

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Interlocutory Application No.2 of 2019

in

Interlocutory Application No.1 of 2019

in

Civil Miscellaneous Appeal No.634 of 2019

and

Civil Miscellaneous Appeal No.634 of 2019

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

This Civil Miscellaneous Appeal is filed by plaintiffs in Original Suit No.1157 of 2018 on the file of the II Additional District Judge, Ranga Reddy District, at Lal Bahadur Nagar.

2. The subject matter of the suit is an extent of Acs.19.32 gts. situate in Survey Nos.146 and 147 of Balapur Village under New Jalpally Municipality and Old Balapur Grampanchayat, Saroornagar Mandal, Ranga Reddy District.

3. The appellants herein filed the said suit against respondents for recovery of possession of the same; to declare certain documents as null and void and not binding on the appellants; for a permanent injunction restraining respondents from creating any third-party interest and changing the nature of the suit schedule property; to seek a direction to the Tahsildar, Saroornagar to delete the names of

respondent nos.1 to 42 and to incorporate the names of appellants and respondent no.43 in the Revenue Records from 1988 to 2018; and costs.

4. The appellants claim that the subject property belongs to one Late Umme Salma which she purchased under a registered sale deed dt.20.03.1348 Fasli from the previous owner and that she died on 29.02.1988 leaving behind appellants as her legal heirs. The relationship of appellants with the said Late Umme Salma is explained in detail in the plaint.

5. It is contended that the name of Late Umme Salma is reflected in the Revenue Record as pattedar; but respondent nos.1 to 42 are claiming title in respect of the said property basing on alleged sale deeds executed by one Chandraiah who had no right, title or interest therein; that the said Chandraiah claimed to have purchased the property from Late Umme Salma, but she did not sell the property to anyone during her lifetime; that she filed Original Suit No.614 of 1987 before the Principal District Munsiff, Hyderabad, East and North, Ranga Reddy District against one Hasan Bin Abdullah to recover possession of the properties which are subject matter of the said suit, and the said suit was decreed on 08.02.1988; that respondent nos.1 to 42 have no right over the suit schedule property; that the documents being relied upon by respondents are created and fabricated documents, and are not binding on the appellants; that

respondents have also obtained orders from the Revenue authorities behind the back of appellants which do not bind the appellants; and therefore, they are constrained to file the said suit for the above reliefs.

6. Along with the said suit, the appellants also filed Interlocutory Application No.1787 of 2018 in Original Suit No.1157 of 2018 under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 reiterating the contents of the **plaint** and sought a temporary injunction restraining respondents from changing / altering the nature of the suit schedule property or creating any third-party interests therein.

7. There was also an *ex parte* temporary injunction order against the respondents on 05.11.2018 by the Court below.

8. Counter-affidavit was filed by respondent nos.1 and 18 to the said Interlocutory Application opposing the said application.

9. In the counter-affidavit the 1st respondent contended that he is the absolute owner of the **suit schedule** property; that he is in possession and that the title holders had executed a sale deed bearing Document No.25914 of 2016 (Ex.R.18) in his favour; that the suit filed by appellants is barred by limitation; that appellants were not in possession of the suit schedule property at any point of time, and therefore, they are not entitled to seek injunction, and that they have no *prima facie* case; that there was an earlier suit, viz., Original Suit

No.1117 of 2017 filed by appellant nos.1, 2 and 3 before the II Additional District Judge, Lal Bahadur Nagar, Ranga Reddy District also seeking partition and separate possession; that the said suit is still pending; that Original Suit No.504 of 1987 was filed by Chandraiah against Late Umme Salma, and a judgment was obtained by him against her; that the appellants did not file the suit for recovery of possession within the period prescribed in the Limitation Act, 1963; that E. Chandraiah was in possession of the property from 1956 onwards as per the Pahanis and Adangals, and during his lifetime, he executed several registered documents transferring portions of the suit schedule property to the respondents.

10. Reference is also made to several other suits which are said to be pending, in respect of the subject property.

11. Before the Court below, the appellants examined and marked Exs.R.1 to R.38.

12. By order dt.12.06.2019, the Court below dismissed the said application. In its order, the Court below referred to the contentions of the parties and also to some of the documents filed by the parties. It observed that the name of Chandraiah was recorded in the Pahani even as 'occupier' from 1956-57 to 1970-71; that Late Umme Salma was the owner of the property since 1938, having purchased it under Ex.P.2 dt.20.03.1348 Fasli; that when admittedly Chandraiah died on 18.10.1987, he could not have filed Original Suit No.510 of 1988 on

30.12.1988, and that it appears that somebody impersonated him and got filed the said suit as well as Original Suit No.204 of 1988.

