

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1805/2018

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL)NO. 4570/2018 @ DIARY  
NO(S). 20319/2017)

SARIKA PRAKASH RAO & ORS.

APPELLANT (s)

VERSUS

SMT. GUMPANA VARALAKSHIMI & ORS.

RESPONDENT (s)

O R D E R

Delay condoned.

Leave granted.

Aggrieved by an order dated 16.09.2016 passed in ASMP No. 1209 of 2016 in A.S. No. 554 of 2016, the appellants have preferred the instant appeal.

O.S. No. 181 of 2011 was filed by the respondents/plaintiffs seeking declaration of title in respect of suit property namely, Ac.14-19 cents under the following items i.e. (1) S.No. 18 to an extent of Ac.8-69 cents (2) S. No.20/2 to an extent of Ac.30-98 cents, being the single plot situated at Narellavalasa Village Padamanabham Mandal, Visakhapatnam District, Andhra Pradesh. The respondents/plaintiffs claim to derive the title of the said land through a sale deed executed by one Sri Pusapati Appala Narasimha Raju, who himself is a GPA holder of one Sri Pusapati Venkata Narasimha Raju. Apart from the declaration, relief of permanent injunction was also sought. This suit was filed in the court of II

Additional District Judge, Visakhapatnam. Along with the suit the respondents/plaintiffs also preferred the application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking interim injunctions. This application was numbered as I.A. No. 774 of 2011. The Trial Court by order dated 10.06.2011 granted interim injunction in the said application. The respondents/plaintiffs also filed another suit i.e O.S. No.123 of 2012 for perpetual injunction restraining the appellants/defendants from interfering with the respondents/plaintiffs' peaceful possession and enjoyment of the plaint schedule property. The suit was contested by filing the written statement denying the averments contained in the suit. Issues were framed and the matter went for trial. Both sides examined their respective witnesses. After hearing learned counsel for the parties and going through the record, the Trial Court vide common judgment and order dated 13.04.2016 dismissed both the suits with the finding that the respondents/plaintiffs could not prove their case.

Against the aforesaid judgment and decree dismissing the suits of the respondents/plaintiffs, they have preferred an appeal, being A.S. No. 554 of 2016, in the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh. Along with the said appeal, the respondents/plaintiffs also preferred the application being ASMP No. 1209 of 2016 under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for the following relief:

"to grant ad-interim injunction by restraining the

respondents and their men in interfering into the suit schedule property consisting of Acres 14.19 cents of land along with Mango Tope covered with partly constructed compound wall with gate in survey nos. 17/4, 18, 20/1, 20/2 situated at Nerellavalasa Village, Padmanabham Mandal Visakhapatnam District."

The High Court while considering the above said application has granted the interim relief on the ground that since the court below granted injunction on 10.06.2011 initially and the same continued till the dismissal of the suit by the Court below, the High Court is inclined to continue the said interim arrangement made during the pendency of the suit, in the interest of justice. In this appeal the aforesaid order has been challenged.

We have heard the learned counsel for the parties.

The impugned order shows that the only reason for granting the injunction is that during the pendency of the suit before the Trial Court injunction was operating in favour of the respondents/plaintiffs. To our mind that would not be a valid reason for grant of injunction at the appellate stage. When the Trial Court granted injunction in the application under Order XXXIX Rules 1 and 2 of the CPC, it had taken only a *prima facie* view at that stage and considered the balance of convenience and irreparable injury principles. However, there are specific findings of the Trial Court based on evidence produced. Therefore, while considering the application of the respondents/plaintiffs (appellants in the appeal) filed under Order XXXIX Rules 1 and 2 of the CPC the High Court should have gone into those findings and based on that it should have made up its mind as to whether *prima facie* case for grant of injunction is made out or not. Since that

exercise is not done, we set aside the impugned order and allow this appeal.

Simultaneously, the matter is remitted to the High Court for fresh consideration of the application being ASMP No. 1209 of 2016. However, the interim order passed by the High Court shall remain operative for six weeks from today within which period the High Court can take up the matter and decide as to whether injunction is to be granted or not and in the interregnum whether it could be continued or not.

We make it clear that this Court has not made any observations on the merits of the case.

.....J.  
[A.K. SIKRI]

.....J.  
[ASHOK BHUSHAN]

NEW DELHI;  
JANUARY 15, 2018.

ITEM NO.15

COURT NO.6

SECTION XII-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 20319/2017

(Arising out of impugned final judgment and order dated 16-09-2016 in ASMP No. 1209/2016 passed by the High Court Of Judicature At Hyderabad For The State Of Telangana And The State Of Andhra Pradesh)

SARIKA PRAKASH RAO &amp; ORS.

Petitioner(s)

VERSUS

SMT. GUMPANA VARALAKSHIMI &amp; ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.115144/2017-CONDONATION OF DELAY IN FILING and IA No.115146/2017-EXEMPTION FROM FILING O.T. and IA No.115145/2017-CONDONATION OF DELAY IN REFILEING and IA No.115150/2017-DELETING THE NAME OF RESPONDENT and IA No.115148/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

Date : 15-01-2018 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. A.T.M. Rangaramanujam, Sr. Adv.  
Mr. K.L. Sastry, Adv.  
Ms. Sarika Haribabu, Adv.  
Mr. I.V. Kasypa, Adv.  
Mr. M. Nageswara Rao, Adv.  
Dr. Vinod Kumar Tewari, AOR

For Respondent(s) Mr. Y. Raja Gopala Rao, AOR  
Mr. K. Sharat Kumar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed order.

Respondent No.5 is deleted from the array of the parties.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR)  
COURT MASTER (SH)

(MALA KUMARI SHARMA)  
COURT MASTER

(Signed order is placed on the file)