

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

C.M.A.Nos.292 and 293 of 2020.

COMMON JUDGMENT: (per Hon'ble Sri Justice M.S.Ramachandra Rao)

These two appeals arise between the same parties out of the same suit and therefore they are being disposed of by this common Judgment.

2. The appellants in both the appeals are defendant Nos.1 and 2 in O.S.No.863 of 2019 on the file of the XIV Additional District Judge, Ranga Reddy District at L.B. Nagar.

The case of the plaintiffs/respondents 1 to 5

3. Respondent Nos.1 to 5/plaintiffs filed the said suit against appellants in respect of an open land admeasuring Ac.4.28 gts forming part of southern portion of Sy.No.209 consisting of 61 plots situated at Kuntloor Village, Abdullapurmet Mandal, Ranga Reddy District, in a representative capacity, invoking Order I Rule 8 C.P.C.

4. It is not in dispute that a separate application under Or.1 rule 8 CPC seeking permission of the Court to file the suit in representative capacity is also presented along with the suit and is still pending on the file of the said Court and has not been disposed of yet.

5. It is the case of the respondent Nos.1 to 5 in the suit that they are owners of plots of land in Sy.No.209 in Kuntloor village and

they had purchased the same under sale deeds executed in their favour between 1980 to 2007.

6. According to them, one M.Punnaiah Goud, S/o.late M.Bagaiah owned this land and he was granted Occupancy Right Certificate (ORC) under the provisions of A.P. (Telangana Area) Abolition of Inams Act, 1955 vide proceedings bearing No.E/387/75 dt.28-12-1979. They alleged that thereafter he along with neighbouring ORC holders made plots, obtained sanction and sold plots to various persons. It is also alleged that the plots which are purchased by respondent Nos.1 to 5 are in the southern portion of the layout plan said to have been prepared by the said Punnaiah Goud.

7. Respondent Nos.1 to 5 contended the said Punnaiah Goud passed away on 24-07-1996 leaving behind his son Anjan Kumar Goud; in disputes between respondent Nos.1 to 5 and some plot owners and one Qasim Ali, who was claiming ownership on northern part of Sy.No.209 of Kuntloor village, the said Anjan Kumar Goud was assisting and helping respondent Nos.1 to 5 and some plot owners for protecting their lands and he even made a statement Ex.P-33 on 21-07-2004 before the Revenue Divisional Officer, Hyderabad East acknowledging sales made by his late father in favour of persons like respondent Nos.1 to 5; that he had also filed L.G.C.No.19 of 2010 against certain parties before the Special Court for Land Grabbing (Prohibition) Act, 1982 at Hyderabad and admitted during his deposition in cross-examination

on 12-09-2010 before the said Court that his father had divided the land into plots in Sy.Nos.204, 208 and 209 and sold all the plots; that in Writ Petition No.28677 of 2009 filed before the High Court of Andhra Pradesh, Hyderabad also, the said Anjan Kumar Goud filed an affidavit stating that there was a layout in respect of Ac.4.28 gts in Sy.No.209, which was sold to third parties during the years 1980 to 1986; that the said Anjan Kumar Goud died on 05-11-2016 and thereafter the 1st appellant and 2nd appellant, who are widow and son of the said Anjan Kumar Goud, got a draft layout dt.30-04-2009 and final layout dt.15-07-2019 (Ex.R-9) through Hyderabad Metro Development Authority (HMDA) and started selling the plots already sold by late Punnaiah Goud to third parties; and the said purchasers starting interfering with their possession and enjoyment. They also contended that appellant No.1, suppressing the sale of property by Punnaiah Goud, also obtained Exs.R-1 to R-3 pattadar pass book and title deeds in respect of the suit schedule property behind the back of respondent Nos.1 to 5.

8. They therefore filed the suit to declare that the draft layout plan dt.30-04-2019 issued by the HMDA (R-6) is illegal, fraudulent, collusive and not binding on respondent Nos.1 to 5 and consequently to cancel the same; to declare the registered mortgage deed dt.06-07-2019 executed by 1st appellant in favour of 6th respondent as null and void and not binding on respondent Nos.1 to 5; and strike it off the same from the Office of the Sub-Registrar, Hayatnagar. They also sought a perpetual injunction restraining the

appellants from interfering or encumbering or altering the suit schedule property in any manner whatsoever.

I.A.No.994 of 2019 and I.A.No.995 of 2019

9. Along with the suit, respondent Nos.1 to 5 also filed I.A.No.994 of 2019 under Order 39 Rules 1 and 2 C.P.C. for grant of interim injunction restraining the appellants from interfering with the possession of respondent Nos.1 to 5 over the suit schedule property within the specified boundaries. They also filed I.A.No.995 of 2019 under Order 39 Rules 1 and 2 C.P.C. for grant of temporary injunction restraining the appellants from alienating the suit schedule property.

