(2016) 08 AP CK 0012

Andhra Pradesh High Court

Case No: C.M.A. No. 390 of 2016

Pattamsetty Vital Srinivasa Rao and Others - Appellants @HASH Pattamsetty Venkateswara Rao and Others		APPELLANT
	Vs	
		RESPONDENT

Date of Decision: Aug. 19, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2

Citation: (2016) 6 ALT 355 : (2017) 2 AndhLD 102

Hon'ble Judges: Sri. S. Ravi Kumar, J.

Bench: Single Bench

Advocate: Mr. Raja Reddy Kumar, Advocate, for the Appellant; Mr. V. Surya Kiran, Advocate, for the Respondent Nos. 1 and 2; Mr. V.S.R. Anjaneyalu, Advocate, for the Respondent Nos. 3 to 12

Final Decision: Dismissed

Judgement

Sri. S. Ravi Kumar, J. - This appeal is preferred against order dated 23-04-2016 in I.A.No.1180/2015 in O.S.No.265/2015 on the file of IV Additional District Judge, Gutnur.

2. Appellants herein are defendants 4 to 6 and respondents 1 & 2 herein are plaintiffs and respondents 3 to 12 are the other defendants in the suit. Parties are hereinafter referred to as plaintiffs and defendants as arrayed in the suit for convenience and better understanding.

3. Plaintiffs filed O.S.No.265/2015 for partition of plaint schedule properties into 15 equal shares and allot one such share to each plaintiffs with separate possession free from obstructions by meets and bounds. In that suit, they filed I.A.No.1180/2015 seeking temporary injunction to restrain defendants 4 to 8, their

men and followers from making any constructions in item No.1 of plaint schedule property or in any way altering nature of plaint schedule property, pending disposal of the suit. The application was resisted by defendants 4 to 6 mainly on the ground that plaint schedule properties were orally partitioned in the year 1970 and as per said oral partition, plaintiffs & third defendant have sold out their share of properties in the year 2003 in respect of item No.1 of plaint schedule property and that item No.2 of plaint schedule property is the absolute property of Chinna Raghavaiah. They also contended that item No.1 of plaint schedule property was given for development and in spite of publication calling for objections, nobody came forward as 3 such the developers obtained building approval and the plaintiffs are aware of all these facts and the suit is filed only to stop the construction in item No.1 of the plaint schedule property. On a consideration of documents filed on behalf of both parties, trial Court granted temporary injunction by order dated 30-1-2010 on 26-08- 2015 restraining defendants 4 to 6 from making any constructions from item No.1 of plaint schedule property or in any way altering the nature of plaint schedule property, pending disposal of the suit and that order was challenged before this Court in CMA No.663/2015. This Court suspended the said temporary injunction by order dated 30-10-2010 on giving undertaking by defendants 4 to 6 that they will not claim any equities, in case of success of plaintiffs in the suit. As the Court below has not considered Exs. R1 to R3 relied on by defendants 4 to 6 this Court remanded the case by directing Court below to consider those documents and dispose of the matter as expeditiously as possible with further directed that defendants 4 to 6 shall give un-conditional undertaking. After remand, the trial Court, after considering documents Exs.R1 to R3, allowed the application confirming the earlier order. Aggrieved by which, present appeal is preferred.

4. Advocate for appellants submitted that item No.1 of plaint schedule property is Ac.0-32 cents of land in D.No.200/B of Ankireddypalem Village, Ankireddypalem Gram Panchyat, Nallapadu Sub-Division, Gutnur District. He submitted that it is specific case of plaintiffs that this item No.1 of plaint schedule property is part of Ac.1-27 cents and that plaintiffs'' grand father P. Ramaiah @ Ramulu is the original owner and that he inherited the same along with other items through a registered gift deed dated 16-04-1946 executed by D. Nagaratnamma. He submitted that the said Ramulu died in the year 1976 leaving his two sons Pedda Raghavaiah & Chinna Raghavaiah. He submitted that plaintiffs are the children of Pedda Raghavaiah who predeceased Ramulu in the year 1970 and Chinna Raghavaiah died in 1996. He submitted that according to plaintiffs, plaintiffs and defendants are coparceners and in joint possession of plaint schedule properties but according to defendants 4 to 6, all the properties of Ramulu were partitioned in the year 1970 between the families of Pedda Raghavaiah and Chinna Ragahavaiah, and the suit schedule properties are absolute properties of defendants 4 to 6. He submitted that documents Exs. R1 to R3, which are the sale deeds executed by plaintiffs and third defendant would disclose that they have sold their share that fell to them in the partition that took

place in the year 1970 and therefore, their claim over item No.1 of plaint schedule property is not at all tenable. He submitted that this very suit itself is not maintainable and the prima face case and balance of convenience are not in favour of plaintiffs, but the Court below has not properly appreciated documents-Exs. R1 to R3 and recorded a finding that the plaintiffs still have got share in item No.1 of plaint schedule property. He submitted that the trial Court granted injunction, without considering documents-Exs. R1 to R3, therefore, the order of the trial Court is liable to be set aside.

