

HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.8 of 2015

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JUDGMENT : (per Hon'ble Sri Justice R.Subhash Reddy)

Though the matter is listed in interlocutory stage, at the request of both the learned counsel, the appeal itself is heard and being disposed of finally.

2. This Civil Miscellaneous Appeal is filed by the appellant/defendant No.1 in the suit aggrieved by the order and decree dated 15.09.2014 in I.A.No.1127 of 2014 in I.A.No.822 of 2014 in O.S.No.231 of 2014 passed by the IV Additional District Judge, Guntur, dismissing the application filed by her under Order XXXIX Rule 4 r/w. Section 151 of C.P.C., seeking to vacate the interim injunction passed in I.A.No.822 of 2014 in O.S.No.231 of 2014.

3. Appellant is defendant No.1 and respondent Nos.1 to 3 are plaintiffs and respondent Nos.4 to 13 are defendant Nos.2 to 11 in the suit O.S.No.231 of 2014. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in the suit before the Court below.

4 . Plaintiff No.1 is the wife of one late Ramesh Babu, and plaintiff Nos.2 and 3 are their children. The plaintiffs filed the aforesaid suit for partition and separate possession of the suit schedule properties into two equal shares and to allot one such share to them. It is the case of the plaintiffs that the suit schedule properties are the joint family properties. Pending disposal of the suit, they have filed

I.A.No.822 of 2014 under Order XXXIX Rules 1 and 2 of C.P.C., seeking to grant interim injunction restraining the defendants from alienating the plaint schedule properties till 18.7.2014. At the first instance, the Court below has granted interim injunction on 18.6.2014. Subsequently, on an application in I.A.No.1127 of 2014 filed by the 1st defendant seeking to vacate said interim order, the same was dismissed through the impugned order dated 15.09.2014. Hence, the present appeal.

5. Mainly, it is the contention of learned counsel for the appellant/defendant No.1 that the husband of plaintiff No.1, during his life time, has filed suit O.S.No.274 of 1995 on the file of the Court of Additional Subordinate Judge, Guntur, against her father for declaration of ownership and title on the suit schedule properties, wherein it was pleaded that all the joint family properties were partitioned orally. The learned counsel submits that though the documents filed in O.S.No.274 of 1995 show that all the properties are joint family properties, the same are not being considered.

6. On the other hand, it is submitted by the learned counsel for the respondents/plaintiffs that it is specifically pleaded by the plaintiffs that the said decree was obtained by playing fraud, as the said suit was filed on 17.10.1995 and the same was decreed on 7.11.1995 i.e., within a period of 20 days. It is submitted that during his life time, her husband late Ramesh Babu has not filed any suit by engaging any Advocate and the entire episode of filing suit and obtaining decree is fraud.

7. Having heard learned counsel for the parties, we have perused the material on record.

8. In this case, it is to be noticed that the plaintiffs are none other than the legal heirs of late Ramesh Babu, who are claiming partition of the suit schedule properties. At the first instance, interim injunction was granted on 18.6.2014 and the said order continued since then. The plea of the appellant/defendant No.1 that the suit schedule properties were earlier orally partitioned is a matter to be

considered by the trial Court after recording evidence of both sides. With regard to the contention of learned counsel for the appellant/defendant No.1 that the documents filed in O.S.No.274 of 1995, which is said to have been filed by the husband of plaintiff No.1, it is specifically pleaded by the respondents/plaintiffs that late Ramesh Babu has not filed any suit during his life time and filing of the said suit and obtaining decree is a fraud played only to deprive the share to the legal heirs of late Ramesh Babu.

9. In support of his contention, learned counsel for the appellant/defendant No.1 has placed reliance on a judgment of this Court in D. ILAIAH vs. D. RAMAIAH.

10. We have perused the said judgment. Whether *prima-facie* case made out or not and whether balance of convenience lies to grant interim injunction or not are the matters to be considered having regard to the facts of each case and the material on record. In view of the same, we are of the view that the said judgment would not render any assistance to the case of the appellant/defendant No.1.

11. Having regard to the findings recorded by the Court below and whether the suit schedule properties were earlier orally partitioned or not is a matter to be considered by the Court below after recording evidence of both sides. Therefore, we do not find any merit in this appeal so as to interfere with the impugned order dated 15.9.2014.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed. The Court below is directed to dispose of the suit as expeditiously as possible. As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A. SHANKAR NARAYANA

08.06.2015.

Msr

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