

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI**

CIVIL MISCELLANEOUS APPEAL No.812 of 2016

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

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of CPC, is filed by the appellants/respondent Nos.2 and 3/defendant Nos.2 and 3, aggrieved by the order dated 09.10.2015 passed in I.A.No.793 of 2015 in O.S.No.34 of 2015 by the learned VIII Additional District Judge, at Miryalaguda, wherein the Court below granted interim injunction in favour of the respondent Nos.1 & 2 herein/petitioners/plaintiffs, restraining the appellants/respondent Nos.2 and 3/defendant Nos.2 and 3, from alienating the petition schedule properties in the name of the third parties till the disposal of the plaint.

2. Heard the submissions of Sri K. Krishna Mohan, learned counsel for the appellants, Sri P. Prabhakar Rao, learned counsel for the respondent Nos.1 and 2 and perused the record.

3. No representation for the respondent Nos.3 and 5. The learned counsel for the appellants filed a Memo *vide* USR No.50988/2021 and submitted that respondent No.4 died on

09.12.2020 and the respondent Nos.1 to 3, who are already on record, are the legal heirs of respondent No.4.

4. The learned counsel for the appellants/defendant Nos.2 and 3 would contend that the Court below while dealing with the subject I.A.No.793 of 2015, did not advert to the provisions under Order XXXIX Rule 1 and 2 of CPC as well as Rule 3A of CPC. It is brought to the notice of this Court that in view of reorganization of Judicial Districts in the Telangana State, the subject suit has been transferred to the Court of I Additional District Judge, Suryapet and renumbered as O.S.No.24 of 2022. At present, the suit is at the stage of trial and ultimately, prayed to allow the appeal, as prayed for.

5. Here, it is apt and appropriate to extract operative portion of the impugned order dated 09.10.2015 passed in I.A.No.793 of 2015 in O.S.No.34 of 2015 by the learned VIII Additional District Judge, at Miryalaguda, reads as follows:

"Issue interim injunction restraining the respondents from alienating the property in the name of the 3rd parties till the disposal of the plaint."

A perusal of the aforesaid order reveals that it is an *ex parte* order and that the temporary interim injunction was granted till the disposal of the plaint, which is patently erroneous. As per the mandate given under Order XXXIX Rule 3A of CPC, the Court below is required to dispose of the subject I.A.No.793 of 2015 within thirty (30) days from the date on which *ex parte* injunction order was granted. Much time has been passed. By this time, the Court below ought to have finally disposed of the subject I.A. Further, the subject suit in O.S.No.34 of 2015 filed by the respondent Nos.1 and 2 herein/plaintiffs seeking partition and separate possession of the suit schedule properties, pertains to the year 2015. As per the circulars issued by the High Court from time to time, suits pending since more than five years have to be given utmost priority and the Presiding Officer concerned shall make every endeavor to dispose of the cases on priority basis and reduce the pendency of pre-2018 cases. Since the subject suit pertains to the year 2015, the Court concerned ought to have disposed of the subject suit, by this time. In view of these circumstances, it is appropriate to direct the Court concerned to dispose of the subject suit in O.S.No.24 of 2022 (old O.S.No.34 of 2015), expeditiously.

7. Accordingly, this Civil Miscellaneous Appeal is allowed and the impugned order dated 09.10.2015 passed in I.A.No.793 of 2015 in O.S.No.34 of 2015 by the learned VIII Additional District Judge, at Miryalaguda, is set aside. Consequently, I.A.No.793 of 2015 is restored to its file, for fresh disposal, in accordance with law. The learned I Additional District Judge, Suryapet, is directed to dispose of the subject suit in O.S.No.24 of 2022 (old O.S.No.34 of 2015) pending on its file, expeditiously, preferably, within a period of three (03) months from the date of receipt of a copy of this judgment.

As a sequel, miscellaneous petitions pending, if any, in this appeal, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

M.G. PRIYADARSINI, J

Date: 12.12.2022
SCS