

HON'BLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION No.2335 OF 2019

DATE: 25.02.2020

Between:

Aileni Linga Reddy, s/o. Siddi Ram Reddy,
Aged 40 years, occu: Employee, r/o.H.No.2-6-90/6,
Jangaon Town, Jangaon district and others.

..... Revision Petitioners/
Respondents 1 to 3, 6,7,9 & 10

And

Meka @ Mekala Ravi Kumar, s/o. Siddilingam,
Aged 53 years, occu:Govt. Employee,
r/o.H.no.6-2-2/52/2, Balaji Nagar,
Jangaon town and district and others.

....Respondents/appellants /
Respondents 4, 5, & 8

This Court made the following:



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ORAL ORDER:

Heard learned counsel for revision petitioners Sri C.M.R.Velu and learned counsel for respondents 1 to 3 Sri K.Raghuveer Reddy.

2. Plaintiffs are respondents 1 to 3 herein; Defendants 1, 2, 3, 6, 7, 9 and 10 are revision petitioners and defendants 4, 5 and 8 are respondents 4 to 6 herein. For the sake of convenience, parties are referred to as arrayed in the suit.

3. This revision is filed against order dated 4.9.2019 in C.M.A.No.33 of 2017 reversing the decision of the trial Court and granting temporary injunction to plaintiffs.

4. Plaintiffs 1 and 2 claim as absolute owners and in possession of agricultural land admeasuring Ac.1.14 guntas covered by Survey no.40/A, Pemberthy village, Jangaon mandal acquired under registered sale deed bearing document no.659/2001 (Item 1) and plaintiffs 2 and 3 claim to be owners and in possession of land to an extent of Ac.1.14 guntas covered by survey No.40/B, Pemberthy village, Jangaon Mandal by virtue of registered sale deed document No.6033/2016 (Item 2). Alleging that though no way concerned with their land, defendants are interfering in their possession and enjoyment of suit schedule property, plaintiffs filed O.S.No.293 of 2016 in the Court of Principal Junior Civil Judge at Jangaon to grant decree of perpetual injunction. Defendants deny ownership and possession claim of plaintiffs and extent of land. Later plaintiffs restricted their claim in property in Item 1 only to Ac.1.09½ guntas.

5. Plaintiffs filed petition under Order XXXIX Rule 1 & 2 of CPC seeking temporary injunction to restrain defendants 1-10 from interference over the suit schedule property. Plaintiffs application to grant temporary injunction is rejected on the ground that plaintiffs made wrong declaration on total extent of suit schedule land on which injunction is sought. As they have come to Court with unclean hands, they are not entitled to equitable relief. The Memo filed by plaintiffs restricting the claim of land is rejected on the ground that it was filed after objection was raised in the counter and not at the first instance.

6. Aggrieved thereby, plaintiffs preferred C.M.A.No.33 of 2017 in the first Appellate Court. The first appellate Court accepted the plea of plaintiffs in giving up claim to certain extent of land shown in the schedule appended to suit in different survey numbers. The Appellate Court held that Exs.P1 and P2 can be assumed to be genuine documents. Further observed that the defendants are claiming land in survey nos.41, 42 and 43, but not in 40. Holding that the balance of convenience is in favour of plaintiffs, first appellate Court granted temporary injunction, however, restricting the operation of the injunction order to Ac.1.09 ½ guntas only.

7. Learned counsel for defendants/revision petitioners would submit that the lower appellate Court erred in reversing the finding arrived at by trial Court without assigning reasons to take contrary view and setting aside the well considered decision of the trial Court. An order passed by trial Court in exercise of its discretion cannot be interfered by appellate Court unless patent illegality is noticed. Merely because a different view is possible no ground to

interfere by appellate Court. Learned counsel placed reliance on the following decisions:

i) **Skyline Education Institute (Pvt.) Ltd. V. S.L.Vaswani and another¹**;

ii) **Mandali Ranganna and others etc. v. T.Ramachandra and others²**;

iii) **Kashi Math Samsthan and another v. Srimad Sudhindra Thirtha Swamy and another³**;

iv) **M/s. Gujarat Bottling Co. Ltd., and other v. Coca Cola Company and others⁴**;

v) **Sri Dasnam Naga Sanyasi and another v. Allahabad Development Authority, Allahabad and another⁵**;

vi) **Indukuru Ramachandrareddy and another v. Agnigundala Venkata Ranga Rao and another⁶**;

vii) **Laxmi Khadi Bhandar v. Agricultural Development Branch and another⁷**; and

viii) **Mathew Phillips v. P.O. Kosh⁸**.

