

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

CIVIL MISCELLANEOUS APPEAL No.80 of 2022

JUDGMENT: (Per Hon'ble Dr.SA,J)

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of C.P.C, is filed by the appellants/respondent Nos.1, 2, 4, 5, 6, 8 and 9/defendant Nos.1, 2, 4, 5, 6, 8 and 9, aggrieved by the order and decree, dated 25.01.2022 passed in I.A.No.1913 of 2019 in O.S.No.986 of 2019 by the learned IX Additional Chief Judge, City Civil Court, at Hyderabad, wherein the subject Interlocutory Application filed by the respondent Nos.1 and 2 herein/petitioners/plaintiffs under Order XXXIX Rules 1 and 2 of C.P.C seeking to grant *ad interim* injunction restraining the appellants herein/respondent Nos.1, 2, 4, 5, 6, 8 and 9/defendant Nos.1, 2, 4, 5, 6, 8 and 9 and respondent Nos.3, 4 and 5 to 10 herein/respondent Nos.3, 7 and 10 to 15/defendant Nos.3, 7 and 10 to 15, or persons through them from proceeding with construction activity or changing the nature of petition schedule property, was disposed of by the Court below directing both parties to maintain *status quo* during the pendency of the suit proceedings.

2. We have heard the submissions of Sri J.Prabhakar, learned Senior Counsel appearing for Sri M.A.K.Mukheed, learned counsel for the appellants, Sri P.Raja Sripathi Rao, learned counsel for the respondent Nos.1 and 2, Sri Shyam S. Agrawal, learned counsel for the respondent Nos.3 and 6 and perused the record. As per the cause title, respondent Nos.3 to 10 are not necessary parties to this appeal.

3. The appellants herein are respondent Nos.1, 2, 4, 5, 6, 8 and 9 in the subject I.A.No.1913 of 2019/defendant Nos.1, 2, 4, 5, 6, 8 and 9 in the O.S.No.986 of 2019; the respondent Nos.1 and 2 herein are the petitioners in the subject I.A.No.1913 of 2019/plaintiffs in O.S.No.986 of 2019; and the respondent Nos.3, 4 and 5 to 10 herein are the respondent Nos.3, 7 and 10 to 15 in subject I.A.No.1913 of 2019/the defendant Nos.3, 7 and 10 to 15 in the O.S.No.986 of 2019.

4. The learned Senior Counsel appearing for the appellants/ respondent Nos.1, 2, 4, 5, 6, 8 and 9 would contend that the respondent Nos.1 and 2 herein/petitioners/plaintiffs are the children of respondent Nos.6 and 9 herein but the subject suit for partition and separate possession was filed by their paternal grandfather-Quader Hussain on behalf of respondent Nos.1 and

2/plaintiffs claiming as a Guardian, who has no locus standi. It is further contended that when the father is alive, mother cannot be appointed as natural guardian of respondent No.1 and accept the gift on her behalf. Under Mohammedan law, the father of a minor is the natural guardian. In this regard, the learned Senior Counsel relied upon the decisions in **Syed Shah Ghulam Ghouse Mohiuddin and others v. Syed Shah Ahmed Mohiuddin Kamisul Quadri (died) by L.Rs and others¹** and **Gulamhussain Kutubuddin Maner v. Abdulrashid Abdulrajak Maner and others²** and contended that under Mohammedan Law, when the father is alive, he is only the legal guardian of the minor and no other relation is entitled to act as guardian of the minor. The respondent Nos.6 to 9 herein colluded with the grandfather of respondent Nos.1 and 2 herein and got filed the subject suit. The respondent Nos.1 and 2 herein have no right, title or interest in the suit schedule property. Respondent Nos.1 and 2 set up a claim in the subject suit for partition and separate possession stating that under Ex.P.2-registered gift settlement deed dated 03.12.2016, 160 sq.yards of land was gifted to them by their grandfather,

