
(1998) 08 AP CK 0051
In the Andhra Pradesh High Court
Case No : A.A.O. No. 1409 of 1997

Duvvalu Ilaiah and Others

APPELLANT

Vs

Duvvala Ramaiah and Others

RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1998) 4 ALD 383 : (1997) 6 ALT 95

Hon'ble Judges : Lingaraja Rath, J;J. Chalameshwar, J

Bench : Division Bench

Advocate : Mr. T. Subrahmanyam, for the Appellant; Mr. P. Narasimha Rao, for the Respondent

Judgement

Lingaraja Rath, J

1. Plaintiffs in the suit have preferred this appeal assailing the refusal of injunction in their favour to restrain respondents 1 to 4 from alienating the suit property. The suit has been brought for partition between the plaintiffs and the respondents 1 to 4. Respondents 5 to 7 are alienees. Father of the plaintiffs and the father of the respondents 1 to 4 were brothers. The suit is contested by the respondents contending the suit to be not maintainable as there has been previous partition in 1988 with allotment of specific parcels of land to each branch and parties to have been not only possessing such properties in accordance with previous partition but also each party to have been selling out each allotted portion independently. Mr. T. Subrahmanyam, learned Counsel for the appellants urges there to have been no previous partition and the properties to be joint coparcenary properties. It is the submission that the balance of convenience lies in protecting the property from alienation till the disposal of the suit.

2. It is admitted before us that separate parcels of the property have been recorded in pahanies in the name of each branch. Though ultimately whether there has been a previous partition or not and what is the evidentiary value of

the pahanies are questions to be decided in the suit, yet the existence of the entries in the pahanies separately cannot be doubted. Thus there is prima facie case of previous partition as otherwise there was no occasion for and there is no other explanation for such separate entries in the pahanies. It is also admitted that both the plaintiffs and the respondents have sold out of their allotted shares of the properties. That is a fact which would also lend support to a prima facie case. Next is the question of balance of convenience. Since the lands are involved in the suit, any transfer of the land would be pendente lite and would be subject to the ultimate decision in the suit. If transfer of land is made, the purchaser has to take it at his own risk. But merely because of that, it would not be fit and proper, in the background of the facts and circumstances of the case as discussed above, to restrain the respondents from alienating the properties. But it has to be made clear, if ultimately the story of previous partition fails and the suit of the plaintiffs may have to be decreed, that the respondents 1 to 4 or alienees from them cannot claim any equity in respect of the partition of the land and the question of actual effecting of the partition has to be carried out unaffected by the alienation transactions, particularly in the final decree proceedings. When these two factors are decided, the question of irreparable injury does not arise because it will go as a sequel to the balance of convenience as we have already discussed. In the result, the appeal has no merit and is dismissed.