

*** HIGH COURT OF ANDHRA PRADESH: AMARAVATI**

HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

AND

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

+ C.M.A. No.135 of 2022

% 14.09.2023

#Mundru Ramarao and 5 others

... Appellants

Vs.

\$Mundru Kresha and another

... Respondents

! Counsel for the petitioners: Sri M.Chalapathi Rao

! Counsel for the Respondents : Sri P.S.P.Suresh Kumar

< Gist:

> Head Note:

? Cases referred:

¹ AIR 1957 Madras, 1986

² AIR 1986 Delhi 121

³ AIR 2013 Madras 80

⁴ AIR 1975 AP 187

⁵ (1996) 3 ALD 477

⁶ (2012) 5 SCC 370

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
AND
HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

CMA.No.135 of 2022

JUDGMENT: *(per Hon'ble Sri Justice D.V.S.S.Somayajulu)*

This appeal is filed questioning the order dated 24.03.2022 in I.A.No.519 of 2021 in O.S.No.112 of 2021.

2. The suit O.S.No.112 of 2021 is filed by a minor and his mother for partition of the suit schedule properties which are quite extensive and valuable. There are 13 items of properties and the first plaintiff is claiming a 4/13th share and the 2nd plaintiff is claiming a 1/13th share apart from other reliefs. The second plaintiff is the daughter-in-law of the defendant Nos.1 and 5. Defendant Nos.2 to 4 are the daughter of defendant Nos.1 and 2 and the siblings of the second plaintiffs husband. Second plaintiff's husband died intestate on 18.05.2020. Due to subsequent developments the second plaintiff claims that she is compelled to file this suit for partition as the defendants refused to allow her into the residence. She also filed an interim application

under Order 39 Rule 1 CPC to restrain the alienation. A counter is filed, leading to the impugned order being passed after hearing.

3. This Court has heard Sri M.Chalapathi Rao, learned counsel for the defendants/appellants, who questions the order and Sri P.S.P.Suresh Kumar for the respondents.

4. Learned counsel for the appellants argued the matter at length and raised issues in line with this counter that items 1 to 13 are not proven to be ancestral or joint family properties or that there is joint family nucleus at all. He contends that the suit schedule properties are the self acquired properties of the first defendant and he relies upon the Hindu Gains of Learning Act, 1930 and the case law under the said Act namely, **Ramakrishna Mardi and others v. Vishnumoorthi Mardi and others**¹, **Major Pran Nath Kaushak v. Rajinder Nath Kaushik**², **K.Govindarajan v. K.Subramanian**³ etc. It is his contention that this vital aspect was overlooked by the trial Court. It is also submitted that the *prima facie* case, balance of convenience etc., are not examined in the proper perspective.

¹ AIR 1957 Madras, 1986

² AIR 1986 Delhi 121

³ AIR 2013 Madras 80

5. In reply to this, Sri P.S.P.Suresh Kumar, learned counsel, points out that the trial Court took a right decision to protect the interest of the minor and her mother as there is a danger of the property being alienated. He points out that even in the written statement without giving adequate/proper details, it is mentioned that items 1, 2, 3, 4, 5 and 11 are no longer available and they were sold out. He submits that the impugned order is correct in the facts and circumstances of the case and by preserving the *status quo*, no harm will be caused to the defendants.

COURT:

6. This Court after hearing their contentions notices that the affidavit in question filed in I.A.No.519 of 2021 sets out the facts of the case. In paras 2 to 8, the facts are described. In para 9, *prima facie* case and balance of convenience are touched upon and in para 10 an injunction is prayed for. The counter filed however is detailed and it raises several pleas.

7. The law is well settled that an injunction cannot be granted for the mere asking. The petitioner will have to plead and prove that an order is necessary in the case to preserve the existing state of things/injury etc. till a final hearing takes place. The petitioner must *prima facie* prove that there is a threat and the

need to protect the property from being alienated. Some pleading and averment to that effect is needed for the Court to come to a conclusion that an interim order is to be granted for protection of the property and to preserve the *status quo*.

8. The trial Court relied upon the fact that some items of the property were sold out i.e. items 1 to 5 and 11 and granted the interim order. In the judgment relied upon in para 12, it is noticed that during the pendency of the suit, defendant No.1 transferred the properties 2 and 3 and in turn they had transferred the property in favour of third parties. Therefore, the theory of *lis pendens* was held to be not enough and an order of temporary injunction was granted. In the case on hand, this Court finds that such a fact situation is available. Such pleading is also not there. As mentioned earlier, the affidavit is absolutely bereft of details. The case law relied on was not discussed let alone distinguished. The issue of 'gains of learning' etc., is also not discussed. It is also settled law that merely because a case is filed or is likely to be filed a person cannot be deprived of his right to deal with his property. It is noticed in this case that even without the petitioners specifying that attempts are being made to alienate the property, with a view to cause loss etc., an injunction was granted. What is stated in the affidavit is that the property

was leased out to third parties and rent is being enjoyed. Similarly, lands are also being rented and income is being enjoyed. Therefore, the petitioner states that she is entitled to seek an injunction. In para 8 of the affidavit, it is stated that the petitioners are entitled to some particular shares. Other than this, there was no averment that the property is being alienated or that encumbrances are being created. Yet an injunction was granted by the trial Court.

9. While the argument of Sri Suresh Kumar that the interest of the minor need to be protected appears at first blush to be appealing, the fact remains on the ground of this emotional appeal, this Court cannot ignore the settled law. The issues raised in the counter by the respondent were not discussed before the Court came to a conclusion that there was a need to grant an injunction. Without expressing anything further, the impugned order is set aside in the circumstances of this case.

