

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

**PRESENT
THE HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
THE HONOURABLE SMT JUSTICE P. SREE SUDHA**

C.M.A. NO: 433 OF 2021

Appeal under Order XLIII Rule 1 of CPC against the Order/ decree in IA No.303 of 2021 in OS No.208/2021 dated 01/10/2021 on the file of the Court of the II Additional District Judge, Ranga Reddy District at L.B.Nagar.

Between:

M/s. Indukuri Life Spaces LLP, A Limited Liability Partnership Having its office at 973/A, Road No. 49, Jubilee Hills, Hyderabad - 500033, Represented By its Authorised Signatory Sri.Basani Sanjay Reddy.

...APPELLANT/PETITIONER/ PLAINTIFF

AND

1. Sri. C. Kumar Goud, S/o. C. Satyanarayana Goud, Aged about 65 years, Occ. Business, R/o. 2-2-76/25, R.K. Nagar, Bagh Amberpet, Hyderabad-013.
2. Sri. C. Rakesh Kumar Goud, S/o. C. Kumar Goud, Aged about 34 years, Occ. Business, R/o. 2-2-76/25, R.K. Nagar, Bagh Amberpet, Hyderabad-013.
3. Sri. C. Mukesh Kumar Goud, S/o. C. Kumar Goud, Aged about 30 years, Occ. Business, R/o. 2-2-76/25, R.K. Nagar, Bagh Amberpet, Hyderabad-013.
4. Sri. C. Krishna Goud, S/o. C. Satyanarayana Goud, Aged about 49 years, Occ. Business, R/o. 2-2-76/25, R.K. Nagar, Bagh Amberpet, Hyderabad-013.
5. Sri. C. Abhilash Goud, S/o. C. Krishna Goud, Aged about 26 years, Occ. Business, R/o. 2-2-76/25, R.K. Nagar, Bagh Amberpet, Hyderabad-013.

...RESPONDENTS/RESPONDENTS/DEFENDANTS

IA NO: 2 OF 2021

Petition under Order XXXIX Rule 1 & 2 R/w. Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to grant ad-interim injunction against the respondents, restraining the respondents, their henchmen or agents from interfering with the peaceful possession of the plaintiff in the petition schedule property,

SCHEDULE OF THE PROPERTY

All that the land total admeasuring Ac. 20.07.51 Gts (equivalent to 81697.04 Sq. meters), in Survey Nos. 438, 439, 440 Part, Situated at Pasumamla Village formerly under Hayathnagar Revenue Mandal, presently under the Pedda Amberpet Municipality and Adullapurmet Revenue Mandal, Ranga Reddy District, NORTH . 100' Radial Road connecting Nagole to Gowrelly Junction ORR and Neighbours and in Sy. No. 440/P and 439 SOUTH . Neighbours land in Sy. No. 443 EAST . Neighbours land in Sy. No. 440/P, 436 and 438/P WEST . Neighbours land in Sy. No. 440/P, 441 and 442

**For the Appellant : M/s. CHANDRASEN LAW OFFICES
SRI B.NAMRATA REDDY, ADVOCATES**

For the Respondents : SRI A.VENKATESH, Advocate

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
THE HON'BLE SMT. JUSTICE P. SREE SUDHA

CIVIL M SCELLANEOUS APPEAL No.433 of 2021

JUDGMENT : per HON'BLE SMT. JUSTICE P. SREE SUDHA)

This Civil Miscellaneous Appeal is preferred against the order and decree dated 01.10.2021 in I.A.No.303 of 2021 in O.S.No.208 of 2021 passed by the II Additional District Judge, Ranga Reddy District at L.B. Nagar, dismissing the application filed by the appellant/plaintiff for grant of interim injunction restraining the respondents therein from interfering into the peaceful possession of the petition schedule property.

2. The appellant herein is the plaintiff and respondents herein are the defendants before the trial Court. For the sake of convenience, the parties are referred to as they were arrayed in the suit before the trial Court.