¹ (1971) 1 Supreme Court Cases 597

² (2000) 8 Supreme Court Cases 507

wherein each of them got 80 sq.yards but the said property is different from the property given for development under Ex.P.1-development agreement-cum-general power of attorney dated 29.05.2018. The respondent No.6 along with his mother i.e, respondent No.7 acquired 486 sq.yards + 80 sq.yards of land, respectively, total admeasuring 566 sq.yards under Ex.P.2-gift settlement deed dated 03.12.2016. The respondent No.6 acquired 385 sq.yards of land under Ex.P.3-settlement deed dated 09.06.2016 from Mohammed Rasheeduddin and out of said land, the respondent No.6 gifted 162 sq.yards to his sister and wife i.e, respondent Nos.8 and 9, respectively vide Ex.P.4-gift settlement deed dated 09.12.2016 and retained the remaining land i.e, 223 sq.yards with him. Under Ex.P.1-Development Agreement-cum-GPA, the respondent Nos.6 to 9 entered into Development Agreement with the appellants and respondent Nos.3 to 5 in respect of total land admeasuring 951 sq.yards (566 sq.yards + 162 sq.yards + 223 sq.yards) and as such the land of respondent Nos.1 and 2/plaintiffs admeasuring 160 sq.yards is different and it is not covered by Ex.P.1-Development Agreement-cum-GPA. Therefore, seeking partition of the property covered under Ex.P.1 admeasuring 951 sq.yards, is illegal and arbitrary. In Ex.P.1-development agreement dated

29.05.2018, the property claimed by the respondent Nos.1 and 2/plaintiffs is specifically omitted and there are recitals to that effect. Though an extent of 951 sq.yards of land was given for development, GHMC issued sanctioned plan for 887.48 sq.yards only and the remaining land is left vacant. There is specific clause in the Development Agreement (clause 34) that if any dispute arises, such dispute shall be resolved through the Arbitrator. Respondent Nos.6 to 9 filed Arbitration Application No.104/2021 and the same is pending. They are unsuccessful in obtaining any interim order against the appellants from proceeding with the construction. Further, respondent Nos.6 to 9 also filed Arbitration Application under Section 9 of Arbitration and Conciliation Act, before the III Additional Chief Judge, City Civil Court, Hyderabad, vide O.P.No.86/2019, wherein an order was passed not to alienate the property. The grandfather of the respondent Nos.1 and 2 having received an amount of Rs.1,87,00,000/- before entering into the subject Development Agreement dated 29.05.2018 towards advance refundable amount and executed a receipt, started litigation and harassing the appellants by way of lodging false complaint before the Municipal Corporation. It is also contended that the respondent Nos.6 to 9 filed W.P.No.21349/2019 before this Court, wherein

this Court *vide* order dated 27.09.2019 was pleased to pass an order directing to take necessary action on the explanation given by the respondent Nos.6 to 9 and ensure that construction over the subject property is made in accordance with sanctioned plan. The respondent Nos.6 to 9 being unsuccessful in the Writ Petitions and O.P.No.86/2009 had resorted to filing of the present suit by the minors (respondent Nos.1 and 2) through their paternal grandfather Quader Hussain. The respondent Nos.6 to 9 were unsuccessful in getting the permission cancelled. They have resorted to multiple tactics to restrain the appellants from raising construction in terms of the development agreement dated 29.05.2018 and approved plan. The appellants are making construction in accordance with the approved plan. After the commencement of construction and when multiple structures are raised over the suit property, a false claim has been set out by the grandfather of respondent Nos.1 and 2, who received substantial amount. The appellants had invested huge money and raised construction upto the level of stilt + 3 floors. On instructions, learned Senior Counsel submitted that the appellants would not claim any equities in the event of respondent Nos.1 and 2/plaintiffs are successful in obtaining a decree for partition and the respondent Nos.1 and 2 can claim

