

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR**

C.M.A.No.803 of 2019

ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

Heard Sri Vedula Srinivas, counsel for appellants and Sri A.Mahesh Kumar, counsel for respondents 1 to 4.

2. This Appeal is filed under Order XLIII Rule 1 CPC challenging the order dt.09.07.2019 in I.A.No.873 of 2019 in O.S.No.145 of 2019 of the XV Additional District & Sessions Judge-cum-XV Additional District & Sessions Judge-cum-II Additional Family Judge, Ranga Reddy District.

3. The appellants herein are defendants 5 & 6 in the above suit.

4. The said suit was filed by respondents 1 to 4 herein against the appellants and others for declaration of their title to the suit schedule property and for recovery of possession and to declare registered Sale Deeds bearing document No.s 2325/2014 and 14048/2016 as null and void, and not binding on them.

5. It is the contention of respondents 1 to 4/plaintiffs that they are joint owners and possessors of the suit schedule property; that it originally belongs to one V.Sudharshanam and was part of a larger parcel of land, which was alienated by said Sudharshanam and others under registered Sale Deed dt.23.03.1985 in favour of IDL Chemicals Employees Co-operative House Building Society

Limited; that the said Society subsequently alienated it to the wife of the 1st respondent by name Boga Savithri, who is also the mother of respondents 2 to 4, under a registered Sale Deed bearing document No.1437/1990 dt.01.02.1990; that the respondents 1 to 4 were residing in Maharashtra State and Boga Savitri died on 23.07.2011 leaving behind respondents 1 to 4 as her successors; and that they came to know only in the 1st week of August, 2018 that the appellants and others were trying to grab the suit schedule property and were proceeding with digging of pits and laying of foundations. They contended that they then investigated and came to know that there was a Sale Deed dt.04.04.1989 executed by V.Sudharshanam and two others through their GPA Holder in favour of 5th respondent/1st defendant in respect of the suit schedule property; that later the GPA dt.25.07.2008 was created by 6th respondent in favour of 7th respondent in respect of the suit schedule property; that a registered Sale Deed dt.20.02.2014 was also created by 6th respondent in favour of 8th respondent, and the 8th respondent in turn executed a registered Sale Deed on 25.10.2016 in favour of the appellants herein.

6. Along with the suit, respondents 1 to 4 filed I.A.No.873 of 2019 under Order XXXIX Rules 1 and 2 CPC for grant of an interim injunction in their favour restraining the appellants and others from altering or changing the nature of the suit schedule property.

7. The suit schedule property is described as under:

“SCHEDULE OF PROPERTY

All that the Plot bearing Nos 823 and 824-B, admeasuring 433.00 sq. yards., which is equivalent to 362.87 Sq.Mtrs., in Sy.No.202 situated at Kondapur Village, Serilingampally Mandal, Ranga Reddy District and bounded by :-

NORTH	:	PLOT Nos.801 & 802
SOUTH	:	30 FEET WIDE ROAD
EAST	:	30 FEET WIDE ROAD
WEST	:	PLOT NO.822 ”

They reiterated the contents of the written statement in the said application.

8. Counter affidavit was filed by the appellants disputing the contentions of the respondents 1 to 4. They alleged that they are the joint owners and possessors of the suit schedule property having purchased the same under registered Sale Deed dt.25.10.2016 from 8th respondent; that the 8th respondent acquired the property under registered Sale Deed dt.20.02.2014 from 7th respondent; that after purchase, appellants had constructed the compound wall and small room for watchman, and obtained Electricity Connection from SPDCL and the property was also assessed for municipal tax. It is also their contention that the suit schedule property was purchased by one Kasi Eshwari and she had filed an application before the Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad for rectifying the survey number(Sy.No.200), which was declared as non-surplus land in the holding of their vendor; and that later, a rectification was made on 22.09.2009 substituting Sy.No.202 instead of Sy.No.200. It is also alleged that respondents 7 and 8

had applied for regularization of the lay out and obtained such regularization from the GHMC and construction permission was also obtained from GHMC by them on 17.09.2018. It is contended that slabs for four floors had already been laid.

