

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

C.M.A.No. 382 OF 2016

DATED 09TH AUGUST, 2016

Between:

M.Rajashekar ... Appellant

AND

M.Pentamma and others ... Respondents

Counsel for the appellant : Sri G.Srinivas

Counsel for respondent Nos. 1 to 5 : M/s. Amarnath Law Firm

Counsel for respondent Nos. 6 to 11 : --

THE COURT MADE THE FOLLOWING

JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This civil miscellaneous appeal is taken up for hearing at the interlocutory stage with the consent of learned counsel for both parties. The appellant filed O.S.No. 139 of 2015 on the file of the Court of XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad (for short, 'the lower Court'), for partition and separate possession of 1/6th share in the suit schedule properties. He has also filed I.A.No. 109 of 2015 for an order to restrain the respondents from alienating the suit schedule properties to third parties pending the suit. By order dated 13-11-2015, the lower Court has dismissed the said application on a *prima facie* finding that there is no evidence to show that the suit schedule properties were purchased with the joint family funds or from the sale proceeds of ancestral properties.

2. In our opinion, considerations for granting an injunction against alienation of properties pending a suit vary depending upon the nature of the suit and the relationship between the parties. Undisputedly, the appellant is the son of respondent No. 1 and the brother of respondent Nos. 2 to 5. The issues, as to whether there was a joint family and, if so, there existed a joint family nucleus, whether the respondents had their own individual source of income and whether the properties, sought to be partitioned, were purchased from out of joint family funds or from the personal income of the individuals, could be adjudicated only based on the evidence that may be adduced by both parties. Therefore, it is too premature for the Court to draw any *prima facie* conclusion in this regard. The appellant being a member of the family of respondent Nos. 1 to 3, even if we exclude the two married sisters, further alienations of the properties to third parties would cause serious prejudice to his interest.

3. In this view of the matter, the appellant is entitled to grant of injunction pending disposal of the suit. The order under appeal is set aside. I.A.No. 109 of 2015 is allowed.
4. The civil miscellaneous appeal is, accordingly, allowed. The lower Court is directed to dispose of the suit expeditiously.
5. As a sequel to disposal of the civil miscellaneous appeal, C.M.A.M.P.No. 752 of 2016 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

G.SHYAM PRASAD, J.

Date: 09-08-2016.

JSK