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**(2014) 02 AP CK 0029**  
**In the Andhra Pradesh High Court**  
**Case No : C.M.A. No. 1050 of 2013**

B. Narasimha Reddy

APPELLANT

Vs

Nama Damodhar Reddy and Another

RESPONDENT

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**Date of Decision :** 19-02-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2

**Citation :** (2014) 2 ALD 687 : (2014) 3 ALT 469

**Hon'ble Judges :** T. Sunil Chowdary, J;G. Rohini, J

**Bench :** Division Bench

**Advocate :** D. Vijaya Kumar, Advocate for the Appellant; G. Sudhakar Reddy, Advocate for the Respondent

**Final Decision :** Dismissed

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## Judgement

T. Sunil Chowdary, J.—This civil miscellaneous appeal is filed by the defendant against order dated 30.9.2003 in plaintiffs' I.A. No. 1485 of 2013 in OS No. 1015 of 2013 on the file of I Additional District Judge, Ranga Reddy District at L.B. Nagar. By the impugned order, learned District Judge granted interim injunction restraining defendant and others from interfering with the possession of plaintiffs in respect of petition schedule plot. For the sake of convenience, the parties will be hereinafter referred to as they are arrayed in the suit. The case of the plaintiffs is that they are absolute owners and possessors of petition schedule plot bearing No. 210, admeasuring 366 Sq.yards, in Survey No. 60 Part, situated at Ward No. 8, Block No. 3, Sri Ramana Colony, Karmanghat Village, Saroornagar Revenue Mandal, Ranga Reddy District under GHMC L.B. Nagar Circle. They purchased the plot through registered sale deed bearing No. 5143/2003, dated 8.4.2003. Originally Balam Jangaiah and others were possessors of Acs.52.00 of land in Survey No. 60 of Karmanghat Village. The said land was classified as Inam land as per the revenue records. Balam Jangaiah and others applied to revenue authorities for issuance of Occupancy Rights Certificates (ORCs) under Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. The Inams

Tribunal vide Proceedings No. AD/survey/Special-80 issued independent ORCs in favour of Balam Jangaiah and others on 31.10.1980. In pursuance of the said ORCs, Balam Jangaiah and others have become owners to an extent of Acs.52.00 of land situated in Karmanghat Gram Panchayat vide its Proceedings No. 415/1980, dated 29.8.1980 and thereafter they converted the land into 575 plots and sold them to various persons. The plaintiffs' vendor by name M. Shamantha, W/o. Venkateswarlu purchased the petition schedule plot under registered sale deed bearing Document No. 2635/1980, dated 7.4.1981. The plaintiffs have purchased the petition schedule plot from Shamantha under registered sale deed bearing Document No. 5143/2003, dated 8.4.2003. The plaintiffs' vendor and thereafter the plaintiffs have been in possession and enjoyment of petition schedule plot. The plaintiffs approached the Municipal authorities and got regularised the petition schedule plot under Land Regularisation Scheme on 30.12.2008. The defendant is openly proclaiming that he is having title to the suit property and tried to dig pits in the petition schedule plot on 15.8.2013. Prima facie case and balance of convenience are in favour of the plaintiffs and if interim injunction is not granted in their favour, they would sustain irreparable injury. Hence, this petition.

2. The defendant filed counter-affidavit inter alia contending that originally the land in Survey No. 58 of Karmanghat Village is Inam land and its Inamdar, late Khaja Shakir Hussain, and the defendant was in possession and enjoyment of Acs.8.26 guntas of land in Survey No. 58. The defendant approached the Inams Tribunal for grant of ORC. After due enquiry, the then Revenue Divisional Officer, East Division granted ORC in favour of defendant vide File No. H/963/81 dated 24.9.1981 in respect of Acs.8.26 guntas. He got his name mutated in the revenue records and obtained subdivision Survey No. 58/1/S. Out of the said land, the defendant sold Ac. 1.06 guntas to one Ghan Shaheed Baba, who is running a school in the name of G.S.B. International School. The defendant obtained layout for an extent of Acs.5.38 guntas from H.U.D.A. in the year 1991 and sold plots to different persons. He also sold Ac.0.18 guntas to one P.D. Prakash and others. The defendant retained Ac. 1.04 guntas in Survey No. 58. The members and office bearers of Sri Ramana Colony Welfare Association (for short, the Association), who have no right or title, tried to interfere and occupy the land Ac. 1.04 guntas in Survey No. 58/1/S. Then he filed OS No. 1014 of 1999 on the file of Principal Junior Civil Judge, Ranga Reddy District at L.B. Nagar for perpetual injunction and the same was decreed on 25.6.2013. During the pendency of the said suit, the Advocate Commissioner with the help of surveyor demarcated the land and a sketch map was prepared. The plaintiffs who are well aware of the earlier proceedings in OS No. 1014 of 1999 and passing of the decree of perpetual injunction in favour of defendant on 25.6.2003 by learned Principal Junior Civil Judge, Ranga Reddy District, suppressed the same and filed the present suit, and obtained the ex parte injunction order against the defendant. There is no prima facie case and balance of convenience in favour of plaintiffs. Hence the petition is liable to be dismissed.

