

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION No. 773 OF 2022

ORDER:

This Revision is filed by the defendants in the suit aggrieved by the order dated 20.07.2021 in I.A.No. 258 of 2020 on the file of the Principal Junior Civil Judge at Devarakonda which was confirmed by the order dated 15.12.2021 in C.M.A.No. 19 of 2021 on the file of the Judge, Family Court-cum-VI Additional District Judge, Nalgonda.

2. The respondent herein is the plaintiff who filed O.S.No. 162 of 2020 for perpetual injunction in respect of plaint 'A' and 'B' schedule lands. The said lands are Acs.2.10 guntas in Survey No. 285/4, Acs.1.13 guntas in Survey No. 290 at Namapur Village and Acs.1.03 guntas in Survey No. 66/1/E at Meti Chandapur Village of Marriguda Revenue Mandal. It is the case of the plaintiff that he is the absolute owner, pattadar and possessor of agricultural land in Survey No. 66/1/E admeasuring an extent of Ac.1.03 guntas. The plaintiff submits that in respect of 'A' and 'B' schedule property, a Will was executed by his senior paternal uncle who died on 06.03.2015. His paternal uncle had no issues and he is physically-handicapped. He used to live in his brother's house till his death. As the plaintiff was taking care of him, he executed the

Will bequeathing the properties before the revenue officials and thereafter the Tahsildar ordered for mutation of the plaintiff's name by proceedings dated 25.05.2019. The plaintiff's name was accordingly, mutated in the revenue records and he was issued pattadar passbook, title deeds in respect of 'A' and 'B' schedule lands. It is stated that general public is aware of the plaintiff's possession and enjoyment of the property. The defendants are agnates to the plaintiff and the deceased. It is stated that the plaintiff had cleared the loan obtained by the deceased from A.P.G.V.B., Marriguda Branch from his pocket. The defendants have no manner of right and title in respect of plaintiff 'A' and 'B' schedule properties. The defendants physically trespassed into the land with deadly weapons and beat the plaintiff mercilessly causing bleeding injuries and tried to occupy the land. A complaint was lodged with the police and also he had come up with the present suit i.e. O.S.No. 162 of 2020. It is further stated that as the plaintiff has got a *prima facie* right and title to the property and if the injunction is not granted, it would cause irreparable loss and hardship, he sought for *ad interim* injunction.

3. A counter-affidavit has been filed by the defendants disputing the execution of Will in favour of the plaintiff. It is stated that late Buchaiah suffered from paralysis on the lower

body, he was uneducated and prior to his death, he became unconscious and went into coma and no medical treatment was provided to him and he was badly neglected. In the said health condition, it cannot be believed that Will was executed. The averment that the plaintiff had repaid the bank amounts, it is stated that the loans were waived by the government under 'Runa Maafi'. Earlier, late Buchaiah, defendants' father along with other sharers filed a partition suit i.e. O.S.No.130 of 2018 and it was withdrawn and subsequently, he filed the suit for partition before the learned Senior Civil Judge, Nalgonda i.e. O.S.No. 419 of 2018 against the father of the plaintiff and Borra Chinna Mallamma and the Court had passed the order of *status quo* with regard to plaint 'A' and 'B' schedule properties *vide* I.A.No. 1510 of 2018 on 27.11.2018. In the said suit, the father of the plaintiff had filed written statement and the very same advocate, who filed the written statement has filed the present suit before this Court by suppressing all these facts. It is submitted that on 03.10.2018, a representation was given to the District Collector who directed the Tahsildar, Marriguda to enquire and take necessary action. However, they did not dispute the fact that the Mandal Revenue Officer has mutated the name of the plaintiff. Immediately they carried the matter in Appeal before the Revenue Divisional Officer, wherein a notice

was served on the plaintiff and others and upon hearing both the sides, the Revenue Divisional Officer had stayed the order of the Mandal Revenue Officer on 30.11.2019. It is submitted that in spite of *status quo* order granted by the Senior Civil Court at Nalgonda and suspension order by the Revenue Divisional Officer, Deverakonda, the plaintiff has cultivated cotton crop which can fetch Rs.2,00,000/- and they have also sought a direction to deposit the same in the Court. It is stated that the plaintiff has come to the Court with unclean hands and he is not entitled for any equitable relief of injunction.

4. The Court below by order dated 20.07.2021 had allowed the I.A. by restraining the defendants from interfering with peaceful possession of the plaintiff over the petition schedule property till disposal of the suit. The Court has observed that before the Court below, Exs.P1 to P9 were marked on behalf of the plaintiff and on behalf of the defendants, Exs.R1 to R11 were marked. The Court has held that Exs.R6 and R7 show that the Revenue Divisional Officer, Devarakonda granted stay of alienation of petition schedule 'A' and 'B' land and the Court observed that the revenue documents showing ownership and possession of the plaintiff are not invalidated by the Revenue Divisional Officer, Devarakonda and holds good. More over Exs.R1 to R10 do not show that the defendants are in

possession of petition schedule 'A' and 'B' land. As suit for partition is pending before the Hon'ble Senior Civil Judge, Nalgonda and the present suit is filed only for relief of perpetual injunction, it shows the *prima facie* case in favour of the plaintiff. Hence, the Court had granted the said order.