their share on the constructed premises. The subject suit is a collusive suit. It is filed only to harass the appellants/developers. The respondent Nos.1 and 2 and respondent Nos.6 and 9 belong to one family. The grandfather and the parents of the respondent Nos.1 and 2/plaintiffs are operating through minors (respondent Nos.1 and 2) in order to harass and cause irreparable loss to the appellants/developers. In this regard, learned Senior Counsel relied upon the decision in **Mandali Ranganna and others v. T. Ramachandra and others**³, wherein it was held that while considering an application for grant of injunction, the Court should not only take into consideration the basic elements in relation thereto viz. existence of *prima facie* case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. The learned Senior Counsel thus prayed to allow the appeal and set aside the impugned order and decree dated 25.01.2022 passed in I.A.No.1913 of 2019 in O.S.No.986 of 2019 by the Court below.

5. On the other hand, the learned counsel for the respondent Nos.1 and 2/plaintiffs would contend that under Ex.P.2-gift

³ (2008) 11 Supreme Court Cases 1

settlement deed dated 03.12.2016 bearing document No.6449/2016, the respondent Nos.1 and 2/plaintiffs were given an extent of 80 sq.yards each, totaling 160 sq.yards and the respondent No.6/father of the respondent Nos.1 and 2, was given 486 Sq.yards and respondent No.7/wife of the Quader Hussain (mother of respondent No.6) was given 80 sq.yards. The aforesaid properties are part and parcel of House bearing No.6-2-1 part(old) and New Municipal No.6-2-1 & 1/1, admeasuring 726 sq.yards, situated at Lakdikapul, Hyderabad. Under the said gift settlement deed dated 03.12.2016, the ownership and possession of the donees is joint. So the house bearing No.6-2-1 part(old) and new Municipal No.6-2-1 & 1/1, is in joint ownership and possession of the respondent Nos.1 and 2 and their father (respondent No.6) and grandmother (respondent No.7). The subject property (land admeasuring 160 sq.yards) was gifted for the welfare of minors i.e, respondent Nos.1 and 2/plaintiffs. The respondent Nos.6 and 9 assured the grandfather of the respondent Nos.1 and 2/plaintiffs that they will protect the property. The respondent Nos.1 and 2/plaintiffs are not parties to the Ex.P.1-Development Agreement dated 29.05.2018 nor their grandfather had received any amount from the developers. There is no collusion in between the grandfather

of the respondent Nos.1 and 2/plaintiffs and other respondents. Since the land admeasuring 160 sq.yards was given to the respondent Nos.1 and 2/plaintiffs (each 80 sq.yards) for their welfare and development, the respondent Nos.6 and 7 have no right to give the said property for development. Though there is an order dated 12.11.2019 passed in W.P.No.24673 of 2019 (Ex.R.2) to complete the construction as per the sanctioned plan, that will not bind the minors i.e, respondent Nos.1 and 2/plaintiffs. The respondent Nos.1 and 2/plaintiffs have not suppressed any material facts. When the grandfather of the respondent Nos.1 and 2/plaintiffs has gifted the property for the welfare of the minors (respondent Nos.1 and 2) and when the parents of the respondent Nos.1 and 2 i.e, respondent Nos.6 and 9 failed to protect the property gifted to the respondent Nos.1 and 2, the grandfather of the respondent Nos.1 and 2/plaintiffs has every right to represent the respondent Nos.1 and 2/plaintiffs as their next friend and file the subject suit. Therefore, filing of the subject suit by the respondent Nos.1 and 2/minors being represented by paternal grandfather, to protect their interest cannot be faulted and it cannot be considered as a ground to dismiss the subject Interlocutory Application, which is filed for *ad interim* injunction. It is submitted that in the

