

IN THE HIGH COURT OF ANDHRA PRADESH

CIVIL MISCELLANEOUS APPEAL No.172 of 2022

Between:

Sri Somepalli Govindu.

.... Appellant

AND

Smt.Madikiri Rajamani & 3 others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 30.11.2022

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.V. SESA SAI

&

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters /Journals? Yes / No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes / No

A.V. SESA SAI, J

DUPPALA VENKATA RAMANA,J

*** THE HON'BLE SRI JUSTICE A.V. SSHA SAI**
&
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.... Respondents

! Counsel for Appellant : Sri A.P.Reddy

^ Counsel for Respondents : Sri V.Dushyanth Reddy

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> Head Note:

? Cases referred:

1. (2003) 10 SCC 310
2. (2016) 4 SCC 68
3. AIR 1969 SC 1076
4. AIR 2018 SC 3152

THE HON'BLE SRI JUSTICE A.V. SESA SAI
&
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

CIVIL MISCELLANEOUS APPEAL No.172 OF 2022

JUDGMENT: *(per Hon'ble Sri A.V. Sesa Sai, J)*

Defendant No.1 in O.S.No.7 of 2021 on the file of the Court of the learned XI Additional District Judge, Piler is the appellant in the present Civil Miscellaneous Appeal, preferred under Order XLIII Rule 1 CPC.

2. In the present appeal, challenge is to the order, dated 07.04.2022, passed by the learned Additional District Judge in I.A.No.62 of 2021, granting injunction in favour of the plaintiffs and against the defendants. Respondents 1 and 2, who are the plaintiffs, are the daughter and son of the first defendant and the respondents 2 and 3 are the son and daughter of the first defendant. Respondents 1 and 2 instituted the above said suit for the following reliefs:

“a) To divide the plaint schedule properties between the plaintiffs and defendants into five equal shares and out of the same to allot two such shares to the plaintiffs by taking good and bad of the soil into consideration and put the plaintiffs in separate possession of the same,

within the time fixed by this Hon'ble Court, failing which, the same be done through process of law.

b) Award the costs of the suit, and

c) pass such other or further reliefs as this Hon'ble Court deems fit and proper under the circumstances of the case, in the interest of justice”.

3. Along with the plaint, respondents 1 and 2 herein also filed I.A.No.62 of 2021 under the provisions of Order XXXIX Rules 1 and 2 CPC, praying the trial Court to grant injunction, restraining the defendants from alienating the suit schedule properties. Resisting the said application, first defendant-appellant herein filed counter. The learned Judge, by way of the order under challenge in the instant appeal, allowed the said application, granting temporary injunction, restraining the defendant, from alienating the suit schedule properties pending disposal of the suit. Hence, the present appeal by the first defendant under Order XLIII Rule 1 CPC.

4. Heard Sri O.Manohar Reddy, learned Senior Counsel representing Sri A.P.Reddy, learned counsel for the

appellant on record, and Sri N.Subba Rao, learned Senior Counsel, representing Sri V.Dushyanth Reddy, learned counsel for the plaintiffs-respondents 1 and 2, apart from perusing the entire material available on record.

5. Sri O.Manohar Reddy, learned Senior Counsel, contends that the order passed by the learned Judge is highly erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order XXXIX Rules 1 and 2 CPC; that in the absence of any proof as to the nature of jointness of the plaint schedule properties shown by the plaintiffs, learned Judge grossly erred in granting the relief of injunction; that the plaintiffs failed to prove the existence of triple requirements namely: 1) *prima facie* case; 2) balance of convenience; and 3) irreparable loss, as such, the learned Judge ought to have dismissed the application for injunction filed by the plaintiff; that the wife and the daughter of the first defendant already instituted several suits, wherein no interim orders were passed; that the order of the trial Court is completely bereft of any valid reasons for arriving at the conclusions; to bolster his

submissions and contentions, learned Senior Counsel takes support of the following judgments:

5. *(2003) 10 SCC 310*
6. *(2016) 4 SCC 68*
7. *AIR 1969 SC 1076*

6. Per contra, emphatically supporting the impugned order of injunction, learned Senior Counsel appearing for the plaintiffs-respondents 1 and 2 contends that there is no error nor there exists any infirmity in the questioned order and, in view of the same, invocation of the jurisdiction of this Court under Order XLIII Rule 1 CPC is impermissible; that the learned Judge, on a careful and meticulous analysis of the material available on record, while recording valid reasons, granted injunction; that the plaintiffs have categorically pleaded as regards the nature of the property as joint family properties; that the children by their birth become coparceners in the ancestral property; that the contention that, with the partition that took place in the year, 1986 between the first defendant and his father, the ancestral property lost its character and became the self-acquired property of the first defendant

and, as such, plaintiffs and other defendants would not have any share is neither sustainable nor tenable in the eye of law. In support of his submissions and contentions, learned Senior Counsel, appearing for the plaintiffs-respondents 1 and 2 herein places reliance on the judgment of the Hon'ble Apex Court in the case of ***Shyam Narayan Prasad v. Krishna Prasad and others***¹.