5. Aggrieved thereby, the defendants have approached the Family Court-cum-Additional District Judge, Nalgonda and the Appellate Court by order dated 15.12.2021 dismissed the Appeal. The Appellate Court has considered the mutation proceedings and also the proceedings of the Mandal Revenue Officer and the Revenue Divisional Officer and held that there is a *prima facie* case in favour of the plaintiff regarding possession of the suit lands. The Court also observed that the order of *status quo* was passed by the Court on 27.11.2018 in a suit for partition and that it is not the case of the defendants that the father of the plaintiff who was party to the suit before the Senior Civil Judge's Court alienated the property in favour of the plaintiff. The trial Court properly considered the material and came to the correct conclusion and no ground is made out by the defendants to interfere with the order under Appeal. Hence, the Appellate Court has dismissed the Appeal filed by the defendants.

6. Learned counsel for the revision petitioners Sri P. Radha Krishna submits that the Court below failed to see that the 4th petitioner's unmarried brother died on 06.03.2015 intestate and he along with other sharers filed suit for partition and an order of *status quo* was passed on 27.11.2018. The proceedings of the Tahsildar are dated 25.05.2019, whereby mutation was done in favour of the plaintiff and the appellate proceedings are dated 25.05.2019. It is also observed by the lower appellate Court that the plaintiff's counsel who has filed the suit for perpetual injunction, the very same advocate appeared in a suit for partition and obtained *ex parte* temporary injunction by suppressing the material facts. It is submitted that even as per the plaintiff, the paternal uncle died on 02.03.2015 and the Will was executed in his favour but the proceedings and other documents which were filed by him are of the year 2019. It is submitted that questioning the order of the Revenue Divisional Officer, Writ Petition No. 25359 of 2021 was filed before this Court. The Court was pleased to grant an order of *status quo* with regard to the entries in the revenue records in respect of the subject properties. Learned counsel submits that the relief of injunction is an equitable relief and it cannot be granted to a person, who has come before the Court with unclean hands. Both the Appellate Court as well as the trial

Court misunderstood the material on record and came to the conclusion which is contrary to law and contrary to the material available on record.

7. Learned counsel for the respondent / plaintiff Sri V. Seetharama Avadhani submits that the plaintiff filed a suit for injunction and sought interim injunction therein. It is submitted that in the said Application, the plaintiff could submit to the Court and prove that there is a *prima facie* case in his favour and if the injunction is not granted, it would cause irreparable loss and hardship. As he could establish the three ingredients, the Court below granted injunction in his favour and the appellate Court has confirmed the same. Learned counsel submits that there is no illegality in the order under Revision and the petitioners could not place one single document to show their possession in respect of the subject property.

8. Both the plaintiff and the defendants are the members of the same family. The undisputed fact is that earlier a suit for partition was filed and in the said suit, an order of *status quo* was granted on 27.11.2018. Both the appellate Court as well as the trial Court relied on the mutation proceedings issued by the Mandal Revenue Officer though it was stayed by the Revenue Divisional Officer but however, the Court

has observed that only stay of alienation was granted. The entire suit schedule properties are part of the comprehensive suit for partition and in the said suit, the plaintiff's father has filed his written statement and the advocate who appeared in the said suit appeared before the other Court and filed suit for permanent injunction. In the instant suit, there is no whisper about filing of earlier suit and the order of *status quo* granted by the Court. Both the Appellate Court as well as trial Court, though particular fact was brought to their notice and the same was discussed in the judgment, failed to consider the same. As rightly pointed out by the learned counsel for the petitioners, the relief of injunction is equitable relief. Whoever approaches the Court seeking the said relief should approach the Court with clean hands. On the face of it, in this case, there is clear suppression and misrepresentation of facts which is evident from the fact that the earlier suit that is filed is suppressed. Both the Courts are carried away with mutation proceedings which are much after the *status quo* order passed in a suit for partition. Even the documents for the purpose of relying on the possession, prima facie case of the plaintiff, the Court relied on the mutation proceedings which are also granted after the orders are passed by the Court in a partition suit. In the considered opinion of this Court, both the Courts below are not

right in granting injunction when the plaintiff failed to prove the *prima facie* case, balance of convenience and irreparable loss. Secondly, as he has suppressed the facts and approached the Court, he is not entitled for equitable relief of injunction. The order under Revision is therefore liable to be set aside.

9. Accordingly, the Civil Revision Petition is allowed. The order dated 20.07.2021 in I.A.No. 258 of 2020 in O.S.No. 162 of 2020 on the file of the Principal Junior Civil Judge at Devarakonda which was confirmed by the order dated 15.12.2021 in C.M.A.No. 19 of 2021 on the file of the Judge, Family Court-cum-VI Additional District Judge, Nalgonda is set aside. No costs.

10. The Miscellaneous Applications, if any shall stand automatically closed.

LALITHA KANNEGANTI, J

17th February 2023

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