10. In these applications, they reiterated the contents of the plaint, and sought to contend that the appellants were trying to grab the property of respondent Nos.1 to 5 without any lawful entitlement and they should be prevented from doing so and also restrained from alienating or creating a charge over the suit schedule property.

The case of the appellants/defendants 1 and 2

11. Written statement was filed by the appellant No.1, which was adopted by 2nd respondent, refuting the contentions of respondent Nos.1 to 5.

12. The 1st appellant denied that respondent Nos.1 to 5 are owners and possessors of the suit schedule property. She also denied that any plots were made by her husband Anjan Kumar Goud or her

father-in-law Punnaiah Goud in respect of Ac.4.28 gts in Sy.No.209 of Kuntloor village during their lifetime.

13. She claimed that she and her sons are the absolute owners and possessors of Ac.3.28 gts in Sy.No.209/A having acquired it from her husband Anjan Kumar Goud, who had succeeded to it from his father Punnaiah Goud.

14. She claimed that they converted the land into plots and also obtained layout from the 6th respondent on 15-07-2019 and subsequent thereto sold all plots in favour of one M.R.R. Developers and others under registered sale deeds. She contended that the purchasers are in possession and enjoyment of their respect plots since the date of their purchase.

15. She claimed that she made an application to the 7th respondent Municipality/Nagara panchayat to provide list of approved Gram Panchayats and DTCP layouts in Sy.No.209 of Kuntloor village from the beginning under the Right to Information Act, 2005 and that she was informed by the said Municipality that there is no approved layout relating to Sy.No.209 of Kuntloor village vide Ex.R-6 dt.18-09-2019.

16. She also placed reliance on the pattadar pass book and title deeds obtained in the name of Anjani Kumar Goud during his lifetime as legal heir and successor to his father Punnaiah Goud, and contended that only the name Anjani Kumar Goud is recorded as pattedar and possessor of the subject land.

17. She admitted that her husband Anjani Kumar Goud, during his lifetime, filed L.G.C. against some third parties, but stated that the said LGC was withdrawn as not pressed subsequently. She also claimed that the extent of Ac.3.28 gts owned and possessed by her and her children was converted into non-agricultural land by proceedings dt.30-03-2019 (Ex.R-4) by obtaining permission from the Revenue Divisional Officer, Yamjal. She denied all the allegations leveled against her and 2nd appellant in the written statement, and sought for dismissal of the suit.

18. In both I.A.Nos.994 and 995 of 2019, the 1st appellant filed counter-affidavit reiterating the stand taken by her in the written statement in O.S.No.863 of 2019.

The orders dt.14.5.2020 of the court below in IA.No.s 994 and 995 of 2019

19. In the trial Court, respondent Nos.1 to 5 filed Exs.P-1 to P-34 and appellants filed Exs.R-1 to R-13.

20. By separate orders dt.14-05-2020, the Court below allowed both I.A.No.994 and 995 of 2019.

21. In its orders, the Court below held that late Punnaiah Goud, ancestor of appellants, had purchased the extent of Ac.4.28 gts along with other land in Kuntloor village from Vakiti Pulla Reddy and Vakiti Sathyamma; that he was also issued ORC for this land of Ac.4.28 gts in Sy.No.209.

22. It referred to the depositions Ex.P-29 of Anjan Kumar Goud, son of Punnaiah Goud as P.W.1 in LGC No.19 of 2010 for holding

that Punnaiah Goud had purchased the land from Vakiti Pulla Reddy and Vakiti Sathyamma. The issuance of ORC to Punnaiah Goud was held by the Court below to be based on common order passed by the High Court in the judgment rendered by it in **Chama Narasimha Reddy and others Vs. Joint Collector, Ranga Reddy District at Hyderabad and others**¹.

23. It then referred to Ex.P-33 letter of objection dt.21-07-2004 submitted by Anjan Kumar Goud to the Revenue Divisional Officer, Ranga Reddy East Division wherein he admitted about plotting of land in Sy.No.209 etc by his father and sale of the said plots to purchasers.

24. Relying on the deposition Ex.P-29 given by Anjan Kumar Goud as P.W.1 in L.G.C.No.19 of 2010, it held that he admitted that the plots in Sy.No.209 were sold by his father Punnaiah Goud during the period 1979 to 1986; and that he also obtained pattadar pass book in 2006 without disclosing to the Mandal Revenue Officer that the land had already become plotted land.

25. It concluded that the suit schedule land is the same land which was plotted by Punnaiah Goud, the father of Anjan Kumar Goud and sold as plots to respondent Nos.1 to 5 and their predecessors-in-title, and rejected the contention of the appellants the suit schedule property is different from the land for which Punnaiah Goud was issued ORC. It also held that respondent Nos.1 to 5 and their

¹ 2007 (2) ALD 28

predecessors-in-title had purchased plots from Punnaiah Goud in the suit schedule land of Ac.4.28 gts in Sy.No.209.

