

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.M.A.Nos.365 and 366 of 2018

COMMON JUDGMENT :

C.M.A.No.365 of 2018 is filed against the order dt.26-02-2018 in I.A.No.898 of 2014 in O.S.No.891 of 2014 of the XIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

2. C.M.A.No.366 of 2018 is filed against the order dt.26-02-2018 in I.A.No.288 of 2014 in O.S.No.892 of 2014 of the XIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

3. Since common issues on fact and law arise in both these Appeals and since respondents are same in both the Appeals though appellants are different, they are being disposed of by this common judgment.

4. The appellants in both these appeals are plaintiffs in the above suits.

5. They filed the said suits for a perpetual injunction against respondents restraining the respondents from interfering with their alleged lawful possession and enjoyment of agricultural land of Ac.3.00 gts each in Sy.No.493/part situated at Manchirevula village, Rajendranagar Mandal, Ranga Reddy District.

THE CONTENTIONS OF THE APPELLANTS

6. According to both the plaintiffs, they had purchased an extent of Ac.3.00 gts each in Sy.No.493/part under registered sale deeds bearing Doc.Nos.1404/2010 and 1403/2010 dt.03-06-2010.

7. They contended that originally one Hyder Ali Mirza, father of their vendor, was the pattedar in respect of land in Sy.No.493 along with other survey numbers; that after his death, his legal heirs obtained legal heir/succession certificate from the office of the Mandal Revenue officer, Asifnagar, Hyderabad vide Certificate bearing No.7077/2002 dt.01-10-2002; in 2007, the son of late Hyder Ali Mirza executed a registered G.P.A. in favour of his brother by name Nade Ali Mirza as they are residing out of the country; Nade Ali Mirza offered to sell the suit schedule properties to the respective plaintiffs and they paid total consideration and obtained the above sale deeds. They also contended that they had made an application before the Tahsildar, Rajendranagar Mandal for grant of mutation proceedings and issuance of patta pass book and title deed and after due enquiry, he granted mutation in favour of respective plaintiffs vide File No.B/648 of 2010 dt.03-08-2010 and patta pass book and title deeds were also issued to them. They contended that they were in continuous uninterrupted peaceful possession and enjoyment of the suit schedule properties from the dates of their purchase without any obstruction or interference from anyone.

8. They contended that since the suit schedule properties were near the Outer Ring Road, Nade Ali Mirza, in collusion with others, tried to interfere with their peaceful possession and enjoyment over the suit schedule properties and tried to grab their land; that appellants filed O.S.No.237 of 2012 and O.S.No.236 of 2012 before the I Additional Senior Civil Judge, Ranga Reddy District for perpetual injunction along with an I.A. restraining Nade Ali Mirza from interfering with their alleged peaceful possession and enjoyment; that *status quo* orders were granted therein, which were subsisting; and that respondents, who had no concern with the suit schedule land, tried to interfere with the suit schedule properties on 20-08-2014 taking advantage of the fact that appellants were residing at Hyderabad.

9. They alleged that the appellants somehow prevented the respondents with the help of neighbours and well wishers and respondents left the suit land but threatened the appellants that they would come again and occupy the suit schedule property. They contended that they gave police complaint to the police of Narsingi, but the police refused to receive the complaint and advised the respective appellants to approach the Civil Court and so they filed the said suits.

10. Along with suits, the appellants filed I.A.Nos.898 of 2014 and 288 of 2014 under Order XXXIX Rule 1 and 2 C.P.C. seeking temporary injunction restraining the respondents from interfering with

their alleged possession and enjoyment of the suit schedule properties by reiterating the contents of the plaints.

