

IN THE HIGH COURT FOR THE STATE OF TELANGANA

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD**

CIVIL MISCELLANEOUS APPEAL NOS.289 AND 291 OF 2020

CMA.No.289 of 2020

Between:

Kopalle Venu Gopal,
S/o Late K.V.Narasimha Rao, Aged about 64 years,
Occ: Business, R/o H.No.1-11-165, Beside
Venkateswara Temple, Sowbhagyapuram Colony, SPK
Puram, Saroornagar Mandal, Ranga Reddy District &
another.

..Appellants.

and

P.Subhrahmanya Prasad, S/o P.V.Kutumba Rao, Aged
about 65 years, R/o APSRTC Officers Colony, Sagar
Road, Champapet, Ranga Reddy District & others.

.... Respondents

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Date of Judgment pronounced on : 28-09-2020

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD**

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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< GI ST:

> HEAD NOTE:

!Counsel for the appellants in : Sri G.Vijaya Bhaskar
Both matters

^ Counsel for the 1st respondent in : Sri S.Sridhar.

? Cases referred

1. 1991(1) ALT 366
2. 2018(1) ALD 54
3. MANU/SC/0148/2019
4. (2010) 1 SCC 689

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CIVIL MISCELLANEOUS APPEAL NOS.289 AND 291 OF 2020

COMMON JUDGMENT:

(Per Sri Justice M.S.Ramachandra Rao)

Heard Sri G.Vijaya Bhaskar, learned counsel for the appellants and Sri S.Sridhar, learned counsel for the 1st respondent in both the Appeals.

2. These Appeals arise out of the same suit O.S.No.464 of 2018 pending on the file of the VIII Additional District Judge, Ranga Reddy District at L.B.Nagar between the same parties and so they are being disposed of by this common order.

3. The appellants in both these Appeals are defendants 4 and 5 in the said suit.

4. The suit was initially filed by the 1st respondent/plaintiff against respondents 2 to 4 herein for the following reliefs:

“(a) *cancelling the Regd. Sale Deed vide document bearing No.126 of 2009 dated 14.10.2008.*

(b) *cancelling the Registered Agreement of Sale cum GPA Vide document bearing No.1306/2018, dated 08.02.2018.*

(c) *directing the Sub-Registrar, Gandipet from deleting the entries in respect of Sale Deed bearing No.126 of 2009, dated 14.10.2008 and Agreement of Sale cum GPA Vide document bearing No.1306/2018, dated 08.02.2018, from their records.*

(d) *to restrain the Defendants No. 1 & 2, their agents, servants, henchmen from interfering with peaceful possession and*

enjoyment of Plaintiff over the schedule property by way of permanent injunction.

- (e) to restrain the Defendants No. 1 & 2, from alienating or creating any third party interest over the schedule property by way of permanent injunction.*
- (f) to award cost of suit.*
- (g) grant and other relief as this Hon'ble Court may deem fit and proper."*

The case of the 1st respondent/plaintiff in the suit

5. It was the contention of the 1st respondent herein/plaintiff in the suit that he is the absolute owner of the suit schedule property which he acquired through inheritance and also by virtue of a registered release deed dt.14.03.2006 executed by his other family members, i.e., his mother, two brothers and a sister.

6. He contended that the said property along with other properties originally belonged to his late father who died on 28.11.2004 and on his father's death, himself, his mother and other siblings had inherited the same; and pursuant to the above release deed dt.14.03.2006, he became the exclusive owner thereof. He claimed to be in peaceful possession and enjoyment of the said property as an absolute owner.

7. The 1st respondent claimed that he came to know that the 2nd respondent herein/1st defendant in the suit was also claiming rights over the suit schedule property; that the 4th respondent was claiming falsely that his father one Sambaiah had an Agreement of Sale in his favour executed by the father of the 1st respondent and that he was given possession on 23.03.1967; that the said Agreement of Sale was got

validated on 07.03.2007; that that the 4th respondent was falsely claiming that there was an unregistered partition deed dt.12.03.1977, according to which, the 4th respondent became absolute owner of the said property along with his father; that his father had executed an unregistered Will dt.17.04.1984 and his father died on 17.01.1986.

8. The 1st respondent claimed that the 4th respondent entered into an Agreement of Sale with the 3rd respondent and got validated the Agreement of Sale he had with the 1st respondent's father; that a registered sale deed was executed by the 4th respondent in favour of the 3rd respondent; and the 3rd respondent executed a registered Agreement of Sale-cum-GPA dt.08.02.2018 in favour of the 2nd respondent.

9. The 1st respondent alleged that none of these documents create any title or possessory rights in favour of the 2nd respondent, the 1st respondent or the 4th respondent's father Sambaiah.

