

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.22 of 2020

JUDGMENT:

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of CPC, is filed by the appellant/plaintiff, challenging the order, dated 23.12.2019, passed in I.A.No.169 of 2019 in O.S.No.31 of 2019, by the V Additional District Judge, Bhongir, whereby, the order, dated 25.02.2019, passed by the Court below granting ad-interim injunction restraining the respondents/defendants, their henchmen and agents, from interfering with the possession of the appellant/plaintiff over the suit schedule property till 02.04.2019 and which was extended from time to time, was modified to that of granting *status quo* as regards possession of the appellant/plaintiff over the suit schedule property.

2. Heard the learned counsel for both the sides and perused the record.

3. The learned counsel for the appellant/plaintiff would contend that the Court below ought not have modified the relief of interim injunction into *status quo*. In the given circumstances, the Court below ought to have granted temporary injunction, pending disposal of the subject suit. The appellant/plaintiff has fulfilled all the requirements of Order XXXIX Rule 1 of CPC and ultimately prayed to set aside the order under challenge and grant temporary injunction as prayed for. In support of his contentions, the learned counsel had relied on a

decision of this Court in Mangilal Chowdary and another Vs. P.Kasinath Yadav¹.

4. On the other hand, the learned counsel for the respondents/defendants would also contend that the Court below ought not have granted the order of *status quo*. Instead, the Court below ought to have dismissed the subject interlocutory application filed for temporary injunction, as the same is devoid of merit.

5. In view of the above submissions made by both the learned counsel, the point that arises for determination in this appeal is as follows:

“Whether the impugned order, dated 23.12.2019, passed in I.A.No.169 of 2019 in O.S.No.31 of 2019, by the V Additional District Judge, Bhongir, is liable to be set aside?”

6. In Mangilal Chowdary’s case supra, this Court observed as follows:

17. This Court, in Chirapareddi Veeramma and others Vs. Sk.Mahaboob Subhani and others² and Shakeela Jamali and others Vs. Zareena Begum and another³, held that Court should avoid granting status quo orders in applications for temporary injunction filed to restrain the opposite party from interfering with their alleged possession and enjoyment of the suit schedule property, because, such status quo orders are ambiguous,

¹ 2019 (6) ALD 588 (TS)

² 1991 (1) ALT 366

³ 2018 (1) ALD 54

unless the Court specifies what it means by such a status quo before ordering the same.

18. In Chirapareddi Veeramma's case (2 supra), this Court held as follows:

"In matters relating to disputes regarding possession it is the duty of the Court to decide one way or the other as to which party is prima facie in possession of the property. Unfortunately, in several cases coming up before the lower Courts instead of giving a categorical finding as to which party is in possession, the Courts frequently resort to granting orders for maintenance of 'status quo'. Before the Court passes such an order, it is incumbent on the Court to give a finding as to the particular status quo that it wants to be maintained viz., whether the plaintiff or the defendant is in possession and whose possession is to be maintained. The Court cannot escape its duty by merely saying that status quo is to be maintained".

7. In the instant case, the Court below, having discussed the material at length, neither granted or denied temporary injunction in favour of the appellant/plaintiff. While dealing with the application seeking temporary injunction, it is the duty of the Court to decide one way or the other, as to which party is *prima facie* in possession of the property, i.e., either plaintiff/s or the defendant/s. The Court cannot escape its duty merely saying that status quo is to be maintained. Once an application under Order XXXIX Rules 1 and 2 is finally heard, the Court has to either grant or decline temporary injunction. The Court is not supposed to grant an order of *status quo*. In the instant case,

grant of *status quo*, in the given circumstances, is not in tune with the provisions of Order XXXIX Rule 1 of CPC. The Court below failed to keep in mind the fundamental principle of law and it ought not have modified the order of *ad-interim* injunction into an order of *status quo*. On this ground alone, the impugned order is liable to be set aside.

8. Accordingly, the impugned order, dated 23.12.2019, passed in I.A.No.169 of 2019 in O.S.No.31 of 2019, by the V Additional District Judge, Bhongir, is set aside. The subject I.A.No.169 of 2019 is restored to file of Court below for disposal afresh, in accordance with law, within fifteen (15) days from today. Till then, both the parties are directed to maintain status quo with regard to the suit schedule property, in all respects. It is made clear that no opinion is expressed on the merits or demerits of the case.

9. With the above direction, this Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

24th February, 2020

Dr. SHAMEEM AKTHER, J

Note:

Furnish CC by 25.02.2020.

(B/O)

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