

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CIVIL MISCELLANEOUS APPEAL NO. 809 OF 2016

JUDGMENT: (Per the Hon'ble Smt. Justice Anis)

1. This Civil Miscellaneous Appeal, under Order XLIII Rule 1 read with Section 104 of the Code of Civil Procedure, 1908 (for short 'C.P.C.), is directed against the order, dated 24.08.2016 passed in I.A.No.1382 of 2016 in O.S.No.568 of 2016 on the file of the Principal District Judge, Ranga Reddy District at L.B.Nagar.

2. Appellants were arrayed as the respondents 1 to 3, while the respondent No.1 as the petitioner and the respondent No.2 as the respondent No.4 in I.A. before the trial Court.

3. For the sake of convenience, the parties are referred to as arrayed in the I.A. before the trial Court.

4. The petitioner/plaintiff filed the petition under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C. for grant of interim injunction restraining the respondents and others from causing interference with the petitioner's possession and enjoyment over the petition schedule property admeasuring

Ac.1.00 gts. in Survey No.725/8/E situated at Shamshabad Village, Ranga Reddy District.

5. The brief averments made in the petition filed before the trial Court are as follows:

The petitioner/plaintiff purchased the schedule mentioned property vide registered Sale deed bearing Document No.110/2016, dated 11.01.2016 from one Smt. N.Nirmala. The petitioner's vendor purchased the said property on 18.03.1998 from one Dargah Channaiah and others through their registered General Power of Attorney by name V.T.Prakash and obtained possession over the petition schedule property. The title and possession of the petitioner's vendor was very much appreciated by the revenue authorities by mutating her name in the revenue records on 09.07.1998 and assigned Patta No.920. The petitioner's vendor also constructed a compound wall with different heights encircling the schedule land to protect from trespassers. Earlier, when the respondents 2 and 3 tried to cause interference with her possession and enjoyment of the schedule land in the year 2005, the petitioner's vendor filed a suit in O.S.No.493 of 2005 on the file of the II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar and in that suit, the respondents 2 and 3 appeared and filed Written Statement admitting the

ownership and physical possession of the petitioner's vendor. Later on, the petitioner's vendor filed I.A.No.289 of 2008 under Order XXIII Rule 1(3) C.P.C., seeking permission to withdraw the suit reserving right to file a fresh one and ultimately the petition was allowed on 29.07.2008. Prior to filing of O.S.No.493 of 2015 by the petitioner's vendor, there were proceedings before this Court under the provisions of Companies Act, 1956 in Company Petition Nos.112 of 2007, 114 of 2001, etc. and in those proceedings, the ownership and physical possession of the petitioner's vendor was appreciated. After purchase of the petition schedule property, the petitioner got repaired the damaged portion of the compound wall and raised its height and also filed an application before the gram panchayat seeking permission to construct the servant quarters on 27.05.2016 and the same was accorded after due process. The respondents without any manner of right came to the petition schedule property on 01.06.2016 and tried to demolish the compound wall. The said illegal acts of the respondents were resisted by the petitioner. Thereupon, when the petitioner approached the police for lodging a complaint, they advised the petitioner to approach a competent civil court as the dispute is of a civil nature. The petitioner, having no other go, filed the suit in O.S.No.568 of 2016 and also filed the present petition in that

suit. The petitioner got *prima facie* case and balance of convenience is in his favour. Therefore, prayed the Court to grant interim injunction, otherwise he would suffer irreparable loss.

6. The respondents 2 and 3 filed their counter, whereas the first respondent filed a separate counter. The brief averments made in the Counters filed by the above respondents before the trial Court are as follows:

The third respondent is the husband of the second respondent and the first respondent is the Manager of the company owned by respondents 2 and 3. The fourth respondent is a stranger to them and he must have been planted by the plaintiff to support his case. The vendor of the petitioner herself could not identify the existence of her land in O.S.No.493 of 2005 filed against the respondents 2 and 3, as such she withdrew the said suit having failed to obtain any interim orders from the Court. The petitioner's vendor by name Nirmala, having failed to succeed in her illegal attempts to grab the petition schedule property, sought permission from the Court to file a fresh suit by withdrawing O.S.No.493 of 2005. After lapse of 8 years, the petitioner, who purchased the property from his vendor Nirmala, filed the present suit. The petitioner's vendor also filed another suit in O.S.No.2570

