

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION No. 2087 OF 2022

ORDER:

This Revision is filed by the plaintiffs aggrieved by the order dated 04.06.2021 passed by the II Additional Junior Civil Judge's Court at Karimnagar dismissing I.A.No.6 of 2021 filed under Order 39 Rules 1 and 2 C.P.C. which was affirmed by the III Additional District Judge at Karimnagar *vide* order dated 27.01.2022 in C.M.A.No. 13 of 2021.

2. Petitioners are the plaintiffs who filed O.S.No. 3 of 2021 in the Court of the II Additional Junior Civil Judge at Karimnagar for declaration of title and perpetual injunction. I.A.No. 6 of 2021 was filed in the said suit under Order 39 Rules 1 and 2 C.P.C. seeking ad interim injunction in favour of the petitioners restraining the respondents from interfering with the suit schedule property. It is the case of the petitioners that petitioner No.1 had inherited the suit house from her father during partition among her sisters and respondent No.1 is a foster son of her father. The schedule property fell to the share of petitioner No.1 and since then she has been in continuous possession and enjoyment of the house. The two sisters in their share along with petitioner No.1 constructed their respective

houses and they are in peaceful possession and respondent No.1 is in possession of the house fell to his share. It is stated that the name of petitioner No.1 has been mutated in the revenue records on 29.11.1995. Respondent No.1 who is fostered brother of petitioner No.1 had played fraud on petitioner No. 1 and got executed a gift deed *vide* registered document dated 03.11.2003. Thereafter, petitioner No.1 had got the said gift settlement deed cancelled *vide* cancellation deed dated 21.11.2005. It is stated that respondent No.1 approached the municipal authorities and got his name mutated in the revenue records and he was trying to interfere with the possession of petitioner No.1. It is stated that petitioner No.1 has been in possession of the property and has been paying the electricity consumption charges. Respondent No.1 has no right over the said property and as he has been interfering with the property, the present suit was filed. Unless and until interim injunction is granted, petitioner No.1 would be put to irreparable loss and hardship.

3. A counter-affidavit was filed on behalf of Respondent No.1, wherein, it has been categorically submitted that respondent No.1 is real brother of petitioner No.1 and the property is ancestral property. Petitioner No.1 and defendant

No.1 got half share each during the life time of their father and their father had executed a relinquishment deed dated 13.09.1993 relinquishing his half share of consideration in the property in favour of respondent No.1 and since then, respondent No.1 has become the absolute owner of the property. It is stated that after settlement of property on respondent No.1 and other two sisters, the balance property i.e. suit property totally admeasuring 195 square yards became the absolute property of father and he bequeathed the said property to petitioner No. 1 with the consent of respondent No.1 *vide* Will deed dated 24.09.1994 and he died on 03.11.1994. By virtue of the said will deed, petitioner No.1 became the absolute owner of the suit property and her name was mutated in municipal records *vide* proceedings dated 29.11.1985. Petitioner No.1 used to reside at Hyderabad with her family members and out of love and affection on respondent No.1, she executed the gift deed on 03.11.2003. Thereafter, respondent No.1 became the absolute owner of the property and his name was mutated in the revenue records in the year 2006. Respondent No.1 came to know about cancellation of gift deed only after filing of the suit. It is stated that respondent No.1 is in peaceful possession and enjoyment of

the property from several years. Hence, petitioner No.1 is not entitled for the interim relief as prayed for.

4. Either on behalf of petitioner No.1 or respondent No.1, none were examined. On behalf of the petitioners, Exs.P1 to P5 were marked and on behalf of the respondents, Exs.R1 to R28 were marked. Ex.P1 is xerox copy of the gift deed executed by the father of plaintiff No.1, Ex.P2 is the mutation proceeding, Ex.P3 is the certified copy of the gift deed, Ex.P4 is the certified copy of cancellation of gift deed, Exs.P5 to P7 are the certified copies of registered gift settlement deeds. Ex.R1 is the mutation proceeding, Ex.R2 is the house ownership certificate, Exs.R3 to R5 are the property tax payment receipts, Exs.R6 to R28 are the house tax payment receipts.

5. The Court below considered the documentary evidence and the arguments on behalf of both the parties dismissed the Application. While dismissing the said Application, the Court below observed that original gift deed which was executed by petitioner No.1 in favour of defendant No.1 does not contain any clause for revocation of gift on any specific condition which is contingent upon subsequent events. However the parties have to let in their evidence and the matter is at the premature stage, as such, the real dispute between the

parties can only be determined after full-fledged trial. More over defendant No.1 is successful in establishing that petitioner No.1 has not proved *prima facie* case, balance of convenience and irreparable loss, which are essential for grant of temporary injunction. The said finding was affirmed by the appellate Court by the order dated 27.01.2022 in C.M.A.No. 13 of 2021.

6. Learned counsel for the petitioners Sri K. Sunil Goud submits that after the I.A. was dismissed and before filing the C.M.A., there was an attempt to dispossess plaintiff No.1 from the suit property. Petitioner No.1 is a senior citizen and the Appellate Court has failed to take the said fact into consideration.

7. When an Application is filed seeking interim injunction under Order 39 Rules 1 and 2 C.P.C., the petitioner has to prove that there is a *prima facie* case, balance of convenience and irreparable loss. Petitioner No.1 herein has failed to satisfy the Court below about these ingredients. It is an undisputed fact that gift deed was executed in favour of respondent No.1. According to petitioner No.1, she has cancelled the gift deed which is unilateral cancellation and the same was not considered by the Courts below. Learned counsel for respondent No.1 submits that respondent No.1 is paying

taxes. Respondent No.1 has filed tax receipts to show that he is paying taxes and he is in possession of the property. The Courts below have rightly come to the conclusion and dismissed the Application. This Court finds no reason to interfere with the well-considered and reasoned order passed by the Courts below.

8. The Civil Revision Petition is accordingly, dismissed.
No order as to costs.

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

LALITHA KANNEGANTI, J

08th February 2023

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