26. It therefore concluded that issuance of pattadar pass books to Anjan Kumar Goud and appellant no.1 by the Mandal Revenue Officer under Exs.R-1 to R-3 was illegal; that they were obtained by suppression of real facts and sales already made by Punnaiah Goud long back.

27. It observed that even though L.G.C.No.19 of 2010 filed by Anjan Kumar Goud was dismissed as not pressed, the admissions made by him in his deposition as P.W.1 (Ex.P-29) do not vanish from the record and they would bind the appellants.

28. It also relied on the attestation by 2nd appellant on two of the sale deeds Ex.P-1 dt.06-05-2006 and Ex.P-13 dt.21-05-2007 in respect of the plot Nos.187 and 188 in favour of respondent Nos.1 to 5 observing that 2nd appellant did not deny the attestation and he remained *ex parte* in these Interlocutory Applications.

29. Referring to non-filing of the layout by respondent Nos.1 to 5 in contrast to the draft layout and final layout obtained from the 6th respondent and filed by the appellants, the Court below observed that 6th respondent had sanctioned the layout on the basis of the issuance of Exs.R-1 to R-3 pattadar pass book and title deeds in favour of Anjan Kumar Goud, but when the said issuance itself is contrary to law, the said layout has no value. It further observed that even if respondent Nos.1 to 5 and their predecessors-in-title had

purchased plots from late Punnaiah Goud without any approval of layout, the same would not divest them of title to the said plots.

30. It thus allowed both the applications with costs.

The present Appeals

31. Assailing the same, these two appeals are filed.

32. Heard Sri D.Prakash Reddy, learned Senior Counsel appearing for Sri Sriram Polali, leaned counsel for appellants and Sri V.Hari Haran, learned counsel for respondent Nos.1 to 5.

The consideration by the Court

33. Sri D.Prakash Reddy, learned Senior Counsel appearing for appellants firstly contended that the suit itself had been filed in representative capacity and the Court below had not accorded any permission to respondent Nos.1 to 5 to file the suit in representative capacity, and consequently the suit is not maintainable and no interim relief could have been granted to respondent Nos.1 to 5.

34. It is not in dispute that the application under Order I Rule 8 C.P.C. was filed by respondent Nos.1 to 5 along with the suit and the said application is still pending consideration before the Court below. As long as the said application is pending and has not been rejected, it cannot be said that the suit is not maintainable.

35. It is settled law that permission under order I Rule 8 C.P.C. can be granted even after institution of the suit and the omission to obtain leave at the commencement of the suit cannot reserve as a

reason for dismissing the suit (**Commissioner of Police, City of Hyderabad Vs. Syed Kursheed Hasan² and Muslim Education Society, Karimnagar Vs. Awaz Bin Musallam³**).

36. It is not in dispute that in L.G.C.No.19 of 2010 filed by late Anjan Kumar Goud to declare certain third parties as land grabbers in respect of Ac.4.28 gts in Sy.No.209 of Kuntlur village, Hayathnathnagar Mandal, Ranga Reddy District, as P.W.1 he made the following admissions:

“All the members of the said Raghavendra Welfare Association have purchased the plots. They are the plot purchasers of my father and one Khasim Ali. The plots sold by my father covers an area of Ac.4.28 guntas in Sy.No.209. My father sold all the plots during the period 1979-80. I filed Writ Petition No.28677/2009 before the Hon’ble High Court and the same is pending. I have mentioned in page 7 para 6 of the Writ Petition that ‘Ac.4.28 gts in Sy.No.209 was subjected to layout of house plots and sold to third parties even during the years 1980-1986. It is not true to suggest that I have sold some plots after the death of my father. When the witness was confronted with reference to the sale deeds he admitted that Ex.B-1 is registration extract of the sale deed (with plan) dated 22-8-2005, executed by me in favour of K.Madhavi conveying plot No.107, admeasuring 717 Sq. yds in Sy.No.209 of Kuntluru village, Hayatnagar Mandal, R.R.District. Ex.B-2 is the C.C. of registered sale deed executed by me on 22-3-2007 in favour of Smt.P.Ahalya conveying Plot No.107 and 108, admeasuring 717 sq. yds in Sy.No.209 of Kuntluru village, Hayatnagar Mandal, R.R. District. It is a fact the plot covered by Exs.B-1 and B-2 is one and the same. It is not true to suggest that I am disposing off some plots in Sy.No.209 even though I do not have an inch of land in the said survey

² 1975 (1) ALT 311

³ 1993(3) Law Summary 101

number even now. It is a fact that the application land is a plotted area. It is also a fact I did not disclose before the MRO at the time of obtaining Ex.A-1 that application and a plotted area...”(emphasis supplied)

37. The above admissions made by late Anjan Kumar Goud *prima-facie* indicate that:

(a) the suit schedule land was plotted and sold by his father Punnaiah Goud in 1979-1986 and the land had ceased to be agricultural land by then;

(b) he did not disclose this fact to the Mandal Revenue Officer when he obtained pattadar passbooks and title deeds under the A.P.Rights in land and pattadar passbooks Act,1971.