of 2005 against the vendor of the second respondent for the same relief of injunction and in that suit also, she miserably failed. The second respondent is the absolute owner and possessor of the agricultural land admeasuring Ac.1.13 gts. in Survey No.1528/8/AA having purchased the same by a registered Sale deed dated 21.12.1998 from one Smt. Yellamma W/o.late Samson and ever since the date of purchase, she has been in continuous possession and enjoyment of the said property. She also raised a compound wall, fixed a gate and constructed a thatched shed in the said property. She was also granted pattadar passbook and title deed for the said property. The land of second respondent is forming part of Survey No.725/8/AA, which is naturally part of Survey No.725/8, whereas the petitioner's vendor claimed the property which is forming part of Survey No.725/8/E through V.T.Prakash, the G.P.A. holder, for an extent of Ac.3.00 from Rachamalla Nagaiah and others. Basing on the G.P.A., Ac.1.00 of land was sold in favour of the petitioner's vendor. Hence, neither the petitioner nor his vendor has concern with Ac.1.13 gts. of land purchased by the second respondent. The total extent of land in Survey No.725/8 is Ac.10.00 and its original pattadars were Muthaiah, Pentaiah and Balaiah. Muthaiah was survived by only son Babaiah. The entire extent of Ac.3.00 devolved upon him was sold away

by the said Babaiah to one Raman Bhai Patel, who in turn sold the same to third parties. But, the revenue records stand in the name of Raman Bhai Patel as pattadar for Survey No.728/8/A. Similarly, the son of another pattadar by name Pentaiah, who owned and possessed Ac.3.00 of land in Survey No.728/8/E, executed G.P.A. in favour of V.T.Prakash for the said extent. The said G.P.A. holder sold away Ac.3.00 of land in Survey No.728/8/E in favour of Southern Continental Contractors Limited through a registered Sale deed dated 26.10.1999. The G.P.A. holder also made several transactions for more than Ac.3.00 of land by showing false boundaries to different persons. The said G.P.A. holder was not clear and definite about identification of the land with specific boundaries. In the G.P.A. executed in favour of the said V.T.Prakash, the boundaries are not shown for Ac.3.00 of land. Therefore, the boundaries shown by him in various link documents for the lands sold in favour of the petitioner and others are baseless and not in existence at all. The petitioner's vendor Nirmala might be having a Sale deed for an extent of Ac.1.00, but the identification and existence of the said land is to be established and proved by her. Thus, the petitioner is not holding any physical possession of the land and in fact, he is not in a position to identify his land,

but wrongly identified the land of second respondent and attempting to trespass and occupy the said land.

The father-in-law of the second respondent's vendor by name Balaiah died and he was survived by three sons, namely, Samson, Pentaiah and Swamy. Late Balaiah owned and possessed Ac.4.00 of land in Survey No.725/8 and after his death, the said property devolved on his three sons and the eldest son Samson is the husband of the second respondent's vendor. After the death of Samson, his wife Yellamma became the absolute owner of Ac.1.13 gts. allotted to her husband and her name was recorded as pattadar. Subsequently, she sold Ac.1.13 gts. to the second respondent under a registered Sale deed dated 21.12.1998 and ever since the date of purchase, the second respondent has been in possession of Ac.1.13 gts.

The second respondent is not a party to the proceedings initiated under the Companies Act before this Court. The schedules given in O.S.Nos.493 of 2005 and 2570 of 2005 are different to that of the present suit and inconsistent with the sale deeds of the petitioner's vendor and petitioner himself, and the boundaries are also different. The petitioner's vendor herself was not sure about the existence and identification of her land, naturally the petitioner is not definite about the

existence of suit land. The boundaries shown by the petitioner for the alleged land are contrary and different from the boundaries shown in his sale deed and also different to the boundaries given in the alleged sale deed for Ac.1.00 of land of his vendor. The petitioner failed to prove that he is in possession of the petition schedule property. The petitioner in collusion with his vendor, has brought into existence of sale deed dated 11.01.2016 and filed the suit to grab the property of the second respondent. At one point of time, the petitioner's vendor Nirmala with the help of unsocial elements damaged the gate and part of compound wall constructed by the second respondent, for which complaint was lodged with the police. The petitioner's vendor after withdrawing the earlier suit in O.S.No.493 of 2005 by reserving right to file a fresh suit, did not institute a fresh suit either for declaration and possession or injunction because of uncertainty of existence and identification of her land. The petitioner miserably failed to prove *prima facie* case and balance of convenience, and therefore, prayed the Court to dismiss the petition.

7. During the course of enquiry, on behalf of the petitioner, Exs.P.1 to P.19 got marked and on behalf of the respondents, Exs.R.1 to R.34 got marked by consent.