CONTENTIONS OF 2ND RESPONDENT IN CMA NO.365 OF 2018

11. In O.S.No.891 of 2014, the 2nd respondent filed a written statement, which was adopted by respondent Nos.3 to 7.

12. He denied the title of appellants in C.M.A.No.365 of 2018 over the suit schedule property in O.S.No.891/2014 and contended that the land admeasuring Ac.12.34 gts belonged to Hyder Ali Mirza, and on his death, his three sons and four daughters succeeded to the property; but since they were staying abroad, they appointed one K.C.K.Murahari as their attorney to deal with their properties in India. He contended that the Power of Attorney Holder entered into agreement of sale of lands in Sy.Nos.493, 494, 494/2, 494/3 and 497 of admeasuring Ac.22.00 gts situated at Narsingi, within the limits of Manchirevula Revenue village in favour of respondent Nos.1, 2 and others including predecessors of respondent Nos.3 to 7 on 25-12-1985 and after receipt of part sale consideration, the Power of Attorney Holder inducted the 2nd respondent and other purchasers into possession of the said land including the suit schedule property.

13. They contended that later disputes arose between Power Attorney Holder K.C.K.Murahari and his Principals and the Principals initiated proceedings before the Special Court constituted under the A.P. Land Grabbing (Prohibition) Act, 1982 (for short “the Act”) at Hyderabad against K.C.K.Murahari, the 2nd respondent, other

agreement holders and others in L.G.C.No.136 of 1989 alleging that K.C.K.Murahari is not having power to deal with the said lands and that the 2nd respondent and other purchasers are land grabbers and ought to be evicted from the schedule properties including the land in Sy.No.493; that after comprehensive trial, the Special Court, by its judgment dt.27-08-1993, dismissed the L.G.C. holding that K.C.K.Murahari had power to deal with the said lands and the agreements of sale executed in favour of 2nd respondent and other purchasers are valid and binding and they are not land grabbers. He contended that the said judgment became final.

14. Thereafter he and other purchasers filed O.S.No.506 of 1989 before the Principal Subordinate Judge, Ranga Reddy District at Saroornagar for specific performance of agreement of sale dt.25-12-1985; that one Mohd. Jahangir filed O.S.No.146 of 1989 before the Principal Senior Civil Judge, Ranga Reddy District for specific performance against the legal heirs of Hyder Ali Mirza in respect of land admeasuring Ac.6.34 gts in Sy.No.493; the said Mohd. Jahangir also impleaded himself in O.S.No.506 of 1989; that O.S.No.506 of 1989 was decreed on 19-12-1997 holding that 2nd respondent and other purchasers were entitled to specific performance subject to the judgment rendered in O.S.No.146 of 1989; later O.S.No.146 of 1989 was dismissed on 30-09-2002; the legal heirs of Mohd. Jahangir filed A.S.No.20 of 2003 before the High Court and C.M.P.No.348 of 2003 filed by them for interim injunction pending appeal, was dismissed by the High Court on 01-04-2003.

15. He contended that himself and 9 Decree Holders had assigned the decree passed in O.S.No.506 of 1989 in respect of their 10/11th share out of Ac.12.34 gts in Sy.No.493 along with other lands under registered deeds of Assignment bearing Doc.No.11587/2005 dt.07-11-2005 and Doc.No.11046/2005 dt.21-10-2005 in favour of respondent Nos.8 to 10 and Mr.Sharath Sura and they received the entire consideration amount from the assignees and delivered physical and vacant possession of the land to the assignees and the assignees were in possession thereof.

16. He further contended that out of Ac.12.34 gts in Sy.No.493, Ac.7.28 gts was acquired for formation of Outer Ring Road leaving only Ac.5.06 gts in the said survey number; and a sale deed was executed by the Court on 30-07-2014 in E.P.No.56 of 2014 in favour of the assignees and the legal heirs of one Pratap Singh in respect of Ac.5.06 gts in Sy.No.493.

17. He alleged that the vendors of the appellants were not in possession of the land and they could not have delivered possession of the land to the respective appellants under Doc.No.1404/2010 dt.03-06-2010 particularly when L.G.C.No.136 of 1989 seeking respondents' eviction from the land in Sy.No.493 was dismissed on 27-08-1993 holding that the vendors of the appellants have no subsisting right over the property. Respondents denied knowledge of O.S.No.237 of 2012 or about grant of *status quo* order therein, and contended that the said proceedings are collusive. They denied

interfering with the possession and enjoyment of the appellants in respect of the suit schedule properties.