3. In the grounds of appeal, the appellant/plaintiff contended that the trial Court without giving any weightage to Exs.P-1 to P-50 dismissed I.A.No.303 of 2021 in O.S.No.208 of 2021 and it ought to have considered that the petition schedule property admeasuring Acs.20.07.51 gts. in Sy.Nos.438, 439 and

440/part and the respondents/defendants are claiming only an extent of Acs.2-16 gts. in Sy.No.439, situated in Pasumamilla Village, Pedda Amberpet Municipality and Abdullapurmet Revenue Mandal, Ranga Reddy District. The plaintiff also stated that, admittedly, Syed Mohammed Farooq Miya is the owner of the extent claimed by the defendants and the defendants have no valid title over the suit schedule property, but the plaintiff's predecessors in the title had purchased the said extent directly from the legal heirs of the Syed Mohamood Farooq Miyan. The plaintiff further stated that the HMDA had approved the layout of the plaintiff over the petition schedule property and the same is placed before it under Ex.P-49 and that the plaintiff has clear title and right over the suit schedule property through multiple registered sale deeds Exs.P-1 to P-3 and registered Development Agreement-cum-Irrevocable GPA under Exs.P-4 to P-25 covering the total extent of land and thus, the plaintiff has right over the suit schedule property. The plaintiff further submits that it has invested crores of money, time and energy into the project on the suit schedule property and had acquired the required permissions from the HMDA under Ex.R-49 and RERA authorities under Ex.P-50. The plaintiff also stated that though the defendants have no Conveyance Deed, they are claiming ownership from Ex.R-23,

which appears to be a conditional Agreement of Sale on a plain paper, but they have not filed any evidence to prove subsequent development/transactions with respect to Ex.R-23. It is also contended that though the defendants are claiming that their names are reflecting in the pahanies, they failed to prove their possession over the extent of suit schedule property. The plaintiff further contended that the defendants, on one hand, claiming to be the owners of the land under Ex.R-23, on the other hand, they are claiming adverse possession in respect of the said land, which is a disputed question of fact. It is well settled law that adverse possession can be considered only in case of hostile possession i.e. without the consent of the owner. It is contended that as per the photos under Ex.P-21 filed by the defendants the construction activities are going on in the petition schedule property and they are in possession of the suit schedule property and that even the defendants have admitted the same and the said admission itself is sufficient to grant injunction in its favour. The plaintiff also contended that though the defendants are claiming that the conversion of land in Sy.No.439 was done behind their back, they did not intimate any steps against the conversion order and, therefore, sought this Hon'ble Court to set aside the dismissal of the impugned order dated 01.10.2021.

4. The suit in O.S.No.208 of 2021 is filed by the plaintiff - M/s. Indukuri Life Spaces LLP, a Limited Liability Partnership, Hyderabad, against the defendants seeking to grant perpetual injunction restraining the defendants, their henchmen, subordinates, workmen or any other persons claiming through or acting under them from interfering in any manner with the plaintiff's peaceful possession and enjoyment over the suit schedule property. During the pendency of the suit, I.A.No.303 of 2021 is filed by the plaintiff for grant of interim injunction restraining the defendants from interfering into the peaceful possession of the suit schedule property and the same was dismissed by the trial Court vide order dated 01.10.2021.

5. The plaintiff was entrusted with a total extent of land admeasuring Acs.20.07.51 gts. (equivalent to 81697.04 Sq. meters) in Sy.Nos.438, 439 and 440/part, situated in Pasumamilla Village, Pedda Amberpet Municipality and Abdullapurmet Revenue Mandal, Ranga Reddy District. It also acquired the land admeasuring Acs.11.01 gts. in Sy.No.438 and an extent of Acs.7-28 gts. in Sy.No.440/part and other extent of lands in Pasumamilla Village, Abdullapurmet Revenue Mandal, Ranga Reddy District. The flow of title regarding the land in Sy.No.439 is that, originally one Syed Mohamood