5. On the other hand, Advocate for plaintiffs submitted that there is no dispute with regard to relationship between the parties and all the objections raised on behalf of defendants 4 to 6 can be decided only on appreciation of evidence and they cannot be gone into at interlocutory stage in view of the discrepancy with regard to property claimed by the defendants 4 to 6. He submitted that defendants are not shown the property D.No.200/B in their land ceiling declaration and they have shown D.No.199/B, therefore the Court below rightly held that these aspects have to be decided in the suit and as the plaintiffs have prima facie claim over the plaint schedule property, if the construction is allowed, it will lead to unnecessary complications. He submitted D4 entered into Development Agreement and according to terms of the agreement, major portion of apartments are allotted to builder, which will be sold away to third parties in which case, it will lead to litigation effecting rights of third parties. He submitted that even if the defendants 4 to 6 have given any undertaking, it could not serve the purpose as their share in the apartments is minimal and undertaking would only workout to the extent of their shares, therefore the trial Court may be directed to expedite the trial and fix some time for disposal of the suit.

6. Both sides, besides the above submissions, referred to other aspects touching the pleadings of both parties in the main suit. I am not going into those aspects since any observation or findings may have bearing on the trial Court at the time of disposal of the suit. Here the simple point that has to be answered in this appeal is whether the trial Court has properly appreciated Exs.R1 to R3 as per the direction of this Court in the remand order.

7. Now the point that would arise for my consideration in this appeal is whether Court below has properly appreciated Exs. R1 to R3?

8. Point:- As already referred above, the main contention of the defendants 4 to 6 is that plaintiffs have already sold away their share that fell to them in the oral partition in the year 1970, therefore, their 6 claim over the plaint schedule property is not tenable. Admittedly, the property sold under Ex.R1 to R3 is in respect of D.No.200/B1, whereas item No.1 of plaint schedule property is D.No.200/B. There is absolutely, no material to show that D.No.200/B and D.No.200/B1 are one and the same. Considering this aspect, the trial Court held that this ambiguity can be decided only after full fledged of trial but not at the interlocutory stage.

9. As rightly pointed out by Advocate for plaintiffs at interlocutory stage, the Court has to examine prima facie case. If the recitals in Exs.R1 to R3 disclose alienation of the property involved in the suit without any discrepancy and ambiguity, then those documents can be taken as prima facie evidence and but here, there is a discrepancy with regard to ''D.No.'' in the document and plaint schedule, unless that is clarified, the recitals in these documents cannot be taken as prima facie material. Further, if the recitals of these documents are read, it is stated that executants of these documents have right in Ac.0-63 of cents in D.No.200/B1 and they sold part of site. Here the extent of item one of the plaint schedule is Ac.0-32 cents in D. No. 200/B. So prima facie, it cannot be correlated to say that these two properties are one and the same. As rightly observed by the Court below, this can be decided only during trial, therefore, the objection of the appellants i.e., defendants 4 to 6 that the trial Curt has not properly appreciated documents Exs.R1 to R3 cannot be accepted and it rightly considered them and recorded a finding that prima facie, property involved in these documents and plaint schedule property cannot be correlated.

10. The next contention of the appellants is that as the property was given for development and as the defendants 4 to 6 are ready to give undertaking, they may be allowed to proceed with the construction by accepting the undertaking. There is no dispute that defendants 4 to 6 have entered into a development agreement with builder, according to which, major share in the apartments constructed would go to the builder. As rightly pointed out by Advocate for plaintiffs, the undertaken given by the defendants 4 to 6 may not workout in respect of the plots allotted to builder. Naturally, the builder will put these apartments for sale in which case, third parties will come into picture, which will lead to multiplicity of proceedings and unnecessary complications. Therefore, the request of the defendants 4 to 6 that undertaking given is to be continued cannot be accepted. Further, as seen from the record, the details of the paper publication given in respect of document relating to development agreement is prima facie incorrect and these aspects can only be clarified during trial.

11. Advocate for defendants 4 to 6 relied on a judgment of Patna High Court in **Chhatradhari Mahton v. Akleswar Mahton, AIR 1952 Patna 382** And Decision of Madras High Court In **Kumarappa Chetti v. Muthuvijaya Raghunatha Muthukumara Vanangamudi Valuvatti Thevar (Dead) represented by Thangammal Aeeyar, 1932 AIR (Mad) 207**. These decisions are in respect of appreciation of evidence, but not in respect of prima facie evidence. The principle laid down in these two decisions can only be appreciated after adducing evidence, therefore they are no way helpful to the defendants at this stage.

12. Advocate for plaintiffs referred to the Judgment of Hon''ble Supreme Court in **Skyline Education Institute (India) Private Ltd., v. S.L. Vaswani, 2010 (2) SCJ 344** wherein the Supreme Court held that once the Court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said

exercise of discretion is based upon objective consideration of material placed before the Court and is supported by cogent reasons, the appellate Court will be loath to interfere.

13. Applying the above said principle to the case on hand, I have no hesitation in holding that the Court below has exercised its discretion on the basis of material placed before it and came to a correct conclusion and therefore, there are no grounds to interfere with such findings.

14. For these reasons, I am of the view that the appeal is devoid of merits and liable to be dismissed.

15. Accordingly, appeal is dismissed as devoid of merits and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No cots.