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

**CMA No.s 62 and 65 OF 2021**

**COMMON JUDGMENT:** *(Per Sri Justice M.S.Ramachandra Rao)*

1. These two appeals are filed challenging the order dt.20.01.2021 in IA.No.s 190 and 191 of 2020 in OS.No.57 of 2020 on the file of the I Additional District & Sessions Judge, Medak at Sangareddy.

2. Appellant in both these appeals is the plaintiff in the suit.

3. The said suit was filed on 22.07.2020 by the appellant against the respondents for partition of the suit schedule property into two equal shares and for allotment of ½ share each to herself and to the 1st respondent and to declare a Development Agreement-cum-GPA dt.19.08.2015 executed by the 1st respondent in favour of the 2nd respondent as *null* and *void,* and not binding upon the appellant.

4. The subject matter of the suit is an extent of Acs.6.23 guntas situated at Patancheru Town & Mandal, Sangareddy District.

**The case of the appellant/plaintiff :**

5. The case of the appellant in the suit is that her father, by name D.Narsimha Reddy, had two wives by name Naga Laaxmi and Padmamma; that both the appellant and the 1st respondent

are the children born to D.Narsimha Reddy through his second wife Padmamma.

6. It is the allegation of the appellant that her father purchased the subject land in the name of the 1st respondent for the benefit and welfare of his second wife and her children; that he died in 1995; that Padmamma died on 08.03.2019; and as the legal heirs of Narsimha Reddy, the appellant and 1st respondent are entitled to equal shares. It is also stated that the 1st respondent had approached the appellant and her mother in the year 2015, took them to the office of the Sub-Registrar, Sangareddy and got their signatures on a document stating that it was a partition deed, though it was a Development Agreement-cum-GPA executed by 1st respondent in favour of 2nd respondent on 19.08.2015. She contended that that they were hoping that the 1st respondent would partition the property but the 1st respondent kept on postponing, and in January, 2020, she came to know that the 1st respondent sold away the suit schedule property to third parties and so she filed the suit.

**<u>IA.No.190 of 2020 and IA.No.191 of 2020</u>**

7. Along with the suit, the appellant filed IA.No.190 of 2020 under Order XXXIX Rules 1 and 2 of CPC for grant of interim injunction restraining the respondents from alienating the suit schedule property and IA.No.191 of 2020 to restrain the

respondents from changing the nature of the suit schedule property till the disposal of the suit. She reiterated the contents of the plaint in these IAs.

**The stand of respondents 1 & 2 in the IA.No.s 190 & 191 of 2020**

8. Counter affidavits were filed by respondents 1 & 2 in the said IAs disputing the contentions of the appellant.

9. They contended that the suit schedule property was purchased in the name of the 1st respondent and consideration was paid by the maternal grand father of the 1st respondent alone to the vendor; in the Kasara Pahani of 1954-55 also the 1st respondent is mentioned as the owner and possessor of the suit schedule property; and the father of the appellant and 1st respondent had never claimed during his life time that the property was purchased by him for the welfare of his 2nd wife and his children.

10. It is contended that the pattadar pass book and title deeds were also issued to the 1st respondent by the revenue authorities and it is his exclusive property and none else has any right therein.

11. The 1st respondent contended that he was unable to cultivate the land and gave it for development to 2nd respondent after informing the appellant and his mother, and they also told the 2nd respondent that they have no right over the property,

and they in fact witnessed the Development Agreement-cum-GPA Ex.P7 dt.19.08.2015.

12. The 2nd respondent filed counter supporting the stand of the 1st respondent and contending that after execution of Development Agreement-cum-GPA, they converted the subject property into non-agricultural land on 23.03.2018 and obtained permission from HMDA for construction of residential villas on 26.04.2018. It stated that 50 villas have been constructed, and construction had proceeded substantially by the date the suit was filed, and he had invested about Rs.6 Crores for the development of the land. It contended that seeing the development activities some vested interests instigated the appellant to file the speculative suit to harass the 1st respondent and the 2nd respondent for unlawful gain.