10. Before parting with the case, this Court has to state with anguish that time and again bland/brief affidavits are being filed for various reliefs, matters are being argued and orders are being passed by Judges without considering the essential legal ingredients in each of these cases. The importance needed to be

attached to these matters is found to be sorely lacking in a large number of cases.

11. Both the lawyers drafting the affidavits/applications and the Courts passing orders are under a bounden duty to be very careful and diligent in such matters, since interlocutory matters are mostly decided on affidavits.

12. Learned counsels who draft the applications for an injunction must notice the settled law on the subject and draft the affidavit with sufficient clarity and details. The danger or the threat apprehended; the right infringed/likely to be infringed etc., should be explained with clarity to enable the Court to grant an order depending upon the facts that are pleaded.

13. Bland affidavits without details are not enough to grant relief. If there is a threat to the dispossession/demolition/alienation, the threat should be described with reasonable clarity. If there is a right infringed, the manner of infringement should be spelt out with reasonable clarity. The perceived injury must also be explained. These are examples and not an exhaustive list. If the respondents are acting in a manner contrary to law, that should also be described with

some amount of certainty. This would also enable the Court to test the veracity of the case and to form an opinion.

14. As far as the Courts are concerned, they also have a duty to carefully analyze the affidavits that are filed to decide if there is an infringement or a threat leading to a need for an order of protection. The manner in which the said infringement, threat etc., are described should be considered. The likely injury must be capable of being ascertained. There should be clarity before an order is granted. Prima facie case; balance of convenience and irreparable loss are not empty phrases. They each have a definite connotation. Courts have a bounden duty to analyze these aspects carefully. The Judges must pose these questions to themselves and then look into the materials/pleadings/affidavits.

15. The Hon'ble High Court of Andhra Pradesh held as follows in two cases:

1) *“Nawab Mir Barkat Ali Khan v. Nawab Zulfiqar Jah Bahadur⁴*

“14. It is well-settled that the grant or refusal of a temporary injunction is covered by three well established principles viz., (1) whether the petitioners have made out a prima facie case (2) whether the balance of convenience is in their favour i.e., whether it would cause greater

⁴AIR 1975 AP 187

inconvenience to them if the injunction is not granted than the inconvenience which the opposite party or persons claiming through the opposite party would be put to if the temporary injunction is granted and (3) whether the petitioners would suffer irreparable injury. With the first condition as sine qua non, at least two conditions should be satisfied by the petitioners conjunctively and a mere proof of one of the three conditions does not entitle the petitioners to obtain a temporary injunction in their favour."

2) *Sheela Harry v. Capt. Mohd. Mirza*⁵

"43. In the case of *T.A. George v. D.D.A.* (3) AIR 1995 Delhi 131, the Delhi High Court observed that injunctions were a form of equitable relief and had to be adjusted in aid of equity and justice to the facts of each particular case. No Court had ventured to lay down absolute propositions and thereby forged fetters. However, some principles were too well entrenched and they were (1) Whether the petitioner had made out a *prima facie* case; (2) whether the balance of convenience was in his favour *i.e.* whether it would cause greater inconvenience to him if the injunction was not granted than the inconvenience which the opposite party or persons claiming through the opposite party would be put to, if the temporary injunction was granted; and (3) whether the petitioner would suffer irreparable injury. It was further observed that the mere circumstance that the party had a *prima facie* case did not necessarily mean that the order of temporary injunction must follow. The Court had also to consider the question of irreparable or serious injury and the balance of convenience. With the first condition as *sine qua non*, the party must satisfy at least two conditions conjunctively. A mere proof of one of

⁵ (1996) 3 ALD 477

the three conditions would not take the party out of woods.”

(Emphasis supplied)

16. In the case of ***Maria Margarida Sequeira Fernandes and others v. Erasmo Jack De Sequeira (dead) through LRs.***⁶ the Hon’ble Supreme Court of India was dealing with an application for temporary injunction based upon possession. In paras 83 and 84, the Hon’ble Supreme Court held as follows:

“83. Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and Judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. (emphasis supplied)

84. In order to grant or refuse injunction, the judicial officer or the Judge must carefully examine the entire pleadings and documents with utmost care and seriousness. The safe and better course is to give a short notice on the injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an ex parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex parte ad interim injunction.”

⁶ (2012) 5 SCC 370

17. These cases are being cited as an example since this Court is of the opinion that both the learned counsels who draft affidavits and the Judges who pass orders should be very conscious of the fact that clear averments are necessary in interlocutory applications to enable the Courts to pass interim orders based upon affidavits only. It is hoped that these observations are followed in letter and spirit. The anguish expressed by the Hon'ble Supreme Court that *prima facie* case; balance of convenience; and irreparable loss are not rhetorical phrases for incantation, should be kept in mind. These are the factors to be kept in mind while drafting affidavits and are the factors to be kept in mind by Judges while granting temporary injunctions. Neither the learned lawyers nor the learned Judges should ever lose sight of these vital ingredients. As held by the Hon'ble Supreme Court, the fate of a case is often decided by the grant or refusal of an interim order. Hence, the need for care and caution in these matters is being highlighted in this order; once again.

18. The Civil Miscellaneous Appeal is therefore allowed. No order as to costs. This order will not however preclude the plaintiffs from taking appropriate steps to protect her interest or the interest of the minor child.

19. As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU, J

DUPPALA VENKATA RAMANA, J

Date: 14.09.2023

Note: LR copy be marked

B/o

KLP