approved layout plan, the land admeasuring 160 sq.yards was shown on the extreme Northern side but in fact the property of the respondent Nos.1 and 2 is part and parcel of House bearing No.6-2-1 part(old) and new Municipal No.6-2-1 & 1/1. The nature of the suit is for partition and separate possession and if the construction work is proceeded with and completed by the developers, that will jeopardize the interest of the minors (respondent Nos.1 and 2) and causes irreparable loss to them and the very object of filing of the suit will be defeated. The Court below having dealt with the contentions raised by both sides was pleased to direct both parties to maintain *status quo* during the pendency of the suit proceedings. Since the respondent Nos.1 and 2 are not parties to the development agreement dated 29.05.2018, the submission of the appellants that they will not claim any equities in the event of respondent Nos.1 and 2/plaintiffs succeeding the subject suit, is unsustainable and ultimately, prayed to dismiss the appeal.

6. The learned counsel for the respondent Nos.3 and 6 would submit that respondent Nos.6 and 9 are parents of the respondent Nos.1 and 2/plaintiffs. There is no partition and separate possession in respect of the properties belonging to the

respondent Nos.1 and 2. Without there being such partition, no structures over the undivided property shall be made. If the construction work is proceeded with, the interest of the respondent Nos.1 and 2 will be jeopardized and ultimately prayed to dismiss the appeal.

7. In view of the above rival submissions, the point that arises for determination in this appeal is:

“Whether the Court below is justified in passing the impugned order and decree, dated 25.01.2022 in I.A.No.1913 of 2019 in O.S.No.986 of 2019?”

8. **POINT:** Ordinarily, the three main principles which govern the grant or refusal of injunction are (a) prima facie case; (b)balance of convenience; and, (c) irreparable injury. In grant and refusal of injunction, pleadings and documents play vital role. In the broad category of *prima facie* case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must adjudge the existence or otherwise of a *prima facie* case. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the

plaintiffs, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. Only on weighing competing possibilities or probabilities of likelihood of injury, an injunction would be granted. The Court should not interfere only because the property is a very valuable one. In dealing with such matters, the Court must make all endeavours to protect the interest of the parties by balancing the conveniences and inconveniences. In addition to the basic principles, temporary injunction, being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the Court with clean hands.

9. In the instant case, the respondent Nos.1 and 2/plaintiffs are being represented by their paternal grandfather-Quader Hussain, who executed Ex.P.2-gift settlement deed dated 03.12.2016, bearing document No.6449/2016, and settled the scheduled property i.e, House bearing No.6-2-1 part(old) and New Municipal No.6-2-1 & 1/1, admeasuring 726 sq.yards, situated at Lakdikapul, Hyderabad, to the respondent Nos.1, 2, 6 and 7 (Setlees) in the following manner:

- i) To the respondent No.6, admeasuring 486 sq.yards.
- ii) To the respondent No.7, admeasuring 80 sq.yards
- iii) To the respondent No.1, admeasuring 80 sq.yards
- iv) To the respondent No.2, admeasuring 80 sq.yards

to have and to hold the same as absolute owners and possessors. The respondent No.6 along with his mother i.e, respondent No.7 acquired 486 sq.yards + 80 sq.yards of land, respectively, total admeasuring 566 sq.yards under Ex.P.2. In addition to the above land, the respondent No.6 acquired 385 sq.yards of land under Ex.P.3-settlement deed dated 09.06.2016 from Mohammed Rasheeduddin and out of said land, the respondent No.6 gifted 162 sq.yards to his sister and wife i.e, respondent Nos.8 and 9, respectively vide Ex.P.4-gift settlement deed dated 09.12.2016 and retained the remaining land i.e, 223 sq.yards with him. Under Ex.P.1-Development Agreement-cum-GPA, the respondent Nos.6 to 9 entered into Development Agreement with the appellants and respondent Nos.3 to 5 in respect of Municipal Door Nos.6-2-1 & 1/1 (part) and 6-2-1/A6, admeasuring 951 sq.yards (566 sq.yards + 162 sq.yards + 223 sq.yards), situated at Lakdikapul, Hyderabad. It is the case of the paternal grandfather of the respondent Nos.1 and 2 that respondent Nos.6 and 9, who are the parents of the respondent