38. Ex.P-33 is a letter admittedly submitted by Anjan Kumar Goud to the Revenue Divisional Officer, Ranga Reddy East Division on 21-07-2004, wherein he admitted that his father made plots of the land in Sy.Nos.204, 208 and 209 and that he was getting impleaded in the proceedings for issuance of ORC to some third party and intended to object to the same.

39. The learned Senior Counsel for appellants contended that the Court below ought not to have relied upon the statements allegedly made by Anjan Kumar Goud either in L.G.C.No.19 of 2010 or in Ex.P-33 dt.21-07-2004 as to plotting of land by his father Punnaiah Goud and sale of the said plots to purchasers. He contended that those statements cannot be taken into account under Section 33 of the Evidence Act, 1872. According to him, for the said provision of

law to apply, the proceeding should be between the same parties or their representatives in interest.

40. We are of the opinion that the said contention would have to be considered at the time of trial where the relevancy of Ex.P-29 deposition in L.G.C.No.19 of 2010 and Ex.P-33 letter of objection dt.21-07-2004 would be in issue, and it is not proper at this stage to express any opinion regarding application or otherwise of Section 33 of the Evidence Act, 1872.

41. In any event, the application of Section 33 of the Evidence Act, 1872 will arise only in the case of Ex.P-29 deposition of Anjan Kumar Goud as P.W.1 in L.G.C.No.19 of 2010 and would not arise in the case of Ex.P-33 because the same is not a statement given in a judicial proceeding as a witness.

42. In Ex.P-33 letter given by Anjan Kumar Goud as objection by late Anjan Kumar Goud to the Revenue Divisional officer, Hyderabad East Division on 21-07-2004, he admitted that his father made plots of the land in Sy.Nos.204, 208 and 209 and that he was getting impleaded in the proceedings for issuance of ORC to some third party and intended to object to the same.

43. In the light of this admission contained in Ex.R-33 by Anjan Kumar Goud, it is obvious that Exs.R-1 to R-3 pattadar passbook and title deeds could not have been issued to him or to the 1st appellant by the officials of the Revenue Department since the land was no longer agricultural land and that the same appear to

have been procured by playing fraud *prima facie* on the officials of the Revenue Department.

44. Exs.P-22 to P-27 which are pahanis for the period 2000-01, 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07 show that the land in Sy.No.209 had already been converted into plots even prior to the year 2000. Obviously by managing the Revenue Officials appellants had obtained Exs.R-1 to R-3 pattadar passbooks and title deeds and the approved layout from the 6th respondent long afterwards and also thus played fraud on the officials.

45. It is on the basis of these fraudulent pattadar passbooks and title deeds Exs.R-1 to R-3 that the 1st appellant obviously approached the 6th respondent for sanction of layout and obtained such sanction also on 30-04-2019 and final layout on 15-07-2019. Therefore even the said documents cannot *prima-facie* confer any right, title or interest on the appellants.

46. The further plea of the learned Senior Counsel appearing for appellants that M.M.R.Developers, purchasers from the appellants, have not been impleaded in the sale deed and there is a case of non-joinder of necessary parties and the Court below therefore ought to have rejected the suit itself, cannot be considered at this stage as any sale deed executed by appellants without right, title and interest in the property, which appears to have been already sold by Punnaiah Goud during his lifetime to third parties by making plots, *prima facie* cannot confer any title on the said purchaser. In any event we are not inclined to consider the said plea at this stage.

47. When Anjan Kumar Goud himself has admitted that his father Punniah Goud, during his lifetime, had divided the entire suit schedule land into plots and sold to various persons, the appellants cannot be allowed to take advantage of the death of said Punnaiah Goud and his son Anjan Kumar Goud, and interfere with the possession and enjoyment of the respondents 1 to 5 of the suit schedule properties.

48. For the aforesaid reasons, we find no merit in the appeals and they are accordingly dismissed with costs.

49. We make it clear that the observations made by us are only to dispose of these CMAs and that the Court below shall decide the suit uninfluenced by these observations/findings or those given in its orders dt.14.5.2020 in IA No.994 and 995 of 2019 in Os.No.863 of 2019.

50. Pending miscellaneous petitions, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

T. AMARNATH GOUD, J

Date : 18-09-2020
Vsv