

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL MISCELLANEOUS APPEAL No.209 OF 2021

ORDER :

The appellants in this appeal are the petitioners in I.A.No.9 of 2021 and defendants in the main suit vide O.S.No.75 of 2016 on the file of I Additional District Judge, Mahaboobnagar. Being aggrieved by the order of the trial Court in I.A.No.9 of 2021 filed by these petitioners under Order 39 Rule 1 and 2 C.P.C for direction to the respondent/plaintiff not to proceed with construction work or change the nature of the suit schedule property dismissed by the Court, they preferred the present appeal.

2. In the grounds of appeal, the appellants have claimed that the trial Court committed an error by dismissing their application which was filed by for injunction to restrain the respondents from proceeding with construction over the suit schedule property, even though they made out *prima facie* case and proved that the respondents were proceeding with construction in the suit schedule property.

They have also claimed that the Court below failed to appreciate the pleadings and evidence placed by them and documents produced before the Court and dismissed their application. According to these appellants, the suit filed by the respondent/plaintiff itself is not maintainable. It is hit by Benami transaction (prohibition) Act 1988.

3. It seems the respondent/plaintiff filed suit for declaration of title and injunction on the ground that he is the owner of the suit schedule property which was purchased in the name of appellant No.1 herein as a benamidar of the respondent/plaintiff. He has sought for an injunction to restrain the appellants herein from alienating the suit schedule property during the pendency of the suit. But, while the suit is pending, he started construction over the part of suit schedule property and changing the nature of the land, thereby the same is liable to be restrained. The respondent was proceeding with the construction without obtaining any permission from the gram panchayath and other competent authority. He is not the owner of the property. The 1st appellant herself

purchased the suit schedule property through a registered sale deed out of the funds provided by her father and brother. Subsequently, she has executed a gift deed in favour of the 2nd appellant for an extent of Ac.6-00 by way of registered gift deed dated 23.09.2015. Therefore, the respondent cannot claim the ownership and possession over the suit schedule property. Therefore, the Court below ought to have considered their request and granted an injunction. But the trial Court without proper appreciation of the facts and other record, dismissed their application, thereby they sought for setting aside the order and also for grant of injunction against the respondent herein.

4. The impugned order of the Court below is in I.A.No.9 of 2021 which was filed by the appellants/defendants under Order 39 Rule 1 and 2 C.P.C. As per the averments made in the application and affidavit filed in support of the above said petition, the appellants have claimed that the respondent/plaintiff filed the main suit for declaration of title and injunction on the ground that he himself purchased the property. But, the sale deed was obtained in

the name of his wife who is the 1st defendant in the main suit and appellant No.1 in the present appeal. He has obtained temporary injunction to restrain the appellant from executing any document in respect of the suit schedule property. The appellants have claimed that during pendency of the suit, the respondent/plaintiff collected building material in the suit schedule property with a view to construct a house. When the same was questioned by the appellants, he gave rude answer and thereby the appellants sought for injunction.

5. The respondent having filed counter before the Court below opposed the request and disputed all the averments made by the appellants in the above said petition. The trial Court having heard both parties, dismissed the application vide order referred above.

6. I have heard both parties.

7. Now the point for consideration is:

Whether the appellants herein could make out a case for granting temporary injunction to restrain the

respondent who has filed the main suit for declaration of title and perpetual injunction over the suit schedule property ?

8. POINT

The main suit vide O.S.No.75 of 2016 was filed by the respondent herein for declaration of title and injunction in respect of agricultural land of different extents in different survey numbers. The respondent has claimed that he has purchased the entire suit schedule property in the name of his wife i.e., 1st defendant/1st appellant in the present appeal. Subsequently, there was dispute between the couple, thereby she left him and joined her daughter who is 2nd defendant and appellant No.2 in the present appeal. He has also claimed that defendant No.3 who is none other than son-in-law of 1st appellant and respondent herein, taking advantage of the situation, got executed a registered gift deed in respect of Ac.6-00 out of the total property in favour of his wife. Therefore, the respondent/plaintiff sought four declaration of his title apart from grant of perpetual injunction and during the pendency of the suit,

he has filed an interlocutory application to restrain the appellant herein/defendant from alienating the suit schedule property.

9. The present appeal is with regard to the other petition filed by the appellants before the trial Court. They have claimed in the above said application that the respondent collected building material at the suit schedule property and he was trying to raise structures. It appears from the record that the respondent herein placed reliance on a judgment between **Smt. Shakunthamma vs Smt. Kanthamma, reported in ILR 2014 KAR 6025**, argued before the trial Court that petition filed by the appellants herein under Order 39 Rule 1 and 2 C.P.C in suit filed by him is not maintainable. However, the appellants herein have submitted that in view of Section 94 of C.P.C and in the light of judgment between **Ramaiah vs Gowdappa reported in ILR 1989 KAR 962**, they have argued that the Court has got inherent jurisdiction to issue temporary injunction in the circumstances which are not covered by the proviso of Order 39 Rule 1 and 2 C.P.C.

10. The Court below rightly held that though the petition was filed under Order 39 Rule 1 and 2 CPC in view of Order 39 Rule 1 (a) and Section 94 C.P.C, the Court has got jurisdiction to entertain an application filed by defendant for injunction in the suit filed by the plaintiff. However, the trial Court found that the petitioner are not able to make out a case for granting injunction.

11. As per the record, the appellants herein filed (6) documents in support of their claim. Ex.A1 and A3 are certified copies ROR for the year 2020. Ex.A2 and A4 are the pahanies for the year 2020, Ex.A5 is the copy of letter to the District Collector, Nagarkarnool and Ex.A6 is the endorsement from the Grampanchayath, Veldanda dated 31.12.2020. Ex.A6 is an endorsement by Panchayat Secretary to the effect that no permission was granted in favour of the respondent herein for raising any constructions in the suit land. Therefore, the documents placed by the appellants herein will not establish that there is an attempt by the respondent/plaintiff to raise any

structures. The respondent cannot construct the house without obtaining any permission from the concerned authorities. As rightly observed by the trial Court, the appellants did not file any other proof in the form of at least affidavit from the neighboring residents to show that there was such an attempt by the respondent for construction of house in the suit schedule property. Therefore, the appellants are not able to prove prima facie case, and balance of convenience. The other aspects raised by the counsel before this Court with regard to the ownership of the parties over the property, cannot be looked into in the present application. Therefore, there no merits in the appeal and it is liable to be dismissed.

12. In the result the appeal is dismissed with costs.

13. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 03.11.2022

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