for temporary injunction filed by respondents 1 & 2 against the petitioner, particularly, when respondents 1 & 2 have nothing to show that they have a *prima facie* case.

29. Since both the Courts below overlooked this fundamental principle to be followed while granting a temporary injunction pending suit in favour of respondents 1 & 2 while granting the *status quo* order by the trial Court and while confirming it by the II Additional District Judge, Ranga Reddy District, there is a clear error of jurisdiction of both the Courts, which warrants interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

30. Accordingly, this Civil Revision Petition is allowed; the order dt.01.06.2017 in I.A.No.147 of 2016 in O.S.No.17 of 2016 of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar as well as the order dt.22.03.2019 in CMA.No.81 of 2017 of the II Additional District Judge, Ranga Reddy at L.B. Nagar are both set aside; and I.A.No.147 of 2016 in OS.No.17 of 2016 is dismissed. The observations made in this order shall not be taken into consideration by the trial Court while deciding the suit on its merits.

31. However, in the event of respondents 1 & 2 succeeding in the suit, the Senior Counsel appearing for the petitioner states that the petitioner will not claim any equities. This undertaking of the Senior Counsel on behalf of the petitioner is placed on record. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

25th June, 2019

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