8. He would further submit that by filing memo plaintiffs were trying to fill the gaps in the evidence and same is not permissible.

9. Learned counsel for plaintiffs would contend that the trial Court erred in not appreciating submission of plaintiffs and erroneously rejected by referring to extent of land shown in the schedule. He would submit that total extent of land purchased by plaintiffs 1 and 2 by way of registered sale deed dated 19.03.2001 was Ac.1.14 guntas and total extent of land purchased by plaintiffs 2 and 3 by way of registered sale deed is Ac.1.14 guntas, put together Acs.2.28 guntas. Though 4½ guntas land was acquired, but the same was not deleted from the pattadar passbook and, therefore, while drafting the plaint erroneously total extent as

¹ AIR 2010 SC 3221

² AIR 2008 SC 2291

³ AIR 2010 SC 296

⁴ AIR 1995 SC 2372

⁵ AIR 1995 Allahabad 418

⁶ 2012 (4) ALT 569

⁷ AIR 1991 Patna 273

⁸ AIR 1996 Mysore 74

originally stood was mentioned. It was a *bona fide* mistake and not deliberate or wilful. Having noticed the same, Memo was filed restricting the claim only to Ac.1.09½ guntas. The trial Court failed to appreciate this aspect and proceeded on wrong premise to reject the application to grant temporary injunction. He would submit that dispute between plaintiffs and defendants does not concern extent of land, but one of boundary. Learned counsel placed reliance on the decision in **Puvvadi Subramanyam and another v. Jangam Jayalakshmi and others**⁹.

10. Granting temporary injunction pending trial in the suit is a discretionary relief. The Trial Court is required to consider whether plaintiffs have made out *prima facie* case, whether balance of convenience is in their favour and whether not granting the relief of temporary injunction would seriously prejudice them and cause irreparable hardship and damage. More importantly it also requires to consider the conduct of the parties. Once such discretion is exercised and the trial Court grants or refuses to grant injunction the parameters to review such decision by appellate Court are very limited.

11. Cardinal principle is, appellate Court should be loathed to interfere with decision made by trial Court in valid exercise of discretion. Unless it is proved that trial Court grossly erred in appreciating evidence on record and erroneously refused to exercise discretion. On the scope interference in the discretion exercised by the trial Court in granting/refusing equitable relief,

⁹ 2019 (5) ALD 9 (AP)

the law as it emerged from precedent decisions sighted at the bar are considered hereunder:

11.1. On parameters to grant temporary injunction, in **Mandali Ranganna** (supra), Hon'ble Supreme Court emphasized giving due consideration to the conduct of parties. Supreme Court held,

“18. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz. existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.”

11.2. In **M/s. Gujarat Bottling Co.Ltd.**, (supra), Supreme Court held,

“50. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. ***Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame.*** Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.”

(emphasis supplied)

11.3. In **Indukuru Ramachandrareddy** (supra), this Court observed that the injunction relief being an equitable remedy, a party who does not come to Court with clean hands is not entitled for injunction relief.

11.4. In **Skyline Education Institute** (supra), Supreme Court held as under:

“16. The ratio of the above noted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.”

11.5. In **Puvvadi Subramanyam** (supra), learned single Judge of A.P. High Court succinctly put the principles governing consideration of injunction applications. It reads as under:

“12. The three principles for grant of injunction are well settled and do not require repetition. As per the settled case law on the subject, the plaintiff must prove—

- (a) *Prima facie* case viz., that there is a serious arguable point meaning a question to be tried and a case for a trial with a fair chance of success.
- (b) *Balance of convenience* : who amongst/between the plaintiffs or defendants needs protection and whose rights are likely to be infringed or who is likely to sustain greater harm if the injunction is not granted.
- (c) *Irreparable loss* : a loss to the plaintiff which cannot be adequately compensated in terms of money.”

12. From the orders of 1st appellate Court, two aspects are noticed. Firstly, the Court appears to have been swayed by the plea of plaintiffs that though larger relief was sought in the suit and in the I.A., the plaintiffs have agreed to restrict the prayer to smaller extent and same is valid in view of provision in Order XXIII Rule 1 of CPC. Secondly, while plaintiffs claim their land in Sy.No.40,

defendants claim their land in Sy.Nos.41, 42 and 43. Therefore, as defendants are claiming land in different survey numbers the plaintiffs prayer to grant injunction on land in Sy.No.40 need not be rejected.

