
(2007) 04 AP CK 0034
In the Andhra Pradesh High Court
Case No : CMA No. 71 of 2007

Genemedix Biological Pvt. Ltd.	Vs	APPELLANT
K. Narayana Reddy and Others		RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Evidence Act, 1872 — Section 91, 92

Citation : (2007) 4 ALD 42

Hon'ble Judges : M. Venkateswara Reddy, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : A. Sudershan Reddy, for the Appellant; A. Tulsi Raj Gokul, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—Appellant herein is defendant No. 4 who filed this appeal challenging the orders passed on 3-1-2007 in I.A. No. 3978 of 2006 in O.S. No. 459 of 2006 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad allowing the application purported to be filed by respondents 1 and 2 herein who are plaintiffs under Order 39 Rules 1 and 2 read with Section 151 of C.P.C. seeking to grant ad-interim injunction restraining the appellant and also the 3rd respondent herein who are defendants 1 and 4 therein and their men from dispossessing the plaintiffs from the suit schedule property.

2. The facts in brief are that in the suit filed by the respondents 1 and 2 herein who sought for declaration that the registered gift settlement deed dated 13-5-2004 in favour of the 1st respondent herein executed by them is invalid and inoperative and also for setting aside the sale deed dated 29-6-2006 executed by the 1st defendant in favour of the appellant herein and cancel the same as fraudulent and invalid and consequently, for a permanent injunction restraining the 1st defendant and the appellant from interfering with the possession and occupation of the suit schedule property which consists of a house of an extent of

400 sq. yards situated in S. No. 1384 L.R. Gudem, Hyderabad.

3. The case of the plaintiffs in the suit was that defendant No. 1 is their son. The plaintiffs are owners of the suit properties having purchased the same under a registered sale deed dated 28-2-1978 and later constructed some structures, which are let out. Defendants 2 and 3 are the daughters of the plaintiffs who are already married in 1974 and 1997. After retirement of the 2nd plaintiff, to avoid disputes in future, a Memo of Understanding was entered into between the plaintiffs and Defendant No. 1 on 19th April, 2004 agreeing to develop the property and allot the same to the plaintiffs and also defendant No. 1 and her daughters. In pursuance thereof, for the purpose of commencing construction in the suit schedule property, a registered gift deed dated 13-5-2004 was executed by the plaintiffs in favour of defendant No. 1. However, in spite of such undertaking given by defendant No. 1 for the purpose of commencing the construction under the said agreement, the 1st defendant has alienated the said property in favour of defendant No. 4 by way of a registered sale deed dated 29-6-2006. Therefore, according to the plaintiffs, such an action on the part of Defendant No. 1 in violation of the terms of Memorandum of Understanding, is totally fraudulent and illegal. Pending the suit, the present application has been filed before the Court below seeking to continue the plaintiffs to remain in possession. There has been no delivery of possession as such in favour of the appellant-defendant No. 4 pursuant to the said sale deed dated 29-6-2006 and therefore, the plaintiffs sought for an interim injunction.

4. Initially, the Court below granted ad-interim injunction on 31-10-2006 and defendants 2 and 3 were not made parties to the proceedings as they are not necessary. Since defendant No. 1 failed to receive notice, substitute service was taken out. Therefore, contest is being made in this appeal only by appellant-defendant No. 4.

5. It has been contended on behalf of the appellant-defendant No. 4 that he is the bona fide purchaser having substantially paid the sale consideration to defendant No. 1 who was the owner having acquired the same under the gift deed as stated above. Further, he has been in possession and enjoyment of the same and therefore, the plaintiffs are not entitled for any injunction.

6. It has also been contended that he is not aware of any such understanding between the plaintiffs and Defendant No. 1 who are no other than the parents and son and it is only the plaintiffs who are the parents of D1 and D1 who colluded each other in order to deprive the property which has been purchased legitimately by the appellant.

7. However, the Court below having found that there is no evidence to show that the appellant is in possession and that in fact, the plaintiffs are continued to be in possession of the property in question, made the ad interim order absolute. Hence, this appeal.