13. It observed that no suit was instituted by appellants against Chandraiah who was shown as 'occupier' since 1971-72 surprisingly, and that there appears to be a scam in regard to the suit schedule lands. It observed that respondent No.43 is not disclosing true facts and is trying to grab the suit schedule property because he claimed that there was an oral Gift in his favour in Original Suit No.373 of 2016 filed by him against Chandraiah and others seeking cancellation of the decree in Original Suit No.510 of 1988 and for cancellation of other registered sale deeds, and also sought for a permanent injunction; and that he himself executed Ex.R.38 Sale Deed dt.07.02.1974. It also observed that the appellants were aware of the fraud in respect of transactions which were taking place in relation to the suit schedule property, but they kept quiet for a number of years and they did not approach the Court with clean hands. It further held that since several documents were executed by 1st respondent to third-parties by way of registered sale deeds, unless a trial is conducted, it cannot be decided who played fraud against whom, and therefore, the application was liable to be dismissed.

14. Assailing the same, the present Civil Miscellaneous Appeal is filed.

15. Heard Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of Sri D. Madhava Rao, counsel for appellants; and Sri C. Rakee Sridharan, counsel for 1st respondent.

16. Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of Sri D. Madhava Rao, counsel for appellants, sought to contend that the order passed by the Court below is unsustainable; that the injunction sought was to preserve the property in dispute till legal rights are adjudicated since otherwise it would lead to multifarious litigations; that having held that an issue of fraud arises in the matter, the Court should have granted *ad interim injunction* to preserve the property for avoidance of multiplicity of proceedings; that the respondents cannot take inconsistent plea of acquisition of title from Late Umme Salma, and also plead adverse possession; and the conclusion of the Court below that the appellants did not approach the Court with clean hands, is unsustainable.

17. On the other hand, the counsel for 1st respondent supported the orders passed by the Court below.

18. Initially, this Court on 26.06.2019 gave a direction to respondents not to alienate the subject property till the next date of hearing.

Interlocutory Application No.2 of 2019:

19. Interlocutory Application No.2 of 2019 is filed to vacate the order dt.26.06.2019 passed in Interlocutory Application No.1 of 2019 in Civil Miscellaneous Appeal No.634 of 2019.

Consideration by this Court

20. We have heard the contentions of both sides.

21. From the facts narrated above, it is clear that appellants are claiming as legal heirs of Late Umme Salma who admittedly purchased the suit schedule property under a registered sale deed dt.20.03.1938 Fasli and they also contended that she died on 29.02.1988.

22. The instant suit had been filed, i.e., in August, 2018, more than thirty years after her death. No valid reason is assigned by appellants for the inordinate delay in initiating proceedings for recovery of possession from respondents.

23. The 1st respondent claimed to have purchased the property through a registered sale deed, Ex.R.18 on 04.10.2016. He and the other respondents are claiming the properties through Chandraiah.

24. Exs.R.9 to R.11-Sale Deeds filed by respondents show that Chandraiah died on 18.10.1987. But the Death Certificate was not filed in the Court below. These documents show that sales were affected by the legal heirs of Chandraiah claiming that he is the owner

of the property way back in the year 1997 itself. There appear to be also proceedings before the Revenue authorities as can be seen from Exs.R.3, R.4, R.13 and R.14 filed by respondents. At no point of time was any attempt made by appellants to get their names mutated in the Revenue Records. It appears that appellants are guilty of laches in asserting their rights over the suit schedule property, if any.

25. The relief of temporary injunction being an equitable relief, persons like the appellants, who are guilty of laches, cannot be granted such equitable relief.

26. No prejudice is caused to appellants if the said relief is denied because the doctrine of '*lis pendens*' would adequately protect their interests.

27. Therefore, we hold that the Court below has not committed any error of law or fact in refusing to grant temporary injunction in favour of appellants by dismissing I.A.No.1787 of 2018 in Original Suit No.1157 of 2018.

28. Accordingly, the Civil Miscellaneous Appeal fails and it is dismissed. No order as to costs.

29. The interim order granted on 26.06.2019 in Interlocutory Application No.1 of 2019 in Civil Miscellaneous Appeal No.634 of 2019 is vacated, and Interlocutory Application No.2 of 2019 is allowed.

30. It is made clear that whatever observations are made in this order or in the order passed by the Court below shall be ignored by the Court below while deciding the suit, and the suit shall be decided on its own merits uninfluenced by these observations.

31. As a sequel, miscellaneous petitions pending if any in this Civil Miscellaneous Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. AMARNATH GOUD

Date: 21.01.2020

Ndr/*

