

**HON'BLE SRI JUSTICE S. RAVI KUMAR**

**CIVIL MISCELLANEOUS APPEAL No.501 of  
2016**

**JUDGMENT:**

This appeal is preferred against order dated 30.05.2016 in I.A.No.52 of 2016 in O.S.No.5 of 2016 on the file of Vacation Civil Judge-cum-IV Additional District Judge, Kakinada.

2. Appellants herein are defendants in the above referred suit O.S.No.5 of 2016, which is filed for the relief of permanent injunction. Plaintiff i.e., respondent herein contended that she got the suit property from her sons through registered gift deeds of the year 2009 and plaintiff raised plaintain garden in the suit property and defendants filed suit for specific performance with false allegations claiming that they are in possession of the property and tried to disturb the possession of plaintiff on 03.05.2016 and that plaintiff resisted the same with the help of her farm servant and on that ground filed I.A.No.52 of 2016 for grant of temporary injunction.

3. Appellants herein filed counter disputing the affidavit averments of plaintiff and pleaded that plaintiff's husband together with children executed sale agreement dated 09.06.1997, which contains subsequent endorsements of deliver of possession

and as they failed to execute regular sale deed, they filed suit for specific performance in O.S.No.82 of 2016 before VI Additional District Judge, Kakinada, and that they are in possession of the property in pursuance of agreement of sale.

4. On consideration of contentions and rival contentions of both parties, trial Court granted injunction restraining appellants from interfering with plaintiff's possession and enjoyment.

5. Advocate for appellants submitted that the trial Court has not discussed anything with regard to the objection taken in the counter or the documents filed on behalf of respondent in the order. It is submitted that Court below through a cryptic order granted injunction solely on the ground that appellants have not obtained regular sale deed till the date of passing of the order though they purchased it in the year 1997. He submitted that trial Court recorded a finding that on the basis of Exs.P.1 to P.24, prima facie case and balance of convenience are in favour of plaintiff, without discussing anything. He submitted that this is a fit case to set aside the order and remit back for fresh consideration.

6. On the other hand, advocate for respondent-plaintiff submitted that plaintiff proved her possession by producing documentary evidence

and there is absolutely no material on respondents' side to rebut those documents. He submitted if for any reason the matter is remitted back it may be by directing both parties to maintain status quo, otherwise it is difficult to plaintiff to protect possession.

7. I have perused the material papers including the impugned order dated 30.05.2016. The trial Court up to para 10 recorded the contentions and rival contentions that were taken in the affidavit and counter besides describing the documents marked on behalf of both parties and in paras 11 and 12 the findings are recorded. As rightly pointed out by advocate for appellants, nothing is discussed about the prima facie case and balance of convenience with reference to the documents in detail that are exhibited on behalf of both parties. The learned Presiding Officer in a cryptic way dealt the matter though (24) documents are marked on behalf of plaintiff and (15) documents are marked on behalf of appellants. When both parties claim possession over the disputed property it is expected from the trial Court to decide on the basis of affidavits filed on behalf of parties and documents as to who is in possession of the property as on the date of suit and also who has got legal right to be in possession. On such lines,

trial Court is expected to record a finding with regard to prima facie case and balance of convenience. But, as seen from the impugned order, the trial Court recorded a finding that prima facie case and balance of convenience are in favour of plaintiff without elaborately explaining as to how these two ingredients are fulfilled by plaintiff. On a scrutiny of the material, I am of the considered view that impugned order cannot be sustained and it is a fit case to remit back the case by directing the trial Court to examine afresh contentions of both parties with reference to pleadings and documents and then record a finding as to the prima facie case and balance of convenience.

8. For these reasons, appeal is allowed and the impugned order dated 30.05.2016 is set aside and the matter is remitted back to trial Court with a direction to dispose of the same within a period of (30) days from the date of receipt of the order, without being influenced by any of the observations made in this order.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

**S. RAVI KUMAR, J**

12<sup>th</sup> July 2016.

Note:

Issue C.C. by 14.07.2016.

(b/o)

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