13. It is thus seen that the first appellate Court has not considered the opinion expressed by trial Court on conduct of plaintiffs in not disclosing the correct extent of land in their possession and trying to mislead the Court and they have not come with clean hands.

14. The question for consideration is whether the trial Court erred in not considering the evidence on record to grant injunction within the parameters to grant temporary injunction and swayed by the issue of wrong description of extent of land claimed by plaintiffs. Whether showing larger extent of land than what was claimed to be in their possession was deliberate and intended to mislead the Court and gain undue advantage and thus to hold the plaintiffs as not prosecuting the litigation *bona fide* and, therefore, are disentitled to claim equitable relief. It is thus necessary to consider the effect of such declaration made in the first instance.

15. Two pieces of land is shown in the suit schedule, (i) Ac.1.14 guntas in Survey Nos.40/A/1 and 40/A/2 and (ii) Ac.1.09½ in Survey Nos.40/B/A and 40/B/AA. On this extent of land, petitioners sought for temporary injunction. In the affidavit filed in support of the I.A., there is no whisper that physically there is less extent of land in Survey No.40/A, but not Ac.1-14 guntas.

16. In the counter-affidavit, the defendants not only disputed the claim of plaintiffs on owning of land in Survey No.40 *per se*, they have also disputed the claim of plaintiffs on extent of land mentioned in the suit as Ac.1.14 guntas in Survey No.40/A. According to them, in the revenue records, only land to an extent of Ac.1.09 guntas was shown and a false claim is made by the plaintiffs. In fact, they have disputed the claim of plaintiffs on alleged purchase made by them. According to them, lands in Survey Nos.40 to 43 belong to Mohammed Gulam Ahmed Gori and Mohammed Gulam Mahemood Gori and 40 years back they sold the land to their vendors namely Manga Yadaiah, Manga Muthaiah and Manga Sathaiah, vide registered sale deed dated 24.12.1979. It is asserted that on measuring the land, it was found that there was less extent of land available in physical possession. Therefore, they got registered the land in Survey No.43 only. It is further alleged that taking advantage of entries made in revenue records showing land in Survey No.40, a registered deed of conveyance was obtained in the year 2001, with the active collusion of their vendor, even though there is no land available physically. Thus, the defendants primarily oppose the claim of plaintiffs on alleged possession of land in Survey No.40, location and boundaries and alternatively asserted that even according to the revenue records, the total extent of land they can own in Survey No.40/A is Ac.1.09 guntas, but not Ac.1-14 guntas. No immediate steps were taken by the plaintiffs to amend the pleadings in the plaint and in the I.A., but at the stage of hearing filed Memo stating that they are restricting the prayer for grant of temporary injunction to Ac.1.09 guntas.

17. Thus, the opinion expressed by the trial Court that the plaintiffs have not come with clean hands and are not entitled to equitable relief ought to have been seen on over all facts on record.

18. In paragraph No.17, the first appellate Court observed that there is dispute regarding the exact location of petition schedule property and its boundaries. The appellate Court also observed that it is the duty of the appellants/plaintiffs to prove the boundaries by taking necessary steps such as appointment of Advocate Commissioner and examining the revenue officials. In other words, even according to the appellate Court, there is no clarity on location of suit schedule property and its boundaries. However, the appellate Court proceeded to accept the contention of plaintiffs to grant injunction only on the ground that while plaintiffs are claiming their land in Survey No.40 the defendants are claiming their land in Survey Nos.41 to 43 and as land is located in different survey numbers, plaintiffs are entitled to temporary injunction.

19. While holding so, the appellate Court failed to appreciate that the defendants were not only disputing the location, boundaries and the extent of land, but perforce, according to them, in Survey No.40/A, no such land was physically available to the original pattadar. That being so, and as the appellate Court also accepted the stand of the defendants that there is dispute regarding exact location of petition schedule property and boundaries, it ought to have considered the observations of the trial Court also that plaintiffs have not come to the Court with clean hands and therefore, are not entitled to claim equitable relief of injunction. In the facts of this case, the appellate Court erred in

overruling the decision of the trial Court and granting relief to plaintiffs.

20. In the facts of this case, it cannot be said that the trial Court erred in not granting injunction.

21. The order of first appellate Court is not sustainable and it is accordingly set aside and Civil Revision Petition is allowed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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