7. In the above background, now the issues that emerge for consideration and adjudication of this Court are as follows:

- 1. Whether the order passed by the learned Judge, in the facts and circumstances of the case, is sustainable and tenable?*
- 2. Whether the learned Judge is justified in granting injunction?*
- 3. Whether the plaintiffs could successfully establish the existence of triple requirements, namely: prima facie case; balance of convenience and irreparable loss?*

8. In the case on hand, the parties are closely related. First defendant is no other than the father of the plaintiffs and the other defendants in the suit. Normally, differences

¹ AIR 2018 SC 3152

of opinions among the family members would not remain for longer periods in majority of the Indian families, as they are also connected emotionally. Therefore, the dispute, pertaining to the members of the family, is required to be dealt with great amount of care, caution and circumspection. Coming to the case on hand, the object of the interlocutory applications and the orders passed thereon are basically intended to preserve the rights in the properties pending litigation and to avoid the multiplicity of litigation. In the above background, various issues in the present case require examination. The pleadings of the plaintiffs are to the effect that the plaint schedule properties are the joint family properties and acquired out of the joint efforts of all the members of the joint family.

9. On the contrary, the case of the first defendant, who is the appellant herein, is that in the partition of the ancestral properties effected during the year, 1986, between the first defendant and his father, he got only Ac.04.55 cents of land and the other suit schedule properties are his self-acquisitions and neither the

plaintiffs nor the other defendants have any role in the acquisition of the said properties nor they contributed anything in the purchase of the said properties. It is also the case of the first defendant that the ancestral properties, which he got towards his share in the partition with his father that took place in the year, 1986, lost their character and have become his self-acquired properties. Admittedly, all the members of the family are the earning members and are financially well settled. As per the material available on record, plaintiffs 1 and 2 are Doctor and businessman respectively and they are also earning members. Therefore, *prima facie*, their contribution to the development of the family properties cannot be ruled out. In the considered opinion of this Court, the suits filed by the daughter and wife of the first defendant cannot be a ground to deny the relief to the plaintiffs in the present suit, having regard to the pleadings available on record. The induction of a third party in the subject properties, at this stage, would undoubtedly multiply the litigation and leads to multi-fold problems. In order to sustain his stand, as to losing of nature of property from ancestral to self-acquisition, after

partition with the father of the first defendant, learned counsel places reliance on ***Uttam v. Saubhag Singh and others***².

10. According to the learned counsel for the first plaintiffs, the said judgment would not render any assistance to the case of the first defendant. In order to fortify his stand, learned Senior Counsel representing the respondents 1 and 2, places reliance on the judgment of the Hon'ble Apex Court in ***Shyam Narayan's*** case (first cited supra).

11. *Prima facie*, having regard to the factual and circumstantial variation in the case on hand, the judgment cited by the learned counsel for the appellant would not render any assistance to the case of the first defendant-appellant herein.

12. A perusal of the impugned order shows that the learned Judge considered the triple requirements and recorded a finding that the plaintiffs made out *prima facie*

² (2016) 4 SCC 68

case and that the balance of convenience is in favour of granting injunction.

13. As observed supra, if a third party is permitted to enter into the properties at this stage, the same would lead to multiplicity of litigation which eventually causes irreparable injury to the parties. It is also pertinent to note that thread-bare analysis of various contentions and all issues pointed out by the learned counsel cannot be undertaken at this interlocutory stage, which may impact the main adjudication.

14. In view of these circumstances, this Court is not inclined to interfere with the order of injunction granted by the learned trial Judge.

15. For the aforesaid reasons, Civil Miscellaneous Appeal is dismissed. However, it is made clear that the suit shall be disposed of, without being influenced by the observations made either in the impugned order or in the present order of this Court. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this case,
shall stand closed.

A.V. SESA SAI, J

DUPPALA VENKATA RAMANA, J

30th November, 2022

Note:

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