

THE HON'BLE SRI JUSTICE K.C.BHANU

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CIVIL REVISION PETITION No.70 OF 2015

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ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the order, dated 12.08.2014, in Civil Miscellaneous Appeal No.11 of 2012 passed by the XIII Additional District Judge, Narasaraopet, whereunder and whereby, appeal filed against the order, dated 29.02.2012, in I.A.No.1504 of 2011 in Original Suit No.418 of 2011 on the file of the Additional Senior Civil Judge, Narasaraopet, was confirmed.

2. The brief facts that are necessary for disposal of the present revision may be stated as follows:

Originally, the plaint schedule property belongs to one Bollepalli Butchaiah, who executed a registered gift deed in favour of his wife on 11.07.2005; that thereafter, donee accepted the gift deed and sold the property to one G.Padma on 26.07.2005 under a registered sale deed for Rs.60,000/- and since then the said Padma had been in possession and enjoyment of the property; that thereafter, the petitioners herein purchased the plaint schedule property from the said Padma on 11.01.2008 under a registered sale deed for Rs.3,40,000/- and since then they have been in possession and enjoyment of the of the property; that when the respondents herein/defendants, who are strangers, having no right or title over the property are trying to interfere with the property, the petitioners herein filed a suit for permanent injunction and also filed a petition for temporary injunction.

3. Respondents herein/defendants filed counter stating that the petitioners or their predecessors-in-title have no right, title and interest over the plaint schedule property; that the plaint schedule property is part and parcel of registered sale deed, dated 10.06.1985; that respondent No.2 purchased 304 square yards of land under

a registered sale deed, dated 16.12.2011 and therefore, they prayed to dismiss the petition.

4. The trial Court, after considering the material on record, dismissed aforesaid Interlocutory Application and on appeal, it was confirmed.

5. Learned counsel for the petitioners herein contended that the petitioners are in possession and enjoyment of the plaint schedule property in question prior to filing of the suit; that after obtaining permission from the competent authority, the petitioners started construction in the schedule premises and therefore, he prays to admit the Civil Revision Petition.

6. Grant or refusal of interim order is guided by three well established principles viz., 1) whether the petitioners have got *prima facie* right, title and interest over the property 2) whether the balance of convenience is in favour of the petitioners and 3) whether the petitioners will suffer serious irreparable injury if temporary injunction is not granted.

7. It was observed by the appellate Court in the impugned order that after obtaining *ex parte* ad interim injunction, the petitioners obtained permission and approval of plan from the competent authority and thereafter, started construction in the plaint schedule property. Since the property in question is a vacant site, whether the petitioners are entitled to temporary injunction pending disposal of the suit or not has to be decided in the main suit itself because the main relief and the interim relief sought for in the suit is one and the same.

8. With regard to irreparable injury, if temporary injunction is not granted, the petitioners would not suffer any irreparable injury because the property in question is a vacant site. But, under the guise of *ex parte* ad interim injunction, the petitioners cannot make construction in the plaint schedule property. There is no balance of convenience in favour of the petitioners. Therefore, considering all these aspects, the trial Court as well as appellate Court rightly refused to grant injunction in favour

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DATE:30.01.2015

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