

(2007) 04 AP CK 0093
In the Andhra Pradesh High Court
Case No : CMA No. 794 of 2006

Kadupugotla Varalakshmi	Vs	APPELLANT
Vudagiri Venkata Rao and Others		RESPONDENT

Date of Decision : 02-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151
Specific Relief Act, 1963 — Section 19, 41
Transfer of Property Act, 1882 — Section 54

Citation : (2007) 5 ALD 747

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Shanthi Neelam, for the Appellant; K. Subrahmanyam, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The third defendant-third respondent in IA No. 714 of 2006 in OS No. 209 of 2006 on the file of the Court of Senior Civil Judge, Vizianagaram, had preferred this civil miscellaneous appeal, being aggrieved of the order of temporary injunction granted therein.

2. The first respondent in the civil miscellaneous appeal is the petitioner-plaintiff in the said application. Respondents 2 and 3 are defendants 1 and 2 - respondents 1 and 2 in the said application. The application was filed by the first respondent-petitioner-plaintiff under Order 39 Rule 1 read with Section 151 of the CPC (hereinafter referred to in short as "the Code" for the purpose of convenience) praying for the relief of temporary injunction restraining the respondents-defendants from making any constructions or changing the nature of the suit land, pending disposal of the suit. The learned Judge in the light of the respective stands taken by the parties and also in the light of the documents marked Exs.A1 to A6 and Exs.B1 to B5 came to the conclusion that the first respondent in the civil miscellaneous appeal, the petitioner-plaintiff is entitled for

a temporary injunction restraining the respondents from making any constructions or changing the nature of the suit schedule property by any means, pending disposal of the suit. Hence, the present civil miscellaneous appeal.

3. Smt. Shanti Nilam, the learned Counsel representing the appellant would submit that the appellant-respondent No. 3 is the absolute owner of the property by virtue of the registered sale deed in her favour. The learned Counsel would also point out that the learned Judge had not properly appreciated the scope and ambit of Section 54 of the Transfer of Property Act, 1882 and also Section 19(b) of the Specific Relief Act, 1963. The Counsel also pointed out that this a typical case where the bona fide purchaser at least was not put on notice. The learned Counsel also would submit that this Court on 14-9-2006 granted interim suspension and in the light of the facts and circumstances, the impugned order to be set-aside. The Counsel also would submit that however the appellant is not making any attempt to alienate the property as such. The Counsel also placed reliance on certain decisions.

4. Per contra, Sri K. Subrahmanyam, the learned Counsel representing the first respondent had taken this Court through the reasons which had been recorded by the learned Judge and had maintained that the very fact that the consideration shown in Ex.B3 being nominal consideration, prima facie it can be said that the said document was thought of only with a view to put the first respondent-plaintiff into trouble. The learned Counsel would also submit that prima facie in the light of the recitals in Ex.A1, the learned Judge had recorded reasons and observed that it is a fit case where status quo to be maintained pending disposal of the suit. Such order normally not be disturbed by the appellate Court. The Counsel also placed reliance on certain decisions.

5. It is true that this Court on 14-9-2006 granted interim suspension and the matter is coming up for final hearing. The first respondent-petitioner-plaintiff in OS No. 209 of 2006 on the file of the Court of Senior Civil Judge, Vizianagaram filed an application in IA No. 714 of 2006 in the aforesaid suit, under Order 39 Rule 1 read with Section 151 of the Code praying for a temporary injunction restraining the respondents-defendants from making any constructions or changing the nature of the suit land, pending disposal of the suit.

6. It is the case of the first respondent-petitioner-plaintiff that the second respondent in the application shown as third respondent in the civil miscellaneous appeal is the sister of his wife and the second respondent herein the first respondent in the said application is her husband.

7. The parties hereinafter for the purpose of convenience would be referred to as shown in IA No. 714 of 2006 in OS No. 209 of 2006.