CONTENTIONS OF RESPONDENTS 8-10 IN CMA 366 OF 2018

18. In O.S.No.892 of 2014, respondent Nos.8 to 10 filed a similar written statement relying on purchase from K.C.K. Murahari under agreement of sale dt.25-12-1985 and also on the judgment of the Special Court constituted under the act dismissing L.G.C.No.136 of 1989 27-08-1993.

19. It was alleged that respondent Nos.1 and 2 together with the co-purchasers filed a suit for specific performance of an agreement of sale dt.25-12-1985 in O.S.No.506 of 1989 on the file of the Principal Subordinate Judge, Ranga Reddy District at Saroor Nagar and it was decreed on 19-12-1997; that respondent Nos.1 and 2 and other surviving Decree Holders and legal heirs of the deceased Decree Holders jointly entered into an agreement of sale on 06-02-2004 with respondent Nos.8 to 10 and the son-in-law of 10th defendant by name Sharath Sura agreeing to sell Ac.15.00 of land in Sy.Nos.493, 494/2, 494/3 and 497; and pursuant to the said agreement and in part performance of the same, respondents were inducted into possession of the said land. They contended that their vendors, except late Pratap Singh, who were 10/11th share holders of the decree including respondent Nos.1 to 3, 6 and 7 receive entire agreed consideration from them and assigned their right, title and interest under the said decree in their favour and in favour of Sarath Sura

under two registered assignment deeds bearing Doc.Nos.11046/2005 dt.21-10-2005 and 11587/2005 dt.07-11-2005.

20. He also contended that out of Ac.12.34 gts in Sy.No.493, Ac.7.28 gts was acquired for formation of Outer Ring Road leaving only Ac.5.26 gts therein. He further contended that in E.P.No.56 of 2014, sale deed was executed on 30-07-2014 for this extent in favour of respondent Nos.8 to 10 and Sarath Sura to the extent of Ac.4.28 gts and that for balance Ac.0.18 gts in favour of legal heirs of their vendor late Pratap Singh and it was registered on 07-08-2014.

21. Counter-affidavits were also filed in I.A.No.898 of 2014 in O.S.No.891 of 2014 and I.A.No.288 of 2014 in O.S.No.892 of 2014 on the same lines.

Orders dt.26-2-2018 in I.A.No.898 of 2014 in O.S.No.891 of 2014 and in I.A.No.288 of 2014 in O.S.No.892 of 2014

22. Initially, *ex parte* interim injunction was granted in favour of the appellants in I.A.No.898 of 2014 in O.S.No.891 of 2014 and in I.A.No.288 of 2014 in O.S.No.892 of 2014 by separate orders.

23. After recording the contents of both sides, and after considering the documentary evidence filed by them, the Court below dismissed the I.As.

24. It held that the crucial question is “who is in possession of the suit schedule properties”. It then took note of Ex.R-1 application filed before the Chairman, Special Court constituted under the Act by the

legal heirs of Hyder Ali Mirza against K.C.K.Murahari, respondent Nos.1, 2 and others and noted that relief of eviction was sought in the said L.G.C.No.136 of 1989; that the said L.G.C. was in fact dismissed on 27-08-1993 under Ex.R-2 judgment; that from the date of filing of petition before the Special Court under the Act wherein possession of respondent Nos.1 to 7 and others was admitted, there is no document filed by the appellant to show that he or his vendor took back possession from them in respect of the suit schedule land or other lands.

25. It also held that possession to respondents was delivered way back in 1985 on account of they obtaining agreement of sale from K.C.K.Murahari, the Power of Attorney Holder of the legal heirs of Hyder Ali Mirza; that the respondents subsequently filed O.S.No.506 of 1989 for specific performance of the said agreement of sale which was decreed under Ex.R-3/R-4, and ultimately, the Ex.R-8 sale deed was executed in favour of respondent Nos.1 to 7 and other Decree Holders.

