THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL No.1540 of 2008

JUDGMENT:

1. The present civil miscellaneous appeal has been directed against order dated 21.04.2008 in I.A.No.3190 of 2006 in O.S.No.1212 of 2006 on the file of I Additional Senior Civil Judge, Rangareddy District at L.B.Nagar, Hyderabad, wherein, interim application filed by the respondents herein seeking interim injunction pending suit was allowed. The respondents herein filed the said suit for perpetual injunction in respect of the suit property. Aggrieved by the interim injunction, the present appeal is filed at the instance of the respondents therein.

2. The case of the respondents herein before the trial Court is that they are absolute owners and possessors of the suit property by virtue of sale deeds from original land lords executed in the year 1992. After sale deeds were obtained mutations were effected, title deeds and pattedar pass books were granted in their names. Further, their names were also recorded in revenue records as pattedars and possessors. However, the appellants herein without any possession, basing on the sale deeds which were obtained by them from their vendor on the alleged 38-E certificate, tried to

enter into possession of the suit property basing on succession certificate obtained from the Mandal Revenue Officer by their vendor. Hence, the respondents herein filed suit for perpetual injunction and also filed the present interim application seeking interim injunction pending suit.

3. The case of the appellants herein before the trial Court is that their original vendor's father was holding 38-E certificate over the suit property and after his death succession certificate was obtained by the vendor of the appellants from Mandal Revenue Officer. Subsequent to the said succession proceedings, the appellants herein purchased the suit properties from the legal representative of the holder of 38-E certificate, who is their vendor. Since then, they are in possession of the suit property and according to them the respondents herein are not in possession of the suit property and prayed to dismiss the interim application.

4. On the basis of the pleadings, the trial Court has framed the following issue for consideration:

> "Whether the petitioners are entitled for interim injunction as prayed for in respect of plaint schedule A to K properties?"

5. In support of their case, respondents herein got marked Exs.P-1 to P-50 and appellants herein got marked Exs.R-1 to R-13

before the trial Court. The trial Court also marked Exs.C-1 to C-5, which were received from revenue department.

6. On appreciating the evidence on record, the trial Court found that the respondents have established *prima facie* case of their possession over the suit property and also found that the appellants have failed to file any document to prove their possession. In the said circumstances, the trial Court has granted interim injunction as prayed for by the respondents herein.

7. Learned counsel for appellants contended before this Court that the trial Court has not considered the 38-E certificate which was granted and also did not consider subsequent proceedings of Mandal Revenue Officer granting succession in favour of the vendor of the appellant. Basing on such succession proceedings, the appellants have purchased the suit property and since then they are in possession of the same. According to the appellants, the respondents were never in possession of the suit property.

8. None appeared and there is no representation from the respondents.

9. On close scrutiny, *prima facie* the material produced by the respondents herein before the trial Court shows that they have been claiming title and possession over the suit property on the strength of sale deeds executed by their vendor whose name was being reflected in revenue records. The said sale deeds were pertaining to the year 1992. They also effected mutations, obtained title deeds and pattedar pass books were also issued in their favour.

10. The trial Court also considered the material placed by the appellants herein. The entire genesis of the case of the appellants is on the basis of 38-E certificate granted in the year 1975 in favour of father of the vendor of the appellants. No material has been placed on record to *prima facie* establish that after grant of 38-E certificate the possession of the suit property was handed over to the 38-E certificate holder. Once 38-E certificate is granted, the Mandal Revenue Officer has no power to grant any succession. The entire sale transactions are based on 38-E certificate. Subsequently, the succession certificate granted by the Mandal Revenue Officer was set aside by the Joint Collector, on the challenge being made by the respondents herein.

11. The appellants have not placed any record which *prima facie* shows that either their vendor or original grantee of 38-E certificate had been holding any possession prior to effect of transfers in favour of the appellants. The trial Court has rightly considered the *prima facie* material on record and rightly granted interim injunction in favour of the respondents herein, which requires no interference.

12. In the result, the civil miscellaneous appeal is dismissed confirming the order dated 21.04.2008 in I.A.No.3190 of 2006 in O.S.No.1212 of 2006 on the file of I Additional Senior Civil Judge, Rangareddy District at L.B.Nagar, Hyderabad. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 05.01.2023
GVR