Nos.1 and 2 had assured him that they will protect the interest of the respondent Nos.1 and 2/minors but the property belonging to the respondent Nos.1 and 2/minors is also given for development. It is the contention of the appellants/developers before this Court that the property belonging to the respondent Nos.1 and 2/plaintiffs was not given for any development and it is situated on the extreme Northern side of the property given for development, which is left vacant. The property covered under Ex.P.2-gift settlement deed dated 03.12.2016, is falling in between 30ft wide road on Northern side and 25ft. wide road on the Southern side. A perusal of the approved plan filed before this Court reveals that the land admeasuring 160 sq.yards belonging to the respondent Nos.1 and 2 is shown on the northern side but Ex.P.2 reveals otherwise. On verification of documents (Exs.P.1 and P.2) placed on record reveal that the land given to respondent Nos.1 and 2 is forming part of the land shown in the development agreement and it clearly demonstrates that the ongoing construction is over the undivided property of the respondent Nos.1 and 2/plaintiffs and respondent Nos.6 and 7 (covered under Ex.P.2).

10. Though it is contended that the grandfather of the respondent Nos.1 and 2/plaintiffs had received Rs.1,87,00,000/- and entrusted the property for development under Ex.P.1-development agreement-cum-General Power of Attorney dated 29.05.2018, there is no single document to substantiate that any amount was paid to the paternal grandfather of the respondent Nos.1 and 2/plaintiffs and he is a party to the said development agreement dated 29.05.2018. There is no much dispute with regard to the joint interest of the respondent Nos.1, 2, 6 and 7 over the house bearing Municipal No.6-2-1 part (old) and New Municipal No.6-2-1 & 1/1, admeasuring 726 sq.yards, situated at Lakdikapul, Hyderabad, covered under Ex.P.2-gift settlement deed dated 03.12.2016. Out of said 726 sq.yards, the share of the respondent Nos.1 and 2/plaintiffs is 160 sq.yards, which is part and parcel of sanctioned plan, where the construction is going on. All the donees (respondent Nos.1, 2, 6 and 7) under Ex.P.2-gift settlement deed dated 03.12.2016 have joint interest over the total extent of 726 sq.yards. When the property covered under Ex.P.2 is not divided or separated by metes and bounds in between the donees, all the parties have joint ownership and possession over the land admeasuring 726 sq.yards. Therefore, the contention that respondent Nos.6 and 7

have right to give their land admeasuring 566 sq.yards (486 sq.yards + 80 sq.yards) is unsustainable. Further, there are patent violations in proceeding with the construction. Admittedly, *vide* order dated 12.11.2019 passed by this Court in W.P.No.24673 of 2019, the developer i.e, appellant No.1 herein was permitted to go ahead with the construction as per the approved sanction plan but the respondent Nos.1 and 2/plaintiffs are not parties to the said writ petition. Therefore, the said order would not bind the respondent Nos.1 and 2/plaintiffs. Furthermore, to protect the substantial interest of the respondent Nos.1 and 2/minors, the paternal grandfather has filed the subject suit on their behalf as he had gifted the property to them under Ex.P.2-gift settlement deed dated 03.12.2016. Whether the paternal grandfather of the respondent Nos.1 and 2/plaintiffs has *locus standi* to file the subject suit as their next friend, needs determination in the subject suit after full-fledged trial. In this appeal, it is not appropriate to devolve upon such issue. In the course of submissions, it is brought to the notice of this Court that said aspect was also challenged by the developers and the developers are unsuccessful in that regard.