8. learned Counsel appearing on behalf of the appellant strenuously contended

that on the fact of it, the title duly vested in Defendant No. 1 who is the vendor having acquired the property in question under a registered gift deed dated 13-5-2004 under Ex.A.2 and the appellant has purchased the same under a registered sale deed dated 29-6-2006 for a valuable consideration under Ex.A.3 from Defendant No. 1. Thus, these two documents could not have been given a go bye nor would come against the appellant by any such understanding between D1 and the plaintiffs nor would it also be binding on them. Further the documents clearly recite about the delivery of possession and therefore, it is the appellant who is in possession of the property, which fact has totally been ignored by the Court below.

9. learned Counsel appearing on behalf of the respondents herein strenuously repelled the aforesaid contention pointing out that having regard to such a conclusion arrived at between the parents and the son who have promised to make out a construction of the respective plots and allot the same to the plaintiffs and their son 1st defendant and also sisters, D1 went back and executed a sale deed in favour of a 3rd party who is the appellant herein. Therefore, D1 having failed to comply with the Memorandum of Understanding, cannot convey any right or title to a third party.

10. Considering the averments and also perusing the material, the point that arises for consideration in this appeal is as to whether the respondents/plaintiffs have made out any balance of convenience in their favour showing their possession in seeking any interim injunction pending the suit ?

11. At the outset, there is no dispute with in regard to the relationship between the plaintiffs and defendant No. 1. There is also no dispute in regard to the execution of two documents one after another. The plaintiffs had executed a gift settlement deed dated 13-5-2004 in favour of the defendant No. 1 under Ex.A.2 which shows the clear delivery of the possession of the plaint schedule property to Defendant No. 1. This document does not refer to any such Memorandum of Understanding as sought to be relied on by the plaintiffs, alleged to have been executed on 19-4-2004. There is absolutely no explanation forthcoming by the plaintiffs as to the silence about the Memorandum of Understanding in the gift deed. Subsequently, defendant No. 1 had executed a registered sale deed dated 29-6-2006 under Ex.A.3 which not only shows the receipt of the sale consideration by defendant No. 1 but also shows as to the delivery of possession by the defendant No. 1 in favour of the appellant herein. There is no other material forthcoming to dispel the said term. Having regard to the existence of such two documents, which are written one after another, there is delivery of possession to D1 by the plaintiffs earlier and later D4 who is the appellant herein. Therefore, it is not open for the plaintiffs to contradict the terms and conditions of the earlier documents in as much the same is barred under the provisions of Section 91 of the Evidence Act. Even to dispel any such erroneous term, it certainly warrants fair a trial. At this stage, more so, in an application for injunction as interlocutory one, it is very difficult to accept any such version

contrary to the terms as staring at. If at all, the plaintiffs are aggrieved by the acts of DI, it is for them to seek appropriate remedy before a proper forum.

12. In this background of the matter, we have no hesitation to hold that the Court below is not justified in rejecting Exs.A2 and A3 with regard to the prima facie possession.

13. In fact, these two documents prima facie go to show that D4 is in possession of the property in question and prior to that, DI was in possession of the same. However, the plaintiffs have failed to adduce any material on record as to the prima facie possession. Therefore, we feel that the Court below is not justified in arriving at the conclusion that the plaintiffs have established their prima facie case as to the possession. The plaintiffs have also failed to show any balance of convenience.

14. At this, juncture, though the learned Counsel on either side have referred to various decisions across the Bar, but, it is relevant to refer to a latest judgment of the apex Court reported in Roop Kumar Vs. Mohan Thedani, , wherein it is held as follows:

Written document - Proving contents of writing otherwise than by writing itself is forbidden - Section embodies "Best evidence rule" declaring doctrine of substantive law - Even third party seeking to prove written contract, can prove it only by producing such writing.

Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91. The two sections however, differ in some material particulars. Section 91 applies to all documents, whether they purport to dispose of rights or not, whereas Section 92 applies to documents which can be described as dispositive. Section 91 applies to documents which are both bilateral and unilateral, unlike Section 92 the application of which is confined to only to bilateral documents. Both these provisions are based on "best evidence rule". It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory.

15. From the above, it amply transpires that nothing else can be read contrary to the written document and this is a clear case where the appellant has prima facie established not only the title but also possession. Therefore, the orders of the Court below are totally unsustainable both on facts and also on law.

16. The appeal is accordingly allowed and the orders passed in I.A. No. 3978 of 2006 in O.S. No. 459 of 2006 dated 3-1-2007 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad are set aside.