26. It therefore held that respondent Nos.1 to 7 are in possession of the said land and when suits are pending with regard to specific performance of agreement of sale dt.25-12-1985 in O.S.No.506 of 1989, the legal heirs of Hyder Ali Mirza though their General Power of Attorney Holder Nade Ali Mirza executed sale deed and such sale deed would not convey any rights to appellants. It held that there

could not have been any delivery of possession to the appellants under Ex.P-1 sale deed dt.03-06-2010.

27. As regards the Revenue record entries relied upon by the appellants, it was stated that the High Court on 29-03-2018 in W.P.No.4359 of 2018 at the instance of the appellant granted *status quo* orders and so the appellants cannot rely upon the said entries and claim to be in possession of the suit schedule land.

28. It held that the appellants failed to show that there was recovery of possession of the suit schedule properties from respondent Nos.1 to 7 and other Decree Holders by the appellants' vendors and so the presumption is that that respondents continue to be in possession of the lands.

29. It therefore held that the appellants failed to establish that as on the date of filing of I.As., they were in possession of the suit schedule properties and respondents could establish that they are in possession of the same and other lands from 1985 and so they are not entitled to any interim injunction. It therefore vacated the interim injunction.

30. Assailing the same, these appeals are filed.

Contentions of the Counsel for the parties

31. Learned counsel for appellants contended that in L.G.C.No.136 of 1989 no finding was given in respect of land in Sy.No.493 of Manchirevula village on the ground that there were disputes between Md.Jahangir on one hand and respondent Nos.1, 2 and others

regarding which the suit O.S.No.146 of 1989 was pending, and so no finding could be given regarding title in respect of that land claimed by Md.Jahangir. He therefore sought to contend that the trial Court failed to take note of this aspect and erred in refusing to grant temporary injunction in favour of the appellants.

32. Learned counsel for respondents on the other hand refuted the said contentions and stated that L.G.C. was in fact dismissed and no relief was granted to the legal heirs of Hyder Ali Mirza therein; and having admitted in L.G.C. that possession of the land in Sy.No.493 was with respondent Nos.1, 2 and others, the legal heirs of Hyder Ali Mirza could not have executed registered sale deeds in favour of appellants in 2010, because there is no evidence to show how they got possession after dismissal of L.G.C.

33. Learned counsel for appellants could not explain how, when the legal heirs of Hyder Ali Mirza failed to succeed in L.G.C.No.136 of 1989, they got possession of the property i.e. land in Sy.No.493 and delivered possession of the same to the appellants.

34. Merely because title to the land in Sy.No.493 was not decided in the L.G.C., the appellants cannot contend that they are in possession because the legal heirs of Hyder Ali Mirza did not succeed in recovering possession from the respondents to the LGC.

35. There is nothing on record to show that at a later point of time they got possession from the respondents in a manner known to law.

36. So possession of the land in Sy.No.493 continued to remain with respondent Nos.1, 2 and others ever since filing of L.G.C. in 1989 and continued to be so.

37. Though learned counsel for appellants sought to place reliance on revenue record entries and issuance of patta pass book and title deed to the appellants by the Revenue authorities, since the entries in the revenue records cannot be explained in view of the absence of evidence of recovery of possession of land in Sy.No.493 by vendors of the appellants from respondent Nos.1 to 7, they cannot be relied upon *prima facie*. Also because of the *status quo* orders granted on 29-03-2018 in W.P.No.4359 of 2018, no reliance can be placed on the said Revenue record entries.

38. Therefore the Court below cannot be said to have committed any error in law or on fact in refusing to grant interim injunction in favour of the appellants.

39. I therefore do not find any merit in these appeals and they are accordingly dismissed. No costs.

40. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-04-2019

Vsv