

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.2291 OF 2019

Dated:21.01.2020

Between:

Arjula Jyothi, W/o. Madhusudan
Reddy, Age 34 years, Occ: Household,
R/o. Tharigoppula Village, Narmetta
Mandal, Jangaon District

.. Petitioner

And

Damera Thomas @ Thama, S/o. Somaiah,
Aged 48 years, Occ: Agriculture and others

.. Respondents



This Court made the following:

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ORDER:

Heard learned counsel for the petitioner and Sri V. Mallik, learned counsel representing Sri Balla Ravindranath, learned counsel for the respondents.

2. Petitioner/plaintiff herein instituted O.S.No.10 of 2015 in the Court of the Additional Junior Civil Judge, Jangaon, praying to grant permanent injunction restraining the defendants from interfering or entering into the suit schedule property. She also filed I.A.No.12 of 2015 seeking to grant *ex parte* ad interim injunction. The trial Court, by order dated 09.08.2017, on elaborate consideration of the respective submissions and the documents relied upon by petitioner/plaintiff and defendants, respectively, allowed the said I.A. restraining the respondents 1 to 10 from interfering into the peaceful possession and enjoyment of the petition schedule property admeasuring 1936 sq. yards of land in Survey No.276 of Tharigoppula Village, Narmetta Mandal, Warangal District. Aggrieved by the injunction order granted by the trial Court, the defendants filed C.M.A.No.60 of 2017. The V Additional District Judge – cum - II Fast Track Court, Warangal at Jangaon, vide order dated 26.07.2019 reversed the decision of the trial Court and allowed the C.M.A. Aggrieved thereby, this Civil Revision Petition is filed.

3. According to learned counsel for the petitioner/plaintiff, since petitioner/plaintiff is in possession of the subject property all along and in recognition of the possession vested in her with *prima*

facie claim of title to the property in issue, the trial Court passed orders granting injunction in her favour restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property. Therefore, the order of the appellate Court vacating the injunction order granted by trial Court is not sustainable.

3.1 Learned counsel for the petitioner/plaintiff would submit that the appellate Court erred in holding that the defendants ought to have been impleaded in W.P.No.10973 of 2015 and W.A.No.1465 of 2017 and the orders were obtained by the petitioner/plaintiff behind the back of the defendants is not binding on the defendants. He would submit that the first appellate Court erred in going into the transactions between the petitioner/plaintiff, defendants and other parties.

3.2. He would further submit that the order of the first appellate Court in holding that the *ex parte* decree obtained by the vendor of the petitioner in O.S.No.39 of 2008 cannot be enforced as long as a decree is passed by the competent Court is erroneous. The decree is binding on the parties and cannot be ignored. He would submit that in view of the directions issued by this Court in W.P.No.10973 of 2015 and W.A.No.1465 of 2017, petitioner/plaintiff is in possession and she has established her *prima facie* title to the property and therefore the trial Court, having satisfied with the parameters to grant injunction has exercised its discretion in granting injunction. No justification is made for reversing the said decision.

4. Per contra, Sri V. Mallik, learned counsel representing Sri Balla Ravindranath, learned counsel for the defendants, would submit that the documents placed on record would show that long ago, petitioner/plaintiff has sold the very same property and there is no inch of land left with her and having sold the same, she cannot claim to be in possession of the subject property. As the petitioner failed to show *prima facie* title to the property after the sale transactions made by her, she cannot contest the title claim over the said property against the defendants. The suit itself is not maintainable on this ground.

4.1 He would further submit that the subject land was an assigned land and alienation in assignment lands is prohibited by the Telangana Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act, 1977) and therefore petitioner cannot claim to be the legal owner of the subject property and her ownership claim is not valid. The parameters to grant injunction were not satisfied and therefore the first appellate Court rightly allowed the C.M.A. preferred by the defendants.

4.2 He would further submit that the petitioner/plaintiff prayed for obtaining orders from this Court in the Writ Petition and Writ Appeal and has not disclosed the sale transactions undertaken by her and therefore fraud vitiates all proceedings. The orders passed by the learned single Judge in the Writ Petition and further orders passed by the Division Bench in the Writ Appeal would show that the petitioner/plaintiff was not in possession of the subject property and the factum of sale transactions undertaken by her long ago disposing of the entire extent of land was not disclosed

and therefore as the orders were obtained by her by playing fraud, equities do not come to the aid of the petitioner/plaintiff and the said order cannot be relied upon to claim possession over the suit schedule property.

5. In the following two decisions, the Supreme Court determined the scope of exercise of discretion by trial Court while granting injunction and scope of interference by appellate Court when such discretion was exercised by trial Court.

5.1 In **Skyline Education Institute (Pvt.) Ltd. v. S.L. Vaswani and another**¹, the 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.”

5.2 In **Mandali Ranganna and others etc. v. T. Ramachandra and others**², the Supreme Court held as under:

“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.

Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be

¹ AIR 2010 SC 3221

² AIR 2008 SC 2291

entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one. We are not however oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the Court is imperative. Contentions raised by the parties must be determined objectively.”

6. When a decree is passed by the competent Court unless and until the said decree is set aside by the appellate Court, the same is binding on the parties. O.S.No.39 of 2008 was instituted by the vendor of the petitioner/plaintiff and some of the defendants herein are the defendants to the said suit. The prayer sought in the said suit was to grant permanent injunction restraining the defendants therein from interfering with the peaceful possession of the suit schedule property. The trial Court granted the decree restraining the defendants therein from interfering into the peaceful possession and enjoyment of the suit schedule property. The decree granted in the said suit is still subsisting and is binding inter parties and having purchased the very same land, petitioner/plaintiff steps into the shoes of plaintiff in O.S.No.39 of 2008 and as a corollary, he is entitled to rely on the decree granted in the said suit.

7. From the reading of the orders passed by the Courts below, it appears that the authorities of the Government allege that the purchase made by the petitioner/plaintiff is in violation of the provisions of the Act, 1977. On that ground the order of resumption was passed on 04.04.2015. Petitioner/plaintiff challenged the said order of resumption in W.P.No.10973 of 2015.

Learned single Judge of this Court, having found that opportunity was not afforded to the petitioner, though petitioner claimed to be in possession, allowed the Writ Petition and also granted liberty to the respondents to proceed in accordance with law. However, learned single Judge ordered maintenance of *status quo* obtaining as on the date of judgment till such exercise is completed. Aggrieved thereby, petitioner/plaintiff filed W.A.No.1465 of 2017. The Division Bench of this Court, having found that admittedly the petitioner/plaintiff was found to be in possession of the subject land and unless due procedure is followed the possession cannot be disturbed, ordered for her continuous possession till further steps are taken.

8. It is also apparent from the reading of these judgments that the State is claiming the subject land as belonging to it and assigned to Sri Y. Balaiah and having noticed that Y. Balaiah sold the land in contravention of the provisions of the Act, 1977 to E. Venkataiah order of resumption of land was passed.

9. Suffice to note that petitioner/plaintiff purchased the subject property from E. Venkataiah. Whether assignment conditions were violated and whether E. Venkataiah purchased the land in violation of the provisions of the Act, 1977, are matters for consideration by the competent authority and it appears, no further steps are taken pursuant to the judgments rendered by this Court in the Writ Petition and the Writ Appeal.

10. Learned counsel for the respondents/defendants sought to contend that even earlier to 2015, there was order of resumption and in view thereof, by the time the sale transaction took place

between E. Venkataiah and the petitioner/plaintiff, the land was not vesting in E. Venkataiah and therefore it cannot be said that the sale was validly made in favour of the petitioner/plaintiff, even assuming that petitioner was not aware of the status of the land. Whether the transaction between the plaintiff and her vendor was validly made and whether the plaintiff has subsequently sold the land, are the issues which require consideration after full trial and therefore at this stage, no opinion can be expressed on these aspects.

11. Having regard to the background facts and litigation, *prima facie*, the first appellate Court erred in holding that not making the defendants as parties to the Writ Petition and the Writ Appeal would amount to obtaining favourable orders behind their back. The further observations of the appellate Court with regard to the validity of the decree passed in O.S.No.39 of 2008 are also not sustainable.

12. Admittedly, defendants do not claim any right over the property but only claim to be in possession of a Government land and contests the claim of petitioner/plaintiff on the ground that no manner of right vests in petitioner/plaintiff and the parameters for grant of injunction are not satisfied.

13. I have carefully considered the respective submissions. From the perusal of the order of the trial Court, it is seen that on assessment of evidence placed on record and the orders passed by this Court in the Writ Petition as well as in the Writ Appeal, the trial Court found *prima facie* that the petitioner/plaintiff is in possession of the subject property and therefore the injunction can

be granted in her favour. The said orders are passed in valid exercise of discretion and on consideration of the material on record.

14. Having regard to the assessment of material on record, I am of the opinion that petitioner/plaintiff has satisfied the ingredients required to grant temporary injunction and the view taken by the trial Court in I.A.No.12 of 2015 while granting injunction requires to be sustained and the decision of the first appellate Court in C.M.A.No.60 of 2017 is not sustainable.

15. The Civil Revision Petition is accordingly allowed. The order dated 26.07.2019 passed in C.M.A.No.60 of 2017 on the file of V Additional District Judge – cum - II Fast Track Court, Warangal at Jangaon, is set aside. The order dated 09.08.2017 passed in I.A.No.12 of 2015 in O.S.No.10 of 2015 on the file of Additional Junior Civil Judge, Jangaon, is restored. It is made clear that there is no expression of opinion on merits. It is open to the respective parties to lead evidence before the trial Court and the trial Court shall consider the respective submissions and decide the issues for consideration uninfluenced by the observations made hereinabove. There shall be no order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date:21.01.2020

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