3. In the trial Court, on behalf of plaintiffs, Exs. P1 to P18 were marked. On behalf of the defendant, Exs. R1 to R10 were marked. Basing on the material available on record, the trial Court arrived at a conclusion that the plaintiffs are entitled for interim injunction. Feeling aggrieved by the said order, the defendant preferred this miscellaneous appeal.

4. The learned Counsel for defendant/appellant strenuously submitted that the trial Court granted interim injunction without properly considering the documents filed by defendant. Per contra, learned Counsel for plaintiffs/respondents submitted that the trial Court rightly considered the documents filed by both the parties and granted interim injunction.

5. Now, the points that would arise for consideration in this miscellaneous appeal are:

(1) Whether the plaintiffs are entitled for interim injunction?

(2) Whether the order under appeal is sustainable?

Point Nos. 1 and 2:

6. It is settled principle of law that establishment of prima facie case, balance of convenience and irreparable loss likely to be caused to plaintiff if no injunction is granted, is sine quo non for granting interim injunction. Suffice to say that while deciding the interlocutory applications, the Court should not express any opinion which ultimately affects the rights of the parties to the suit.

7. As seen from the material available on record, plaintiffs have purchased the petition schedule plot under the original of Ex.P1 registered sale deed dated 8.4.2003 from one Shyamantha. The said Shyamantha purchased petition schedule plot under the original of Ex.P2 sale deed dated 7.4.1981. Exs. P7 to P15 are the photocopies of ORCs issued in favour of original owners of the land in respect of Survey No. 60. The plaintiffs got approved layout plan in respect of petition schedule plot (copy of which is marked as Ex.P17). Exs. P3 to P6, certified copies of Encumbrance Certificates prima facie show that petition schedule plot is in possession of plaintiffs and that property is not burdened with any encumbrance.

8. The contention of defendant is that he is owner of an extent of Ac. 1.04 guntas of land in Survey No. 58/1/S is supported by Exs. R1 and R2, the certified copies of Inam Certificate and order in File No. H/963/81 respectively. The defendant filed OS No. 1014 of 1999 against Sri Ramana Welfare Association and the same was decreed. Exs. R4, R5 and R6 clearly manifest that during the pendency of OS No. 1014 of 1999, Advocate Commissioner with the help of surveyor demarcated and prepared sketch map in respect of Survey No. 58. The contention of defendant that he lodged police complaints against members of the Association is prima facie supported by Exs. R7 to R9. In the counter, it is categorically mentioned that the police have not taken any action against the members of the Association basing on the basis of the above complaints. A

perusal of sketch map indicates that there is clear-cut demarcation between Survey Nos. 58 and 60.

9. It is not the case of the defendant that the plaintiffs herein are parties in OS No. 1014 of 1999. It is also not the case of the defendant that he is the owner and in possession of the property covered under Survey No. 60. The plaintiffs and defendant are in possession and have title with respect to distinct survey numbers i.e., Survey No. 60 and Survey No. 58/1/S of Karmanghat Village respectively. Whether the plaintiffs have occupied Survey No. 58/1/S has to be decided at the time of trial of the suit Mere apprehension in the mind of the defendant that the plaintiffs may encroach his property under the guise of interim injunction is untenable.

10. The Hon"ble Supreme Court in Kashi Math Samsthan and Another Vs. Srimad Sudhindra Thirtha Swamy and Another, , while deciding a petition filed under Order XXXIX Rule 2 discussed about the requirements for grant of temporary injunction during pendency of suit and held as under:

In order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted.

The plaintiffs made out prima facie case to go for trial. The material placed before the Court prima facie reveals that the balance of convenience is also in favour of the plaintiffs. If no injunction is granted in favour of the plaintiffs irreparable loss likely to be caused to the plaintiffs cannot be compensated in terms of money. The plaintiffs have satisfied the ingredients for granting of interim injunction in respect of the plaint schedule plot.

11. In Wander Ltd. and Another Vs. Antox India P. Ltd., , while dealing with interference of appellate Courts in the matters of interlocutory injunctions, the Hon"ble Supreme Court held as follows:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by that Court was reasonably possible on the material. The appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate

Court would have taken a different view may not justify interference with the trial Court's exercise of discretion. After referring to these principles Gajendragadkar, J., in *The Printers (Mysore) Private Ltd. Vs. Pothan Joseph*,

9. ...These principles are well established; but, as has been observed by Viscount Simon in *Osenton (Charles) & Co. v. Johnston*, 1942 AC 130 : (1941) 2 All ER 245 (HL) : (AC p.138)

...The law as to the reversal by a Court of appeal of an order made by [a] Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case.

The above principle is followed by the Supreme Court in a recent decision in *Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim and Others*, .

12. Granting or rejecting the relief of I interim injunction is discretion of the Court. While exercising the discretion the Court must strictly adhere to the sound principles of law. In the present case, the trial Court has taken meticulous care in exercising discretion while granting interim injunction. Basing on the material available on record, it is not possible to arrive at a conclusion that the order passed by the Courts below is arbitrary and in violation of the principles of law regulating grant or refusal of interim injunctions. In view of the facts and circumstances of the case, the ratio laid down in the cases *Wander Ltd.'s case* (supra) and *Mohd. Mehtab Khan's case* (supra), we are of the considered view that it is not a fit case to interfere with the order under appeal. The civil miscellaneous appeal is, accordingly, dismissed. No costs. Consequently, the miscellaneous petitions pending if any shall stand closed.