

(2023) 03 TEL CK 0104

In the Telangana High Court

Case No : Civil Miscellaneous Appeal Nos. 443, 464 Of 2022

K. Gopal And 3 Others

APPELLANT

Vs

K. Srinivas Chakravarthy

RESPONDENT

Date of Decision : 31-03-2023

Acts Referred:

Citation : (2023) 03 TEL CK 0104

Hon'ble Judges : T.Vinod Kumar, J;P.Sree Sudha , J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These Civil Miscellaneous Appeals are filed against the Common Order dated 31.12.2021 in I.A.Nos.220 & 221 of 2020 in O.S.No.1050 of 2019 passed by the learned IX Additional Chief Judge, City Civil Court, Hyderabad.

2. The plaintiff in the suit filed I.A.No.220 of 2020 for grant of ad-interim injunction restraining appellants/defendants from alienating or creating third party interest over the suit schedule property. I.A.No.221 of 2020 is filed for grant of ad-interim injunction restraining appellants/defendants from changing nature of the suit schedule property. The trial Court considering the arguments of both sides allowed the application in favour of the respondent/plaintiff. Aggrieved by the said Order appellants/defendants preferred the present Civil Miscellaneous Appeals.

3. Parties herein are referred as plaintiff and defendants as arrayed in the suit for the sake of convenience.

4. Perusal of the record shows that suit is filed for partition and separate possession by one K. Srinivas Chakravarthy, who is the son of first wife of defendant No.1/K.Gopal and against the children of the second wife. Plaintiff stated that his mother is the first wife of defendant No.1 and they got married on 10.05.1968. He stated that during subsistence of the first marriage without the knowledge of his mother, defendant No.1 performed second marriage with one

Nirmala and begot three children i.e., defendants No.2 to 4. He also stated that after performing second marriage her mother residing separately with him and due to intervention of elders a deed of divorce was entered in between them on 11.10.1976 and he was in the custody of his mother. He stated that his great grand-mother Pochamma has secured properties in and around Saidabad. She purchased the properties in the name of her son Maisaiah/plaintiff's grand-father. Apart from that he also owned another property to an extent of Acs.4 – 00 gts at Medchal. Later the defendant No.1 and his brothers sold the said property. Out of the sale consideration they purchased property at Lingo jiguda, Karmanghat in their names. Plaintiff gave pedigree of the family of Pochamma and stated that after the death of Maisayya, as he died intestate his sons and daughters entered into an oral understanding regarding the said properties and divided the same and also mutated their names in the relevant records.

5. He further stated that his mother did not get any maintenance since the date of separation. When he recently came to know that defendants entered into development with third parties regarding the property at Lingo jiguda, Karmanghat, he approached his paternal uncles for partition, but they informed that he is not entitled for any share. He stated that the said properties were given by way of inheritance and thus he is entitled for half share. He filed bonafide certificate to show his date of birth and the father's name to confirm his relationship with defendant No.1, as such he filed suit for partition claiming half share in the property and during the pendency of the proceedings, he filed two I.A's to restrain the defendants from alienating and not to change the nature of suit schedule properties. The trial Court considering the arguments of both sides allowed the application. Against the said Order, defendants preferred the present Civil Miscellaneous Appeals.

6. Appellants/defendants mainly contended that the said properties were self acquired properties and respondent/plaintiff has not filed any document to show that they are ancestral properties. They further stated that their grand-mother never acquired any properties in the name of her son. The respondent/plaintiff has not filed any Pahanies or Encumbrance Certificate to prove their contention. He filed suit for partition only when he came to know about the development made by the appellants. Therefore, requested the Court to set aside the Order of the trial Court dated 31.12.2021.

7. Plaintiff in the suit filed for partition mainly contended that he is the son of the first wife of defendant No.1 and defendants No.2 to 4 are the children of second wife of defendant No.1. He contended that the said properties are ancestral properties of his great grand-mother Pochamma and admittedly he filed suit when he came to know about the development agreement entered between the defendants with the third parties.

8. He also contended that defendant No.1 performed second marriage during the subsistence of his marriage with his mother and thus validity of the second marriage is also to be decided in the suit. Plaintiff filed bonafide certificate to

show his father's name and to claim half share in his property and it is for the Court to decide the entitlement of his share in the property after completion of the entire trial. Further, whether the said properties are ancestral properties or joint family properties or self-acquired properties is to be decided in the main suit after adducing evidence of both the parties. In the meanwhile, if the defendants succeed in alienating the properties and changing the nature of the properties the very purpose of filing the suit for partition will be defeated.

9. Plaintiff stated that his father died intestate, as such defendants in view of oral understanding got mutated their names in respect of their shares and no share was allotted to him. Even when he approached his paternal uncles, they refused to consider the same. The trial Court considering the above facts rightly allowed both the I.A's filed not to alienate and not to change the nature of the properties during the pendency of the proceedings. This Court finds no infirmity in the Order of the trial Court. As the plaintiff approached the Court with the title dispute, his right is to be protected during the pendency of the proceedings. Therefore, the Civil Miscellaneous Appeals filed against the Order of the trial Court are devoid of merits and are dismissed.

In the result, the Civil Miscellaneous Appeals are dismissed confirming the Order of the trial Court dated 31.12.2021 in I.A.Nos.220 & 221 of 2020 in O.S.No.1050 of 2019.

Miscellaneous petitions pending, if any, shall stand closed.