

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE K.LAKSHMAN

CMA.No.1142 of 2019

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

This appeal is filed by the appellants challenging the order dt.20.08.2019 in IA.No.13 of 2019 in OS.No.1 of 2019 on the file of the Family Court-cum-Additional District and Sessions Court, Nizamabad.

2. The appellants are plaintiffs in the above suit.

3. The said suit was filed for partition and separate possession of plaintiff 'A' to 'E' schedule properties on 03.01.2019 contending that the plaintiff schedule properties belong to joint family of the plaintiffs and the respondents 1 & 2, and that by playing fraud on the 1st respondent, the 3rd respondent purchased item-E of the plaintiff schedule. It is contended that the 1st respondent started life as a weaver, who used to weave silk cloths on handlooms and that he thereafter did business in provisions from 1962 to 1980, and later started business in a rice mill by name M/s Ravindranath Rice Mill. It is contended that contributions were made by all the family members to the running of the rice mill and with the income there from several properties were purchased in and around Armour, but the 1st respondent was still acting as Kartha of the joint family and the properties were purchased in his name. It is contended that the plaintiff E schedule property was purchased on 15.03.1989 and it

was joint family property, and it was sold to the 3rd respondent on 24.09.2018.

4. According to the appellants, such a sale could not have been affected by the 1st respondent in favour of the 3rd respondent.

5. In the suit, the appellants sought for a preliminary decree of partition and also for a declaration that the registered sale deed dt.24.09.2018 executed by the 1st respondent in favour of the 3rd respondent was fraudulently obtained.

6. Along with the suit, the appellants filed I.A No.13 of 2019 under Order XXXIX Rules 1 and 2 CPC for a temporary injunction pending suit restraining the respondents 1 to 3 from alienating A to E schedule properties, by reiterating the contents of the plaint.

7. A counter affidavit was filed by the respondents 1 and 2 supporting the appellants.

8. The 3rd respondent, however, disputed the contentions of the appellants. He denied that the property of E schedule is a joint family property or was in joint possession of the appellants and the respondents 1 and 2. He pointed out that all the sons of the 1st respondent are employed and residing separately from the 1st respondent and his wife with their families, and they have not contributed any amount for acquisition of any of the suit properties by the 1st respondent and the suit schedule properties are the self acquired properties of the 1st respondent. He contended that the 1st respondent is the absolute owner of the plaint E

schedule property, that the name of the 1st respondent was recorded in the pahanies as exclusive owner thereof, and on 24.08.2018 the 1st respondent executed a registered sale deed in his favour. According to the 3rd respondent, the suit was filed by the appellants in collusion with other respondents to extract additional amounts from the 3rd respondent and therefore, the temporary injunction sought by the appellants could not be granted.

9. Before the Court below, the appellants marked Exs.P-1 to P-36.

10. By order, dt.20.08.2019, the Court below dismissed I.A. No.13 of 2019.

11. After hearing the contentions of both sides, the Court below observed that the appellants ought to have established that E schedule property is a joint family property and that the 3rd respondent shall make attempts to alienate the same to third parties. It considered Exs.P-6 and P-7 and held that E Schedule property was purchased by the 1st respondent, and the consideration for such purchase was paid by the 1st respondent and there is nothing in these documents to show that the consideration was paid out of joint family funds. It also stated that in Ex.P-1 there is a clear admission that the 1st respondent is an absolute owner of the E Schedule property and the same was in his possession and enjoyment as absolute owner, and there is *prima facie* no documentary evidence to show that the E schedule property is a joint family property. It also observed that there is no mention in the affidavit of the appellants

in the Court below that the 1st respondent tried to alienate the A to D schedule properties. It also pointed that the appellants did not plead that the 1st respondent is not the Kartha of the joint family and he was trying to alienate A to D schedule properties without any legal necessity, or not for discharge of any antecedent debts and or that the properties are being wasted or destroyed. It also held that the relief of injunction cannot be granted to restrain the Kartha from alienating the joint family property, and a member of the joint family, has no right to interfere with the act of the Kartha in the management of the joint family affairs.

11. Assailing the same, this appeal is filed.

12. Though counsel for the appellants sought to contend that the plaint schedule properties are joint family properties of the appellants and respondents 1 and 2, it is not in dispute that the appellants 1 and 2 as well as the 2nd respondent were employed and were not shown to be involved in the Rice Mill business being undertaken by the 1st respondent. Exs.P-6 and P-7 *prima facie* show that the purchase of E Schedule property by the 1st respondent was by paying consideration by the 1st respondent only and there is no recital in the said document that it was paid out of joint family funds. Even Ex.P-1 sale deed executed on 24.09.2018 by the 1st respondent in favour of 3rd respondent mentions that the property is the absolute property of the 1st respondent. Therefore, *prima facie*, it has to be held that the E schedule property is not the joint family property, and if it was the absolute property of the 1st respondent and the 1st respondent had alienated it to the 3rd respondent under Ex.P-1, the appellants cannot

have any say in the said matter or restrain the 3rd respondent from alienating the same.

13. As regards items A to D of the plaint schedule properties, there is not even an averment by the appellant that the 1st respondent was trying to alienate the said properties. Even assuming for the sake of arguments that the said properties constitute joint family properties, *prima facie* the 1st respondent, as Kartha of the said joint family, would be entitled to alienate the same for legal necessity and for discharge of antecedent debts and he cannot be prevented from doing so. There is also no allegation that A to D schedule properties were in danger of being wasted, damaged and destroyed. In the circumstances, we find no error either on fact or law in the impugned order passed by the Court below warranting interference by this Court in the appeal.

14. Accordingly, the appeal fails and the same is dismissed at the admission stage. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

January 02, 2020.
Gra/KTL