

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

CIVIL MISCELLANEOUS APPEAL No.677 of 2019

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

This appeal is preferred challenging the order dt.03-05-2019 in I.A.No.793 of 2018 in O.S.No.223 of 2018 of the V Additional District Judge at Bhongir.

2. The appellant herein is plaintiff in the suit.

The plea of the appellant in the plaint

3. He filed the said suit for declaration that he is the absolute owner of the suit schedule property to the extent of 64% share therein, for recovery of money of Rs.44,50,000/- with interest @ 24% p.a. from the date of registration of the suit, for a preliminary decree for partition of the suit schedule property into two shares of 64% and 36% and allot share of 64% to him, and for passing of final decree as above and for delivery of separate possession to himself and to 1st respondent.

4. It is the contention of the appellant that himself and husband of 1st respondent were childhood friends, that an extent of Ac.4.00 of land in Sy.No.35/A of Anantaram village, Bhongir Mandal, Nalgonda District was purchased jointly by himself and respondent no.s 1-3 under registered sale deed dt.09-10-2015 from its previous owner; that in this sale deed, it was clearly mentioned that each of the vendees

purchased only Ac.1.00 of land; that total amount of consideration paid was Rs.2.78 crores; and it was the appellant, who contributed Rs.44,50,000/- on behalf of 1st respondent and that the other purchasers contributed their share.

5. According to him, there was an understanding that whenever the 1st respondent sells her Ac.1.00 of the property, the appellant would be paid Rs.44,50,000/- along with proportionate share in the profits earned at that time; and there was a Memorandum of Understanding (MoU) entered on 09-10-2015 by the appellant with the 1st respondent wherein she stated that she contributed only Rs.25,00,000/- and that the balance Rs.44,50,000/- was paid on her behalf by the appellant; that it was also acknowledged that the appellant will hold share in her property of Ac.1.00; and in the immediate future, the land would be sold and the amount contributed by appellant would be paid out of the sale consideration along with proportionate share in the profits.

6. The appellant contended that himself and respondent Nos.2 and 3 sold their undivided extent of Ac.1.00 of land each under registered sale deed dt.21-08-2018 to respondent Nos.4 to 8 and what remained was only Ac.1.00 of land in which himself and 1st respondent have a share. He contended that 1st respondent was holding the property in trust for him also and he was in constructive possession of the same along with 1st respondent.

7. He alleged that he came to know that 1st respondent was intending to sell the suit schedule property to third parties without informing him, that he then requested the 1st respondent not to do so and to honour the MoU dt.09-10-2015, but the 1st respondent and her husband did not give any assurance.

8. He alleged that the MoU dt.09-10-2015 is binding and enforceable against 1st respondent and 1st respondent was trying to back out from the contract for making unlawful gains and to deprive the appellant of his due share in the property.

I.A.No.793 of 2018

9. Along with the suit, he filed I.A.No.793 of 2018 under Order XXXIX Rule 1 and 2 C.P.C. for *ad interim* injunction in his favour restraining the 1st respondent/1st defendant from alienating or creating any charge in respect of the suit schedule property in favour of third parties. The plaint averments were also made in I.A.No.793 of 2018.

The counter of the 1st respondent

10. Counter-affidavit was filed by 1st respondent denying the said allegations.

11. While admitting that herself, the appellant and respondent Nos.2 and 3 jointly purchased Ac.4.00 of land on 09-10-2015, it is contended that 1st respondent equally contributed her share of Rs.45,25,000/- and that she had also paid the proportionate registration charges.

12. She contended that while the appellant, respondent Nos.2 and 3 sold their Ac.1.00 shares for personal need, the 1st respondent did not do so ; that the land value increased later; the appellant and respondent Nos.2 and 3 got jealous; and filed a false suit to extort money from her.

13. She alleged that the appellant approached her on the pretext that he will obtain Land Conversion and brought one empty booklet to be submitted to the competent authority and RDO through MRO, and got her signature on the booklet and also on blank papers in the said booklet in 2015 and must have misused the said papers and created the MoU dt.09-10-2015 suggesting that 1st respondent had borrowed money from him.

14. She contended that if at all she borrowed any money, he ought to have obtained promissory note or cheques.

15. It is further contended that the MoU is dt.09-10-2015 and if he wanted to invoke it, he should have filed the suit before 09-10-2018, but the suit was filed on 25-11-2018 and therefore it is time barred. She alleged that in MoU, the signature of her husband was forged and he did not sign it as a witness.

16. Before the Court below, the appellant marked Exs.P-1 to P-5 while the 1st respondent marked no documents.

The order of the trial court

17. By order dt.03-05-2019, the Court below dismissed the said application.

18. After referring to the contentions of the parties and the documents filed by them, it observed that except Ex.P-2 MoU dt.09-10-2015, there is nothing to show that appellant had joint right along with 1st respondent in the suit schedule property.