8. After perusing the material on record, the trial Court allowed the petition and granted temporary injunction restraining the respondents and others claiming through them from interfering with the possession and enjoyment of the schedule property by the petitioner till the disposal of the main suit. The reasons mentioned by the trial Court for such findings are extracted hereunder:

“Whether the property that is being claimed by the petitioner and that of respondents 1 to 3 are one and the same or there is overlapping of boundaries of the survey numbers are to be seen only after allowing the parties to lead the oral evidence to prove the contents of the documents relied on by them. It is apparent from the record that the respondents are claiming different property of Ac.1-13 gts forming part of Sy.No.725/8/AA, whereas the petitioner is claiming Ac.1-00 gts in Sy.No.725/8/E. That apart, respondents 2 & 3 in the earlier proceedings have admitted the right and title of petitioner’s vendor for this Ac.1-00 gts and it is the schedule of the present suit. Merely because the petitioner’s vendor did not institute comprehensive suit subsequently after withdrawing the earlier suit, it does not mean that the petitioner cannot claim the relief of injunction for Ac.1-00 gts of land, because the title of his vendor over it was admitted by the respondents 2 & 3 in the earlier proceedings.”

9. Aggrieved by the order passed by the trial Court, the respondents 1 to 3/defendants preferred the present Civil Miscellaneous Appeal.

10. The learned counsel for the appellants/respondents argued that the appellant No.2 purchased the property about

20 years prior to the purchase of the petitioner and also got effected mutation in the revenue records and obtained the pattadar passbook and title deeds, and also got entered their names in pahanies and made construction of the compound wall by obtaining permission from gram panchayat. It is also argued that the learned trial judge without appreciating the documentary evidence produced by the petitioner in right perspective, granted injunction in his favour though the petition schedule property is not an identifiable property with specific boundaries. It is also argued that the learned trial Judge ought to have appreciated that the appellant No.2 is a bona fide purchaser under the registered Sale deed much prior to the purchase of the petitioner and she is in possession and enjoyment of the property. It is also argued that the Court below failed to observe that the suit claim is only in respect of Ac.1.00 in Survey No.725/8/E without there being any survey and demarcation and the learned Judge ought not to have granted injunction in favour of the respondent/petitioner in the absence of any valid proof of survey fixing the boundaries of the petition schedule property with that of the remaining extent of land. It is also argued that the boundaries mentioned in the sale deeds Exs.P.1 and P.2 are not tallying with each other on the eastern side, and that there is a dispute about the identity of the property and

this fact was observed by the trial Court, but stated that it will be decided only after allowing the parties to lead the oral evidence. It is also argued that earlier the petitioner's vendor filed O.S.No.493 of 2005 and failed to get an injunction in I.A.No.690 of 2005 and that against the orders in I.A.No.690 of 2005, C.M.A.No.5 of 2006 was filed and the same was dismissed and thereafter, C.R.P.No.721 of 2007 was filed, which was also dismissed, and therefore, the petitioner will not get any better title or possession than that of his vendor Nirmala, and thereafter, the petitioner withdrew the suit after obtaining permission for filing a fresh suit. Therefore, prayed the Court to set aside the orders passed in I.A.No.1382 of 2016, dated 24.08.2016, by the Principal District Judge, Ranga Reddy District by allowing the Civil Miscellaneous Appeal.

11. On the other hand, the learned counsel for the respondent/petitioner argued that the petitioner purchased the property from his vendor by name Nirmala under a registered document dated 11.01.2016 for a valuable consideration and his vendor delivered possession of the petition schedule property. It is further argued that earlier when the respondents 2 and 3 tried to interfere with the peaceful possession and enjoyment of the petitioner's vendor,

she filed O.S.No.493 of 2015 on the file of the II Additional Senior Civil Judge, Ranga Reddy District and in that suit, the respondents 2 and 3 admitted about the ownership of the petitioner's vendor to an extent of Ac.1.00 and basing on the said admission, the trial Court rightly granted injunction in favour of the respondent/petitioner. It is also argued that the documentary evidence produced by the petitioner clearly established that his vendor Nirmala had been in peaceful possession and enjoyment of the petition schedule property and her name was entered in the revenue records and that pahanies were issued and therefore the trial Court rightly granted injunction. It is also argued that the petitioner's vendor Nirmala has paid Rs.2,50,000/- to the Southern Continental Contractors Limited in a Company Petition No.112 of 2007 and in those proceedings, it is clearly mentioned that the vendor of the petitioner is Smt. Nirmala. Finally, it is argued that the petitioner proved his *prima facie* case and balance of convenience is in his favour, as such, the trial Court rightly granted injunction and the said findings of the trial Court need no interference, and prayed the Court to dismiss the Civil Miscellaneous Appeal.

12. After hearing both sides, the point that arises for consideration is:

Whether the appellants/respondents have made out any case to set aside the impugned order passed by the trial Court as prayed for?

