

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

Civil Miscellaneous Appeal Nos.298 and 299 of 2018

COMMON ORDER : (per Hon'ble M.S. Ramachandra Rao)

Heard Sri E.V.V.S. Ravi Kumar, counsel for appellants in both the Civil Miscellaneous Appeals; and Sri Srinivas Velagapudi, counsel appearing for respondent nos.1, 6, 9, 11, 12, 14, 17, 18, 19, 24, 25, 28, 29 and 44 in both the Civil Miscellaneous Appeals.

2. Since both these Appeals arise between the same parties out of the same suit, they are being disposed of by this Common Order.
3. The Appellants in both these Appeals are plaintiffs in Original Suit No.394 of 2007 on the file of the XIV Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar, Hyderabad.
4. The subject matter of the Schedule-A property in the said suit is an extent of Acs.5.00 gts. in Survey No.131, 164 and 165 of Narsingi Village, Rajendra Nagar Mandal, Ranga Reddy District.
5. Schedules B.1 to B.4 are also mentioned in the plaint Schedule with which we are not concerned.
6. In the suit, there were 45 defendants.

7. The following relief was sought for in the suit against defendant nos.1 to 37 and 42 to 45 :

“a. To declare that the Plaintiff No.1 and 2 and Defendant No.38 to 41 are the owners of the suit schedule A property, i.e., land admeasuring Ac.0.32 Gts. in Sy.No.131, Ac.1.01 Gts. in Sy.No.164, Ac.3.07 Gts in Sy.No.165 totally admeasuring Acs.5.00 Gts. situated at Narsingi Village, Rajender Nagar Mandal, Ranga Reddy District.

b. Direct the Defendants No.1 to 37, 41 to 45 to deliver vacant possession of the suit schedule A property to the Plaintiffs and in default thereof, this Hon’ble Court may be pleased to put the Plaintiffs in possession of the suit schedule property.

c. To pass a decree of mandatory injunction directing the defendant no.1 to 37, 42 to 45 to demolish the structures raised by them in the suit schedule B.1 to B.4 properties, more particularly in the schedule given.

d. To pass decree of perpetual injunction restraining defendant no.1 to 37, 42 to 45 or anybody claiming through or under them from selling or creating any third party charge / interest over the suit schedule properties or any portion thereof.

e. To award costs of the suit.

f. To pass such other order or orders the Hon’ble Court deems fit and expedient in the circumstances of the case.”

8. Along with the suit, the petitioners have filed Interlocutory Application No.380 of 2017 under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 restraining the respondent nos.1 to 37 and 43 from alienating or creating a charge over the plaint ‘A’ Schedule property and also structures of petition Schedule B.1 to B.4 properties in favour of third-parties.

9. Another Interlocutory Application No.379 of 2017 is also filed under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 by the petitioners against respondent nos.1 to 42 for temporary injunction against respondent nos.1 to 37 and 42 restraining them from changing the nature of the plaint 'A' schedule property and structures of petition Schedules B.1 to B.4 properties, or making any further construction pending disposal of the said suit.

10. Counter-affidavits were filed by respondents opposing grant of such interim relief to petitioners.

11. Both parties marked several documents filed before the Court below, but the Court below did not mark a single document, and ultimately dismissed both the applications.

12. Challenging the same, the present Civil Miscellaneous Appeals are filed.

13. A perusal of the orders passed by the Court below in these applications does not indicate which of the documents filed by each of the parties was considered and relied upon by the Court below to decide these applications.

14. It is the practice in the Court of State of Telangana and Andhra Pradesh that documents filed by parties in interlocutory applications are also given exhibit numbers for the purpose of identification so that the appellate court can know which particular document was referred

to and considered by the Court while deciding the said interim application. The Court below unfortunately did not follow this procedure and it has become very difficult for this Court to make out from its order how it has come to the conclusions that it did, while deciding these applications.

15. Counsel on both sides also agree that it could be a better option to remand the matter to the Court below to properly consider the documents filed by the parties after marking them as exhibits in the interlocutory applications in question.

16. Therefore, without going into the merits of the claims of either sides and without expressing any opinion thereon, we set aside the impugned orders passed in both the appeals, remand both I.A.Nos.379 of 2017 and 380 of 2017 in O.S.No.394 of 2017 to the Court of the XIV Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar, Hyderabad, and direct the said Court to decide the matter afresh after marking the documents produced by both sides by giving exhibit numbers on or before 07.02.2020.

17. *Status quo*, in all respects shall be maintained by both parties, pending decision in I.A.Nos.379 of 2017 and 380 of 2017 in O.S.No.394 of 2017.

18. Accordingly, the Civil Miscellaneous Appeals are disposed of with the above directions. No order as to costs.

19. As a sequel, miscellaneous petitions pending if any in these Civil Miscellaneous Appeals, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 02.12.2019

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