Farooq Miyan was the sole and absolute owner of the land admeasuring Acs.2-16 gts in the said survey number. After the death of Syed Mohamood Farooq Miyan, his legal heirs have divided the said property among themselves and that some of them have executed the registered Agreement of Sale-cum-GPA dated 09.12.2019, bearing document No.3392/2020; and with respect to their share of land admeasuring Ac.1-16 gts. some of the legal heirs have registered Agreement of Sale - cum-GPA dated 21.12.2019, bearing document No.3393/2020; and with respect to the land admeasuring Ac.0-25 gts. in favour of M/s. Sri Aditya Infra, represented by its Managing Partner. They inturn filed application for conversion of the above said land from agricultural usage to non-agricultural usage vide proceedings dated 28.09.2020. Later, the legal representatives of Syed Mohamood Farooq Miyan also sold out their retained extent of land to an extent of Ac.0-15 gnts to M/s. Sri Aditya Infra by way of registered sale deed vide document No.1806/2021, dated 08.02.2021 and sale deed document No.1809/2021, dated 08.02.2021 and for an extent of Ac.0-13 gts. of land and Ac.0-02 gts. respectively, and thus, M/s. Sri Aditya Infra has alienated the land to an extent of Acs.2-16 gts. (equivalent to 11616 Sq. Yards) in Sy.No.439/part in Pasumamilla Village and enjoying the possession. Thereafter,

the plaintiff had presented an application dated 21.07.2020 to HMDA for approval of the residential draft Layout and while the said application is under process for approval by the HMDA and also got registered the ongoing project in the suit schedule property under the name and style of "INDUKURI LAKE SHORE" with the Telangana State Real Estate Regulatory Authority, the defendants without any right, title and interest over the suit schedule property started interfering and disrupting the functioning of the development activities upon the suit schedule property, therefore, the plaintiff filed the present application for grant of interim injunction restraining the defendants from interfering into the peaceful possession and enjoyment of the suit schedule property.

6. On the other hand, the defendants filed counter affidavit denying petition averments of the plaintiff. They admitted that Syed Mohamood Farooq Miyan was the pattadar and possessor of the land to an extent of Acs.2-16 gts. in Sy.No.439 situated in Pasumamilla Village, but denied execution of sale deed by the legal representatives of Syed Mohamood Farooq Miyan. They further stated that there is no document filed by the plaintiff or contents of the documents filed by the plaintiff establishes that they are the legal heirs of late Syed Mohamood Farooq Miyan

and got divided the land in Sy.No.439. It is further stated that when the defendants are in physical possession and cultivation of the land admeasuring Acs.2-16 gts. since more than 50 years, the question of dividing the land between the alleged legal heirs of late Syed Mohamood Farooq Miyan would not arise and all the documents filed by the plaintiff are bogus and created one. They mainly contended that their paternal grandfather, namely Chetty Ramaiah had purchased an extent of Acs.2-16 gts. in Sy.No.439 of Pasumamilla Village, Abdullapurmet Revenue Mandal, Ranga Reddy District, from the original pata dar Syed Mohamood Farooq Miyan in the year 1966 and since then, they were in uninterrupted physical possession of the land and cultivating the same till his death in the year 1977. Subsequent to his death, his seven sons were put in physical possession and they were cultivating the said land and the name of grand-father of the defendants, namely Chetty Ramaiah was clearly recorded in the Revenue records in possessory column since 1966 to till his death in the year 1977 and the certified copies of pahanies from 1967 to 2019-2020 clearly establish about the physical possession of the defendants and their agnates in respect of the land in an extent of Acs.2-39 gts. in Sy.No.439. They also contended that the panchanama conducted by the Tahsildar, Hayathnagar

