

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.69 of 2016

JUDGMENT:

This appeal is preferred against order in I.A.No.701 of 2015 in O.S.No.62 of 2015 on the file of VII Additional District Judge, Mahabubnagar.

2. Appellants herein are plaintiffs in O.S.No.62 of 2015 and in that suit they filed I.A.No.701 of 2015 seeking temporary injunction restraining respondent Nos.5, 6 and 16 from making any constructions in Sy.No.368/AA of Marikal Village of Dhanwada Mandal, which is shown as part of 'B' schedule in the suit. The suit is filed for partition of suit schedule properties and also for perpetual injunction restraining defendants from alienating the suit schedule property pending the suit. Defendant Nos.5, 6 and 16 resisted the petition, but subsequently plaintiffs have withdrawn the claim against defendant No.6 only. Defendant No.5 and 16 resisted the injunction petition contending that plaintiffs approached the Court suppressing the true facts and that defendant No.16 is absolute owner of Ac.0.30 gts. of land covered by Sy.No.368/A out of total extent of Ac.2.05 gts. and the suit filed for cancellation of gift deed is decreed and it has reached finality and plaintiffs have no prima facie right in the suit properties.

3. Trial Court on a consideration of prima facie material

and contentions and rival contentions of both parties held that plaintiffs are not entitled for the relief of temporary injunction by holding that defendants being parties to the proceedings are bound to abide the decree that may be passed in the suit. Now aggrieved by the dismissal of the interim injunction petition plaintiffs preferred the present miscellaneous appeal.

4. Heard both sides.

5. Admittedly, there were earlier suits between the parties in O.S.No.25 of 2012 which has become final so also O.S.No.15 of 2002 and both the suits were held against plaintiffs-appellants herein. The subject matter of injunction petition is Ac.0.30 gts. of land, which defendant No.16 claimed through a registered gift deed executed by defendant No.7. The suit filed challenging the gift deed was also held against plaintiffs. Trial Court on a consideration of entire material including the orders and decrees in the earlier suits O.S.No.25 of 2012 and O.S.No.15 of 2002 held that prima facie case is not in favour of plaintiffs and so also balance of convenience. Trial Court recording such findings and having held that plaintiffs are not entitled for the relief of temporary injunction, observed that defendants being parties to the suit if any decree is passed it is binding on them and as the relief of injunction is equitable, such relief cannot be granted to the parties who approached the Court without placing any prima facie material.

6. Considering the submissions of both parties instead of going into the merits and demerits of the case, I feel by directing trial Court to expedite trial the ends of justice would be met. For these reasons, while dismissing civil miscellaneous appeal, trial Court is directed to proceed with the trial of the suit and decide the same without being influenced by any of the findings which are recorded in I.A.No.701 of 2015 so also in this appeal.

7. For these reasons, appeal is dismissed.

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

S. RAVI KUMAR, J

18th February 2016.

mar