10. Thereafter, the 1st respondent impleaded the appellants herein in the suit contending that during the pendency of the suit, the 2nd and 3rd respondents sold the suit schedule property to the appellants under a registered sale deed dt.28.05.2018 and subsequently a registered release deed dt.24.05.2019 was executed by the 2nd appellant in favour of the 1st appellant, and so they are necessary parties to the suit.

11. He also amended the plaint challenging the sale deed dt.28.05.2018 and the subsequent registered release deed dt.24.05.2019 said to have been executed by the 2nd appellant in favour of the 1st appellant.

I.A.No.801 of 2019 and I.A.No.802 of 2019

12. Thereafter, the 1st respondent filed I.A.No.801 of 2019 under Order XXXIX, Rules 1 and 2 CPC for grant of an ad interim injunction restraining the appellants from alienating or creating any third party interests over the suit schedule property; and I.A.No.802 of 2019 under Order XXXIX, Rules 1 and 2 CPC for an ad interim injunction restraining the appellants from interfering with the 1st respondent's alleged peaceful possession and enjoyment of the suit schedule property pending disposal of the suit.

13. Counter affidavit was filed by the appellants opposing grant of relief to the 1st respondent in these Appeals.

The common order in IAs. 801 and 802 of 2019 passed by the Court below

14. A common order was passed by the Court below on 20th January, 2020 by merely extracting the contentions of both sides and observing that it is not possible to decide the issue of title and possession of the suit schedule property in these Applications; that they can be decided only after a full-fledged trial; but the appellants should be restrained from alienating the suit schedule property and both parties should maintain *status quo* in respect of the said property.

The present CMAs

15. Assailing the same, these Appeals are filed.

16. Learned counsel for the appellants pointed out that there are no reasons assigned by the Court below as to why it had restrained the

appellants from alienating the suit schedule property or directed them to maintain *status quo* in respect of the suit schedule property.

17. He contended that without giving any finding as to whether the 1st respondent had established *prima facie* case, that the 1st respondent has possession of the suit schedule property, that balance of convenience is in favour of the 1st respondent and irreparable injury would be caused to the 1st respondent if the interim relief sought for by him is not granted, the Court below could not have passed the impugned orders.

18. Learned counsel for the 1st respondent also could not show from the impugned orders that any finding on the above aspects was recorded by the Court below.

The consideration by the Court

19. Time and again, this Court has held that when Applications for temporary injunction restraining the defendants from interfering with the plaintiffs' alleged possession of the suit schedule property are filed, the trial Court should refrain from passing *status quo* orders (**Chirapareddi Veeramma and others Vs. Sk. Mahaboob Subhani¹** and **Shakeela Jamali and others Vs. Zareena Begum and others²**). It is surprising that in spite of the same, the Court below has, in the instant case, granted a *status quo* order without giving any finding about the possession of the parties over the suit schedule property.

¹ 1991(1) ALT 366

² 2018(1) ALD 54

20. The Supreme Court in Balkrishna Dattatraya Galande Vs. Balkrishna Rambharose Gupta and others³ held:

“11. Under Section 38 of the Specific Relief Act, an injunction restraining the Defendant from disturbing possession may not be granted in favour of the plaintiff unless he proves that he was in actual possession of the suit property on the date of filing of the suit.”

So the 1st respondent has to establish his possession of the suit schedule property on the date of filing of the suit prima-facie, if he seeks an injunction in the suit restraining the appellants and others to interfere with his possession of the said property.

21. In Kashi Math Samsthan and another Vs. Shrimad Sudhindra Thirtha Swamy and another⁴, the Supreme Court has held as under:

“16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.”
(emphasis supplied)

22. It appears that the Court below has overlooked these well settled legal principles for grant of injunctive relief while deciding I.A.Nos.801 and 802 of 2019.

³ MANU/SC/0148/2019

⁴ (2010) 1 SCC 689

23. The impugned orders of the Court below cannot be sustained in view of the fact that it did not give any finding on the aspects of *prima facie* case, balance of convenience and irreparable injury and also did not give any reasons in the impugned orders for granting the interim reliefs in favour of the 1st respondent.

24. Accordingly, the Appeals are allowed; Orders dt.20.01.2020 in I.A.Nos.801 and 802 of 2019 in O.S.No.464 of 2018 on the file of the VIII Additional District Judge, Ranga Reddy District at L.B.Nagar are set aside; the matter is remanded to the said Court for fresh consideration; and the Court below shall decide the said Applications keeping in mind the observations of this Court in this order within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

25. Pending miscellaneous petitions, if any, in these Appeals shall stand closed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date:28 -09-2020

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