Mandal, through the Revenue Inspector, in the year 2000 clearly disclose that the defendants and their agnates are cultivating the said land and enjoying physical possession of the said land till date. They further submitted that the persons claiming to be the legal representatives of late Syed Mohamood Farooq Miyan without their knowledge and in collusion with the Revenue authorities got mutated their names in the Revenue records as Pattadars and obtained pass books and title deeds. They also contended that it is settled principle of law that under ROR Act, the pattadar, who is not in possession of the land, is not entitled for issuance pass books and title deeds. They also contended that when the defendants are in possession of the land to an extent of Acs.2-16 gts. in Sy.No.439, there is no necessity to interfere with the alleged development work of the plaintiff. It is also contended that the plaintiff in collusion with the alleged land owners is trying to grab the land of the defendants and it is only a developer and GPA holder of the land owners and, therefore, the present suit filed by the plaintiff is not maintainable. They further stated that one Syed Isa Khundmiri and Syed Kunja Fathima jointly filed a suit in O.S.No.983 of 2016 on the file of IV Additional District Judge, Ranga Reddy District, for partition and cancellation of GPA in respect of the land in Sy.Nos.48 to 51, 53, 54, 81, 82, 92, 93, 96,

423, 424 and 439 of Pasumamilla Village, Abdullapurmet Revenue Mandal, Ranga Reddy District, the defendants filed impleading petition in the said suit and the same is coming up for counter. It is also contended that the defendants also submitted an application dated 20.04.2019 before the Tahsildar, Abdullapurmet Revenue Mandal, for issuance of Pass Books in respect of land admeasuring Acs.2-16 gts. in Sy.No.439 of Pasumamilla Village, and also an application dated 08.01.2020 requesting not to mutate the names of any other persons as they are in possession of the land for more than 50 years. The defendants, therefore, sought to dismiss the above said application.

7. Now it is for this Court to see whether the trial Court erred in not granting the injunction or not?

8. The plaintiff is the absolute owner and possessor of the land in an extent of Acs.20-07.51 gts. in Sy.No.438, 439 and 440/part of Pasumamilla Village, Abdullapurmet Revenue Mandal, Ranga Reddy District, whereas the defendants are claiming to be the owners of the land to an extent of Acs.2-16 gts. in Sy.No.439. Therefore, the main dispute is only with regard to an extent of Acs.2-16 gts. The plaintiff contended that it has purchased the land from the legal heirs of Syed

Mohamood Farooq Miyan, who is the absolute owner of the land, whereas the defendants stated that their paternal grandfather purchased the said land in the year 1966 from Syed Mohamood Farooq Miyan and from then onwards, his legal heirs and agnates are in possession of the said land and also cultivating the same and that their names were also recorded in the pahanies from 1966 to 2019-20 in possessory column and, as such, the alleged sale deeds executed by the legal representatives of Syed Mohamood Farooq Miyan are not valid and binding on them. Admittedly, the plaintiff filed sale deeds, which are registered documents and thus, *prima facie*, they proved title and possession over the suit schedule property. The trial Court observed that the defendants filed pahanies and are in possession of the land and granted injunction in their favour. No doubt, they filed pahanies but they did not file pattadar pass books. When the defendants claim to be residing in the suit schedule property for more than 50 years, why they did not submit an application for issuance of pattadar pass books till 20.04.2019 is not explained by them.

9. Learned counsel for the plaintiff would contend that the defendants have no title deeds over the suit schedule property and the Revenue records filed by them cannot be treated as title

deeds. However, the trial Court held that the defendants have proved their possession over the suit schedule property.

10. It is the settled principle of law that in a suit for injunction, *prima-facie*, the parties must establish their possession over the suit schedule property. In a decision reported in **MARIA MARGARIDA SEQUEIRA FERNANDES V/s. ERASMO JACK DE SEQUEIRA**¹ the Hon'ble Apex Court held in para 70, which is extracted hereunder:

'It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

- (a) who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents;
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;
- (f) how he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method;
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;
- (h) if taken on rent, licence fee or lease—then insist on rent deed, licence deed or lease deed;

¹ (2012) 5 SCC 370

- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.;
- (j) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and
- (k) basis of his claim that not to deliver possession but continue in possession.'