**The order dt.20.01.2021 in IA.No.s 190 and 191 of 2020**

13. In the Court below, appellant marked Ex.s P1 to P9 and respondents marked Ex.s R1 to R10.

14. By order dt.20.01.2021, the Court below dismissed I.A.No.s 190 and 191 of 2020.

15. After extracting the contentions of the parties and referring to the documents filed, the Court below noted that the subject property stood in the name of the 1st respondent since 70 years; and that the Development Agreement executed by the

1st respondent in the name of the 2nd respondent on 19.08.2015 contains the signatures of the appellant and her mother.

16. Though it noted the contentions of the appellant that the property was purchased in the name of the 1st respondent when he was 6 years old and had no capacity to purchase the same, it noticed the plea of the 1st respondent that it was purchased in his name by his maternal grand father and not by his father D.Narsimha Reddy and it was continued in the name of the 1st respondent from 1950s. It observed that at no point of time, the appellant had raised any claim in respect of the suit schedule property; that the appellant had not pleaded that she was ever in possession or joint possession of the suit schedule property at any point of time; that there was also children born to D.Narsimha Reddy through his first wife, but they were not added as parties to the suit, and other properties of D.Narsimha Reddy were also not included in the suit schedule. It held that if the 2nd respondent had already incurred Rs.6 Crores of expenditure, which was not disputed by the appellant, no prejudice would be caused to the appellant if she is not granted interim relief in these applications, but if such relief is granted, more prejudice would be caused to the respondents.

**The present CMAs:**

17. Assailing the same, these appeals are filed.

18. Heard Sri G.Vasantha Rayudu, counsel for the appellant and Sri Vedula Srinivas, Senior Counsel appearing for respondents 1 & 2.

19. Counsel for the appellant reiterated the stand of the appellant that the property was purchased in the name of the 1st respondent when he was 6 years old by their father D.Narsimha Reddy for the benefit of the children of his 2nd wife by name Padmamma and herself, and the appellant is therefore entitled to 50% share in the property, and the respondents cannot be allowed to deal with the property and knock it away in its entirety denying her, her half share in the property.

20. Sri Vedula Srinivas, Senior Counsel appearing for both the respondents contends that for the last 70 years, only the name of the 1st respondent was reflected in the revenue records and at no point of time, the name of the appellant was recorded in the revenue records as being in possession; and in fact the property was purchased in the name of the 1st respondent by the money provided by the maternal grand father and the father of the parties had not contributed any amount for such purchase.

**<u>The consideration by the Court:</u>**

21. The fact that property stands in the name of the 1st respondent for more than 70 years is not disputed by the counsel for the appellant.

22. The question, whether the father of the parties, D.Narsimha Reddy, contributed the consideration for such purchase of the subject property or the maternal grand father of the 1st respondent, would have to be gone into in the trial, because the documents under which the suit schedule properties are purchased have not been filed by the appellant in order to come to any *prima facie* view.

23. That apart, the Development Agreement/Ex.P7 dt.19.08.2015 was attested by the appellant and her mother by coming to the office of the Sub-Registrar, Sangareddy, but she choose to file the suit only in July, 2020, almost 5 years later, in which period of time the 2nd respondent had made substantial investments and made constructions in the property.

24. The conduct of the appellant in keeping quite from 1950s till 2020 to file the suit, and also her conduct in keeping quite for almost 5 years after the Development Agreement was executed by the 1st respondent in the name of the 2nd respondent on 19.08.2015, in our opinion, *prima facie,* disentitles her to interim relief.

25. In the absence of any material to show that she was a co-owner, *prima facie* case does not appear to be with the appellant. Even if she were to be a co-owner, absence of proof

of joint enjoyment over 70 years, *prima facie,* indicates possible ouster.

26. Since we do not find any *prima facie* case in favour of the appellant, we do not see any reason to interfere with the order dt.20.01.2021 in IA.No.s 190 and 191 of 2021 in OS.No.57 of 2020 passed by the Court below.

27. Accordingly, both the appeals fail and they are dismissed at the admission stage. However, the Court below shall decide the suit uninfluenced by any observations made in its order dt.20.01.2021 in IA.No.s 190 and 191 of 2021 in OS.No.57 of 2020 or in this order passed by this Court. No order as to costs.

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

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

**T.VINOD KUMAR, J**

11th August, 2021.
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