11. The other contention of the learned Senior Counsel for the appellants by relying on the decisions in **Syed Shah Ghulam Ghouse Mohiuddin's** case (1 supra) and **Gulamhussain Kutubuddin Maner's** case (2 supra), is that under Mohammedan Law, when the father is alive, he is only the legal guardian of the minor and no other relation is entitled to act as guardian of the minor. As per Ex.P.2-gift settlement deed dated 03.12.2016, the respondent No.1/minor was gifted 80 sq.yards of land and the mother i.e, respondent No.9 acted as legal guardian and accepted the gift on behalf of minor. If the analogy projected by the learned Senior Counsel is accepted, then the property gifted to the respondent No.1/minor under Ex.P.2-gift settlement deed dated 03.12.2016 would remain with the donor i.e, paternal grandfather. However, in this appeal, it is not appropriate to devolve upon that issue. It is open to the trial Court to determine the same after full-fledged trial.

12. The material documents on record establish that the respondents No.6 to 9 had entered into Ex.P.1-development agreement dated 29.05.2018 with appellants and the respondent Nos.3 to 5 to an extent of 951 Sq.yards. Thereafter, necessary permission was obtained for construction. Ex.P.5 is the approved

sanction plan, which shows that permission was given for only an extent of 885 Sq.yds to construct stilt + three floors. On the allegation that the appellants and respondent Nos.3 to 5 proceeding with the construction by violating the approved plan, the GHMC had issued notice dated 06.08.2019 under Section 452 (1) and 461 (1). The appellants and the respondent Nos.3 to 5 without having any right over the entire extent of 1111 Sq.Yds had displayed notice board for 1111 Sq.Yds, which includes the minors share (land admeasuring 160 sq.yards gifted to the respondent Nos.1 and 2). Exs.P6 and P9-photographs substantiates the same. Ex.P10-simple mortgage deed was executed with GHMC on 20-07-2018 showing the extent as 885 Sq.yds of land. Admittedly, the respondent Nos.1 and 2 have not entered into any development agreement or any conveyance in favour of the appellants and respondent Nos.3 to 5. So the development agreement dated 29.05.2018 and the permission obtained by the appellants under Ex.P.5 would not bind them. There are disputes in between the developers and the respondent Nos.6 to 9/owners. Since there is no partition in between the respondent Nos.1 and 2 and respondent Nos.6 and 7, by metes and bounds, in accordance with law and as the respondent Nos.1 and 2/plaintiffs have joint ownership and

possession over the land covered under Ex.P.2-gift settlement deed dated 03.12.2016 and since the subject suit for partition and separate possession is pending, it is not appropriate to allow the appellants and respondent Nos.3 to 5 herein to go ahead with the construction even though they have given undertaking that they will not claim any equities. The property belonging to the respondent Nos.1 and 2/plaintiffs is required to be protected. Furthermore, completion of construction would further lead to multiplicity of litigation in between the parties and jeopardize the interest of the minors (respondent Nos.1 and 2/plaintiffs), which is not yet determined in the subject suit. There is no demur with regard to the decision in **Mandali Ranganna** (3 supra) relied upon by the learned Senior Counsel appearing for the appellants, wherein the Hon'ble Apex Court held that while considering an application for grant of injunction, the Court should not only take into consideration the basic elements in relation thereto viz. existence of prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. In the instant case, respondent Nos.1 and 2/plaintiffs are minors and hence, no malice can be attributed to them. They have no questionable conduct. Further, the Court below having dealt with the several contentions raised by both

sides and by examining the documents placed before it, was pleased to direct both the parties to maintain *status quo* during the pendency of the suit proceedings.

13. For the foregoing discussion, there are no circumstances to interfere with the impugned order and decree, dated 25.01.2022 passed in I.A.No.1913 of 2019 in O.S.No.986 of 2019 by the learned IX Additional Chief Judge, City Civil Court, at Hyderabad. This appeal is devoid of merit and liable to be dismissed.

14. Accordingly, this appeal is dismissed. It is made clear that the Court below shall not get influenced by any of the observations made in this order and dispose of the subject suit on merits, in accordance with law.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

Date: 28.12.2022
SCS