

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

CRP.No.4366 of 2017

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.13.02.2017 in CMA.No.96 of 2014 of the XVI Additional District & Sessions Judge, Ranga Reddy District at Malkajgiri, confirming the order dt.09.06.2014 in I.A.No.553 of 2013 in OS.No.162 of 2013 of the Principal Junior Civil Judge at Medchal.

2. Petitioners herein are the defendants in the above suit.

3. The respondents filed the said suit against the petitioners for a Perpetual Injunction restraining the petitioners from interfering with their alleged possession and enjoyment of the suit schedule property.

4. The respondents contended that they purchased the suit schedule plots from their vendor one A.V.S.V.Rao, represented by his AGPA Holder by name B.Venkat Yadav under a registered Sale Deed bearing document No.8193/2013 dt.06.07.2013 by paying valid sale consideration; that their vendor delivered peaceful possession of the suit schedule three plots on the date of execution of the sale deeds and that they are in peaceful, continuous and physical possession thereof; and that their vendor had obtained the suit schedule property under a registered Agreement of Sale-cum-GPA with possession vide three

documents dt.02.09.2006. They alleged that on 11.07.2013 petitioners tried to interfere with their possession and enjoyment of the suit schedule property and therefore they filed the suit on 18.07.2013.

5. Written statement was filed by the petitioners opposing grant of relief to the respondents. They contended that A.V.S.V.Rao executed an Agreement of Sale-cum-GPA on 12.05.2005 in favour of one G.Prabhakar and delivered vacant physical possession of the property to the said G.Prabhakar; that the said G.Prabhakar then sold one plot to 3rd petitioner under a registered sale deed on 17.01.2006, second plot to 2nd petitioner also under a registered sale deed dt.17.01.2016, and third plot to the 4th petitioner under another Sale Deed dt.03.05.2006 and delivered vacant physical possession of the plots. They alleged that A.V.S.V.Rao filed two suits O.S.No.2786 of 2007 and O.S.No.2787 of 2007 before the VI Additional Senior Civil Judge, Fast Track Court, at Medchal, Ranga Reddy District against petitioners 2 & 3 and G.Prabhakar for declaration that the Sale Deeds dt.17.01.2006 are null and void, but the said suits were dismissed subsequently on 21.12.2009 and that the said judgment is also supporting their case. They contended that there is neither *prima facie* case nor balance of convenience or irreparable injury to the respondents.

6. Pending suit, respondents filed I.A.No.553 of 2013 under Order XXXIX Rules 1 and 2 CPC seeking temporary injunction against the petitioners.

7. Before the said Court, the respondents marked Exs.P1 to P6 and petitioners 2 and 3 exhibited Exs.R1 to R12.

8. By order d.09.06.2014, the Court below granted temporary injunction in favour of the respondents. It held that petitioners 2 and 3 had admittedly acquired title through an unregistered document which was got validated and A.V.S.V.Rao got issued a legal notice on 07.01.2006 to G.Prabhakar (*from whom the petitioners are claiming the suit schedule property*) much before execution of Exs.R2, R3, R9 & R14 Sale Deeds canceling the unregistered Agreement-cum-GPA dt.12.05.2005 in favour of G.Prabhakar. It observed that the said G.Prabhakar after receiving the said legal notice, got executed sale deeds in favour of the petitioners and that the documents executed by A.V.S.V.Rao in favour of the respondents are valid documents since they were executed through a registered AGPA as against the unregistered documents, under which the petitioners were claiming title. It also observed that petitioners are not parties in O.S.No.2786 of 2007 and 2787 of 2007. It further observed that whether A.V.S.V.Rao intentionally avoided contesting the suit cannot be decided at the stage, and the petitioners did not file any documents before the Court to prove any allotment of house numbers in favour of the 1st petitioner in paying property taxes.

It therefore held that the respondents have got *prima facie* case, balance of convenience is in their favour and their possession requires to be protected by grant of an interim injunction pending the suit.

9. Assailing the same, respondents filed CMA.No.96 of 2014 before the XVI Additional District & Sessions Judge, Ranga Reddy District at Malkajgiri.

10. The said appeal was also dismissed on 13.02.2017. The lower Appellate Court held that the Agreement of Sale-cum-GPA dt.12.05.2005 executed by A.V.S.V.Rao in favour of G.Prabhakar is an unregistered document; that the said G.Prabhakar therefore did not acquire any title to the property under the said document; and the petitioners, who are claiming title from the said G.Prabhakar, cannot be said to have acquired any legal right over the suit schedule property under the sale deeds executed by the said G.Prabhakar in their favour. It also took note of the fact that Legal Notice was issued on 07.01.2006 by A.V.S.V.Rao canceling the Agreement of Sale-cum-GPA executed by him in favour of G.Prabhakar and only thereafter, sale deeds, Exs.R2 and R3 were executed in favour of respondents 2 & 3, and this creates a doubt with regard to possession of the petitioners over the suit schedule property.

11. Assailing the same, this Revision is filed.

12. Counsel for the petitioners contended that the findings of the Court below cannot be sustained and the order passed by both the Courts below requires to be set aside. According to him, petitioners are claiming under two registered sale deeds dt.17.01.2006(Exs.R2 & R3) which are admittedly executed in their favour by G.Prabhakar as GPA Holder of A.V.S.V.Rao; that A.V.S.V.Rao filed O.S.No.s 2786 and 2787 of 2007 seeking cancellation of the sale deeds but they were dismissed for non-prosecution on 21.12.2009; thereafter A.V.S.V.Rao executed a GPA in favour of B.Venkat Yadav and through him respondents purchased the subject plots in 2013. He also alleged that the petitioners were in possession of the subject property from 2006 and the Court below could not have ignored this fact.

13. On the other hand, respondents claim title through a registered Sale Deeds dt.06.07.2013 executed by the GPA Holder of A.V.S.V.Rao through a registered GPA, by name B.Venkat Yadav. According to them, the Agreement-cum-GPA executed in favour of G.Prabhakar on 12.05.2005 is an unregistered document and no title can be conveyed under an unregistered document to the purchaser. Also as per the judgment of the Supreme Court in **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr.**¹ under an Agreement of Sale or under a GPA, title cannot be transferred.

¹ 2009(7) SCC 363

14. Both the Courts have concurrently held that compared to the unregistered Agreement-cum-GPA which G.Prabhakar had from A.V.S.V.Rao, the registered GPA Holder, B.Venkat Yadav would be in a better position to convey title to the petitioners. This concurrent finding of both the Courts below cannot be said to be perverse warranting interference by this Court in exercise of its power under Article 227 of the Constitution of India.

15. I therefore do not find any error of jurisdiction in the order passed by the Court below.

16. Accordingly, this Civil Revision Petition is dismissed and the interim order granted on 24.11.2017 in CRP.MP.No.5736 of 2017 in the Revision is vacated. However, the trial Court shall decide the suit uninfluenced by the observations made by it in its order dt.09.06.2014 in I.A.No.553 of 2013 or in the order dt.13.02.2017 in CMA.No.96 of 2014 of the XVI Additional District & Sessions Judge, Ranga Reddy District at Malkajgiri or by this Court in this order. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

12th July, 2019.

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