9. Before the Court below, respondents 1 to 4 marked Exs.P1 to P22, while appellants marked Exs.R1 to R9.

10. By order dt.09.07.2019, the Court below allowed I.A.No.873 of 2019. After referring to the contentions of the parties and the documents on record, the Court below observed that the appellants claimed that 5th respondent purchased the property from V.Sudarshanam on 04.04.1989 under Ex.P6, but the said document does not cover Sy.No.202; and though the appellants produced proceedings in G.O.Ms.No.591 dt.24.05.2006 said to have been rectified subsequently by G.O.Ms.No.1091 dt.20.10.2011, later an Endorsement had been issued on 16.10.2006 in application No.H2/455/534/05 (CC.No.H2/253/81) dt.22.09.2009 stating that the land which was allotted to the 5th respondent/1st defendant is in survey No.205. It therefore held that *prima facie* title of the respondents 1 to 4 has been established and if the appellants are permitted to continue with the construction, irreparable loss will be caused to respondents 1 to 4.

11. Challenging the same, this Appeal is filed.

12. Counsel for the appellants contended that *prima facie* case does not exist in favour of respondents 1 to 4/plaintiffs in the light of G.O.Ms.No.1091 dt.20.10.2009 issued by the State Government modifying G.O.Ms.No.591 dt.24.05.2006 and since the appellants had already obtained regularization of the layout/plots from the GHMC and have also got permission from the GHMC who constructed G + 4 floors in the suit schedule property, the impugned order cannot be allowed to stand.

13. Counsel for respondents 1 to 4 however supported the order passed by the Court below.

14. We have noted the contentions of both sides.

15. According to the plaint schedule, the suit schedule plots are located in Sy.No.202 of Kondapur Village, Serilingampally Mandal, Ranga Reddy District and the fact that this property along with other properties belong to V.Sudharshanam and others, is not in dispute. Ex.P18 Sale deed was executed by V.Sudharshanam and others in favour of IDL Chemicals Employees Co-operative House Building Society Limited in respect of land in Sy.No.s 201, 202, 204 & 205 of Kondapur village. The said Society thereafter, according to respondents 1 to 4, executed Ex.P1 Sale Deed dt.01.02.1990 in favour of the wife of the 1st respondent of the suit schedule plots.

16. It is important to note that the registered Sale Deed dt.04.04.1989(Ex.P6) in favour of the 5th defendant conveys title

in plot No.s 823 and 824 but in survey No.195, 200, 206 and 207 of Kondapur Village. There is no reference to Sy.No.202 in this document. According to the appellants, the 5th respondent is their predecessor in title.

17. The proceedings G.O.Ms.No.591 dt.24.05.2006 issued by the Government of Andhra Pradesh making allotment of excess surplus land under the ULC Act in favour of 5th respondent and others mentions only Sy.No.s 200, 201, 203 to 207 of Kondapur village but makes no reference to Sy.No.202.

18. Though G.O.Ms.No.1091 dt.20.10.2011 issued by the State Government mentions as an Errata and substitutes as regards the 5th respondent "Sy.No.202" for "Sy.No.200", even the said G.O. in its heading makes reference only to Sy.No.s 200, 201, 203 to 207 but not to Sy.No.202.

19. *Prima facie*, there is no material to show that land in Sy.No.202 was surplus ceiling land. Therefore, in G.O.Ms.No.1091 dt.20.10.2011, the Government could not have substituted as regards allotment of land to 5th respondent "Sy.No.202" in the place of "Sy.No.200" mentioned in G.O.Ms.No.591 dt.24.05.2006, and any such mention would not confer any right in land in Sy.No.202 in favour of 5th respondent which he could convey validly to respondents 6 to 8 or to the appellants, on the basis of which the appellants can claim *prima facie* title to the property.

20. Assuming for the sake of arguments that it was the same plot which was sold by V.Sudharshanam to the 5th respondent on 04.04.1989, which was also sold ultimately to the wife of the 1st respondent on 01.02.1990 under Ex.P1, the title had already been lost by V.Sudharshanam once he sold the property under Ex.P18 to the IDL Chemicals Employees Co-operative House Building Society Limited.

21. Therefore, we do not find any error in the order passed by the Court below in finding that respondent 1 to 4 have *prima facie* case and holding that balance of convenience is in their favour and irreparable injury would be caused to them if the appellants were allowed to proceed with the construction.

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

23. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S. RAMACHANDRA RAO, J

T.VINOD KUMAR, J

03rd September, 2019.

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