

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Miscellaneous Appeal No.2 of 2015

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Dated 10.02.2015
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Between:

P.Priyanka

...Appellant

and

K.Shashidara Sastry and another

...Respondents

Counsel for the Appellant: Mr.K.V.Subba Reddy

Counsel for the respondents: Mr.Laxman Batchu

The Court made the following:

Judgment:

This Civil Miscellaneous Appeal arises out of Order, dated 31-12-2014, in I.A.No.840 of 2014 in OS.No.334 of 2014, on the file of the Court of the learned Senior Civil Judge, Miryalaguda.

The appellant, through her natural father and General Power of Attorney holder, has filed the above-mentioned suit for declaration of title and perpetual injunction restraining the respondents

from interfering with her peaceful possession and enjoyment of the suit schedule plot admeasuring 200 square yards along with semi-finished construction situated in Survey No.640/A of Miryalaguda Municipality. Along with the suit, the appellant has filed IA.No.840 of 2014 seeking temporary injunction.

The respondents filed a counter-affidavit wherein they have *inter alia* averred that the plot, in respect of which the suit is filed, is situated in Survey No.626 but not in Survey No.640 of Miryalaguda Village as claimed by the appellant; that the land in Survey No.626 is a Government land; that on an application being filed by the respondents for allotment of house plots, the Tahsildar, Miryalaguda, *vide* his proceedings, dated 25-10-2012, has allotted plot Nos.6 and 7 in Survey No.626 to respondent Nos.1 and 2 respectively; and that respondent No.1 has raised the construction up to the lintel level and respondent No.2 has raised the basement. The respondents have, thus, pleaded that the constructions raised by them over their respective plots are being claimed by the appellant, as having been raised by her, with a *mala*

fide intention to grab the same.

On behalf of the appellant, Exs.P.1 to P.4 were filed and on behalf of the respondents, Ex.R.1 to R.14 were filed.

Having regard to the respective pleadings of the parties, the lower Court has framed the following points:

- “1. Whether the petitioner has made out a *prima facie* case for grant of interim injunction ?
2. Whether the balance of convenience is in favour of the petitioner ?
3. Whether the petitioner can be compensated if injunction is granted ?”

On appreciation of the documentary evidence, the lower Court has *prima facie* come to the conclusion that the respondents were allotted plots; that the said plots were situated in Survey No.626; that they were allotted by the Government to the respondents; and that partial constructions were raised by them. Based on the said findings, the lower Court has dismissed the IA filed by the appellants.

Inasmuch as the suit filed by the appellant is pending, this Court refrains from rendering conclusive findings on the merits of the case.

However, on a consideration of the documentary evidence produced by both the parties, this Court is of the *prima facie* opinion that the findings rendered by the lower Court are supported by the documentary evidence produced by the respondents *i.e.*, Exs.R.3 and R.4- house site pattas issued in favour of the respondents, Exs.R.8 and R.9- applications made by them to the Miryalguda Municipality seeking permission for construction and Ex.R.10- Intimation Letter, dated 09-09-2014, issued by the Kapra Municipality.

On a careful consideration of the facts pleaded by either parties and the documentary evidence adduced by them, I am of the opinion that the order of the lower Court is not liable to be interfered with. It is, however, made clear that the constructions, if any, raised by the respondents over the suit schedule plots shall be subject to the result of the suit and the respondents shall not claim any equities, in the event the appellant succeeds in the suit.

Subject the above observations, the Civil Miscellaneous Appeal is dismissed.

As a sequel to dismissal of the Civil

Miscellaneous Appeal, interim order, dated 07-01-2015, is vacated and CMAMP.No.2 of 2015, filed by the appellant for interim relief, is disposed of.

(C.V.Nagarjuna Reddy, J)

Dt: 10th February, 2015
LUR