

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

**I.A.NO.2 OF 2019 IN/AND C.M.A. NO.780 OF 2019**

**J U D G M E N T**

*(Per Honourable Sri Justice M.S.Ramachandra Rao)*

This Appeal is filed challenging the order dt.02.05.2019 in I.A.No.189 of 2019 in O.S.No.38 of 2019 on the file of the V Additional District Judge at Bhongir granting ad interim injunction restraining appellants 1 and 2 from alienating or changing the nature of the suit schedule property till the disposal of the main suit.

2. This Court granted interim suspension of the said order on 30.08.2019 in I.A.No.1 of 2019.

3. Seeking vacation of the interim suspension granted, the 1<sup>st</sup> respondent filed I.A.No.2 of 2019.

4. The appellants are defendants 1, 2 and 4 in O.S.No.38 of 2019 on the file of the V Additional District Judge at Bhongir.

5. The said suit was filed by the 1<sup>st</sup> respondent against the appellants for partition of the suit schedule property into three equal shares and to allot one such share to her.

6. It is the contention of the 1<sup>st</sup> respondent that the suit schedule property belongs to Narsaiah, the father of the 1<sup>st</sup> respondent and appellants 1 and 2, that he died in 1993, that he acquired the said

property during his life time by way of succession and by purchase by his hard earned money. According to her, on his death, she is entitled to  $1/3^{\text{rd}}$  share therein.

7. In paras 4, 9 and 10 of the written statement filed by appellants 1 and 2, they contend that the plaint schedule property is not joint property or ancestral property though in para 19 they say it is ancestral property.

8. If the property is ancestral property, the 1<sup>st</sup> respondent would have  $1/9^{\text{th}}$  share as she would get  $1/3^{\text{rd}}$  share in the share of her father if notional partition were to take place on the date of the death of her father. But if the property is self-acquired property of the 1<sup>st</sup> respondent's father, then she would have  $1/3^{\text{rd}}$  share along with appellants 1 and 2.

9. Since at more than one place in the written statement filed by appellants 1 and 2, they have stated that the suit schedule property is not ancestral property of Narsaiah, it has to be construed to be the self-acquired property of Narsaiah *prima facie*, in which event the 1<sup>st</sup> respondent would be entitled to  $1/3^{\text{rd}}$  share therein as per the provisions of Section 8 of the Hindu Succession Act, 1956.

10. Though the Court below had given *prima facie* a finding that the suit schedule property is ancestral property on the ground that the name of the father of appellants 1 and 2 and the 1<sup>st</sup> respondent is recorded in Adangals from 1955 to 2011, having regard to the plea taken by

appellants 1 and 2 in their written statement, *prima facie* this finding cannot be taken as correct. If the 1<sup>st</sup> respondent had a substantial 1/3<sup>rd</sup> share in the suit schedule property, then appellants 1 and 2 cannot not be allowed to alienate it pending disposal of the suit.

11. Therefore, we sustain the order passed by the Court below on 02.05.2019 in I.A.No.189 of 2019 in O.S.No.38 of 2019 on the file of the V Additional District Judge at Bhongir though for different reasons.

12. The Appeal is accordingly dismissed. I.A.No.2 of 2019 is allowed vacating the interim suspension granted on 30.08.2019 in I.A.No.1 of 2019. No costs.

13. Pending miscellaneous petitions, if any, in the CMA shall also stand dismissed.



**M.S.RAMACHANDRA RAO, J**

**T.AMARNATH GOUD, J**

**12<sup>th</sup> FEBRUARY, 2020**

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