19. It observed that whether Ex.P-2 is forged or created cannot be concluded unless there is a full fledged trial and it also cannot be considered to show that the appellant has got any right over the suit schedule property.

20. It referred to Ex.P-4 which showed that appellant sold away his Ac.1.00 of land purchased under Ex.P-1 and held that what remained was the Ac.1.00 belonging to 1st respondent. It therefore concluded that there was no *prima facie* case and balance convenience was not in favour of the appellant.

The present Appeal

21. Challenging the same, this appeal is filed.

22. Sri B.Vijaysen Reddy, learned counsel for appellant contended that the findings of the Court below are unsustainable and the Court below ought to have taken into account Ex.P-2 and concluded that the appellant had a joint right in the balance Ac.1.00 of land which was

purchased under Ex.P-1 along with 1st respondent and granted temporary injunction pending suit in favour of the appellant.

The Consideration by the Court

23. A reading of Ex.P-1 sale deed dt.09-10-2015 shows that under that sale deed, the appellant and respondent Nos. 1-3 jointly purchased Ac.4.00 of land, and the document clearly mentions that each of them had title to only Ac.1.00 of the property.

24. It is not in dispute that under Ex.P-4 sale deed dt.21-08-2018, the appellant and respondent Nos.2 and 3 sold off their respective Ac.1.00 shares to respondent Nos.4 to 8. Thus, what remains was only the Ac.1.00 in the name of 1st respondent, which according to Ex.P-1 is her exclusive property.

25. Though the appellant relied on Ex.P-2 MoU dt.09-10-2015, since under the said document, the exclusive right of 1st respondent in her Ac.1.00 of land is converted into a joint right in favour of the appellant, the said document would *prima facie* require registration under Sec. 17(1) (b) of the Registration Act,1908. But admittedly it is not registered. So *prima facie* no rights flow thereunder in favor of the appellant under Sec. 49 of the said Act.

26. No doubt the very execution of Ex.P-2 is disputed by 1st respondent and the signature of the husband of 1st respondent on Ex.P-2 is alleged to be forged one. These are matters to be decided at

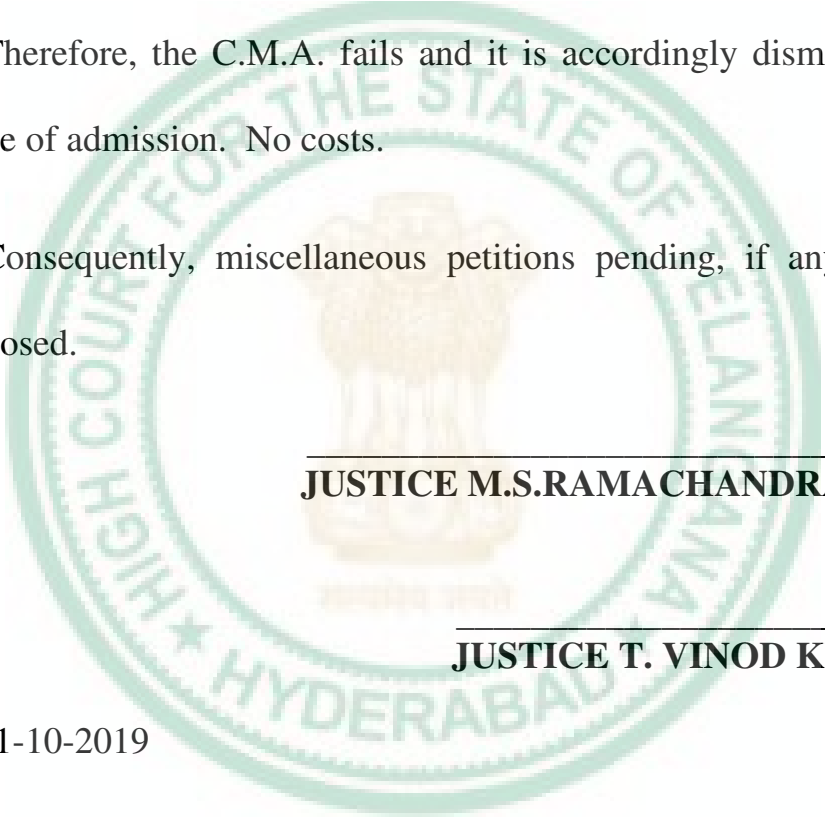
the trial. Therefore one cannot find fault with the Court below for not placing reliance on Ex.P-2 at this stage.

27. Except Ex.P-2 there is no other material to show that the appellant had any joint right in the suit schedule property along with 1st respondent.

28. In this view of the matter, we do not find any error in the order passed by the Court below warranting interference by this Court.

29. Therefore, the C.M.A. fails and it is accordingly dismissed at the stage of admission. No costs.

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



JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. VINOD KUMAR

Date: 01-10-2019
Vsv