11. Further, though the defendants stated that they are in possession of Ac.2-16 guntas of land and filed pahanies to prove the same, they have not stated on which side of the survey number they possessed Ac.2-16 guntas and that they have also not pleaded that the plaintiff encroached into their land. It is the case of the defendants that they are in possession of Acs.2-16 gts. of land in Sy.No.439, but they cannot disrupt the construction activities in an extent of Acs.20.07.51 gts. in Sy.Nos.438, 439 and 440/part, situated in Pasumamilla Village, Abdullapurmet Revenue Mandal, Ranga Reddy District. If at all any construction is going on in the suit schedule property, it is for them to approach the appropriate Forum for necessary relief.

12. It is to be noticed that both the parties are claiming ownership in an extent of Acs.2-16 gts. in Sy.No.439, but the

plaintiff herein filed only suit for grant perpetual injunction restraining the defendants, their henchmen, subordinates, workmen or any other persons claiming through or acting under them from interfering in any manner with the plaintiff's peaceful possession and enjoyment over the suit schedule property. On one hand, the defendants stated that it has purchased the land from the original pattadar way back in the year 1966 and are in possession of the said land and also cultivating the same. In order to prove the same, they mainly relied upon Ex.R-23 - Original Agreement in Urdu dated 02.09.1966 along with English translated copy. A perusal of the said document shows that it was executed by Syed Mohamood Farooq Miyan in favour of Sri Chetty Ramaiah for an extent of Ac.2.10 guntas for his own needs and necessities for a total sale consideration of Rs.1,500/- and received Rs.100/- as advance with a condition that the advance amount of Rs.400/- should be paid within one month and the balance amount of Rs.1,000/- also should be paid within one month to register the property in the name of vendee, otherwise the Agreement of Sale will be treated as cancelled. But, the defendants failed to file the said sale deed registered by the original pattadar in the name of paternal grandfather after payment of the entire amount. Moreover, Ex.R-23 is executed for an extent of Ac.2.10 guntas

but not Ac.2.16 guntas. As such, they also contended that they perfected title by adverse possession. The issue of ownership in respect of the suit schedule property between the plaintiff and defendants is to be decided by appropriate Court in a suit for declaration of title.

13. The plaintiff is engaged in the business of real estate and constructing and developing the lands including the suit schedule property in Sy.No.439 by obtaining necessary permissions from the concerned departments. He also obtained permission for conversion of land from agricultural usage to non-agricultural usage on 28.09.2020. The plaintiff has taken up the construction activity in an extent of Acs.20.07.51 gts. in Sy.Nos.438, 439 and 440/part, and the extent of land in dispute is only an extent of Acs.2-16 gts. in Sy.No.439. The plaintiff gave an application to HMDA on 21.07.2020 and HMDA approved draft residential layout with housing under gated community (with compound wall) in the entire suit schedule property on 09.07.2021 and unless the defendants are not restrained from interfering with the possession of the plaintiff over the suit schedule property, irreparable loss would be caused to the plaintiff. However, the trial Court without considering the documents filed by the plaintiff and only by

relying upon the pahanics filed by the defendants held that the defendants are in possession of the suit schedule property and granted injunction against the plaintiff. The said order dated 01.10.2021 is not proper and is liable to be set aside

14. In the result, this Civil Miscellaneous Appeal is allowed setting aside the order and decree dated 01.10.2021 in I.A.No.303 of 2021 in O.S.No.208 of 2021 and the respondents/defendants are restrained from interfering in to the peaceful possession of the suit schedule property. No order as to costs.

15. Miscellaneous applications pending, if any, shall stand closed.

//TRUE COPY//

Sd/-K.SRINIVASA RAO
JOINT REGISTRAR
GJB
SECTION OFFICER

- To
1. The II Additional District Judge, Ranga Reddy District at L.B.Nagar.
 2. One CC to M/s Chandrasen Law Office Advocate (OPUC)
 3. One CC to Sri / Venkatesh, Advocate (OPUC)
 4. Two CD Copies
 5. One Spare Copy
- Kj.

HIGH COURT

DATED:31/12/2021

JUDGMENT

CMA.No.433 of 2021



ALLOWING THE CM A WITHOUT COSTS.

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[Signature]
20/01/2022