13. **POINT:**

A perusal of the record shows that there is no dispute that the total extent of Survey No.725/8 is Ac.10.00 and its original pattadars were Muthaiah, Pentaiah and Balaiah. Pentaiah was having only one son by name Nagaiah, who owned and possessed Ac.3.00 of land in Survey No.725/8/A. The said Nagaiah during his lifetime executed G.P.A. in favour of one V.T.Prakash to an extent of Ac.3.00. The said G.P.A. holder sold Ac.3.00 of land in favour of Southern Continental Contractors Limited through a registered Sale deed dated 26.10.1999.

14. It is the case of the petitioner's vendor that she purchased the petition schedule property under a registered sale deed through G.P.A. holder V.T.Prakash on 28.03.1995. It is an admitted fact that when the respondents 2 and 3 tried to interfere with the possession of the petitioner's vendor, she filed O.S.No.493 of 2005 on the file of the II Additional Senior Civil Judge, Ranga Reddy District and in that suit, she also filed I.A.No.690 of 2005 seeking interim

injunction and the same was dismissed on 05.12.2005. Aggrieved by the orders passed in I.A.No.690 of 2005, the petitioner's vendor filed C.M.A.No.5 of 2016 and the said C.M.A. was also dismissed on 23.10.2006, against which C.R.P.No.721 of 2007 was preferred. The said C.R.P. was dismissed by this Court on 13.04.2007 by observing thus:

“The submission that the respondents admitted the possession of the petitioner-plaintiff in respect of Ac.1.00 of land is misconceived. As seen from the written statement filed by the respondents in the lower Court, they opposed the entire suit claim. Further, as found by the trial Court the boundaries of the suit schedule property mentioned in the plaint did not tally with Exs.A.1 and A.2. The question whether the petitioner-plaintiff has *prima facie* case or not is a question of fact on which both the Courts below held against her. In such a case, this Court cannot take a different view and came to the conclusion that there is an error on the face of the record.”

15. It is also admitted fact that the petitioner's vendor Nirmala also filed I.A.No.289 of 2008 under Order XXIII Rule 1(3) C.P.C. seeking permission of the Court to withdraw the suit reserving her right to file a fresh suit and the said petition was allowed on 29.07.2008 after due contest. After allowing the petition on 29.07.2008, till this day, the petitioner's vendor has not filed any suit seeking declaration of her title to the petition schedule property.

16. Further, the trial Court as well as the first appellate Court and also this Court while passing orders clearly held that the boundaries of the schedule property mentioned in the plaint in O.S.No.493 of 2005 did not tally with Exs.A.1 and A.2 and the admission of the respondents 2 and 3 about the possession of the petitioner's vendor in respect of Ac.1.00 of land is misconceived. It is also held that in the written statement filed by the respondents 2 and 3, they opposed the entire suit claim. But, on the other hand, the petitioner's vendor has not proved her title to the petition schedule property and thereby the petitioner cannot derive better title than his vendor Nirmala.

17. A perusal of the order passed by the trial Court, it is clear that only based on the admission about the possession of the petitioner's vendor to an extent of Ac.1.00 in O.S.No.493 of 2005, the trial Court granted injunction though it is found that the property claimed by the petitioner and the respondents are one and the same and that there are overlapping boundaries of the survey numbers. However, the trial Court observed that it can be gone into the trial of the case after parties leading oral evidence to prove the contents of the document. This finding of the trial Court is erroneous as this Court already held that admission of the respondents

2 and 3 herein about the possession of the petitioner is misconceived and further the boundaries to the suit schedule property are also not tallying.

18. Admittedly, there is a dispute about the identity of the property and both the parties are claiming same property with different sub-divisions to Survey No.725/8. The fact of payment of Rs.2,50,000/- by the petitioner's vendor Nirmala to the Southern Continental Contractors Limited which was mentioned in the Company Petition, cannot be taken into consideration to prove the *prima facie* case and balance of convenience in favour of the petitioner. Therefore, the petitioner failed to prove that his vendor got *prima facie* title and possession over the petition schedule property. On the other hand, the respondents categorically claimed that they have purchased property in the year 1998 which is forming part of Survey No.725/8/E admeasuring Ac.1.13 gts. from the wife of one Samson who was the son of late Balaiah, one of the pattadar. The other documentary evidence also *prima facie* proves the appellants' case and the respondent/plaintiff failed to prove the essential ingredients of Order XXXIX Rules 1 and 2 C.P.C. Therefore, the order of the trial Court in granting injunction is liable to be set aside.

19. In the result, the Civil Miscellaneous Appeal is allowed, setting aside the order dated 24.08.2016, passed by the Principal District Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.1382 of 2016 in O.S.No.568 of 2016. No order as to costs. However, it is made clear that the trial Court shall dispose of the suit on its own merits, uninfluenced by any of the observations made by this Court in this order or in the impugned order passed by the trial Court itself.

20. Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

09.11.2016
Anr



(SANJAY KUMAR, J)

(ANIS, J)

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
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