8. It is his case that R1 is the absolute owner of the suit schedule property and R1 and R2 were in need of money offered the plaint schedule property for sale and the petitioner agreed to purchase the same @ Rs. 25,000/- per cent, fixing the sale consideration at Rs. 8,75,000-00 and also paid advance amount of Rs.

3,50,000/- and agreed to pay the balance at the time of registration and the agreement was reduced into writing and the first respondent executed the agreement of sale dated 9-10-2004. Subsequently, it is stated that the petitioner secured money by the end of February 2006 and requested the first respondent to execute a regular sale deed but he was postponing the same and hence the petitioner got issued a notice on 27-3-2006, for which, a reply was sent denying the same and an rejoinder notice was also sent. It is also his stand that the petitioner came to know that the first respondent with some dishonest intention executed a settlement deed in favour of R2 and R2 in turn executed a sale deed in favour of R3 with a view to defeat his rights under the said agreement of sale. It is stated that R3 is a close associate of R2. The consideration said to have been paid by the third respondent was only Rs. 70,000/- which is far below the real market value and it is a mala fide transaction.

9. Respondents 1 and 2 filed a counter denying the very execution of the agreement of sale in question and further they had taken a stand that the petitioner has no capacity to purchase the petition schedule property at Rs. 8,75,000-00 and the first respondent was unable to look after his affairs and out of love and affection towards his wife executed a registered settlement deed dated 28-7-2005 in favour of second respondent and subsequent thereto the third respondent offered to purchase and hence she had sold the same to the third respondent by executing a registered sale deed dated 16-2-2005 and put her in possession of the same and it is the third respondent who is in physical possession of the property.

10. The appellant herein, the third respondent filed the counter taking a stand that the first respondent executed the settlement deed in favour of second respondent and the second respondent in turn sold the property to the third respondent under sale deed dated 16-2-2005 and after purchase of the same the third respondent made earth work and fenced by incurring expenditure of Rs. 45,000/- and the petitioner is aware of the sale deed but had not chosen to issue notice to the third respondent and no rights would flow under the alleged agreement of sale and the petitioner is not entitled to seek any injunction against the lawful owner of the plaint schedule property. The appellant-third respondent also asserted that she is entitled to make any construction and the petitioner has no right to prevent the same.

11. Exs.A1 to A6 were marked on behalf of the petitioner and Exs.B1 to B5 were marked on behalf of the respondents.

12. The learned Judge recorded the reasons in detail commencing from Para Nos. 7 to 20 and ultimately came to the conclusion that till the disposal of the suit, respondents to be restrained from making any constructions or changing the nature of the suit schedule property. Ex.A1 is the agreement of sale dated 9-10-2004, Ex.A2 is the pronotes, Ex.A3 is the registered lawyer's notice dated 27-3-2006, Ex.A4 is the reply notice dated 8-4-2006, Ex.A5 rejoinder notice dated 12-4-2006, Ex.A6 is the bank passbook of V. Venkata Rao, A/c.No.8/1804

of SBI, Kothavalasa and Ex.B1 is the registered sale deed dated 5-11-1985, Ex.B2 is the registered gift settlement deed dated 28-2-2005, Ex.B3 is the registered sale deed dated 16-2-2005, Ex.B4 is the invoice dated 22-3-2006 and Mx.B5 is the cash bill dated 14-3-2006 had been marked. Certain submissions were made relating to the nominal consideration, which had been specified in Ex.B3. Certain contentions were advanced in relation to Ex.A1, Ex.B2, Ex.B3 as well. The agreement of sale is dated 9-10-2004 and the registered gift settlement deed is dated 28-2-2005 subsequent thereto, it is stated that Ex.B2 was brought into existence. Ex.B3 is the lawyer's notice dated 27-3-2006. It is needless to say that even in between Ex.B2 and the lawyer's notice Ex.A3, there is sufficient lapse of time. This was pointed out in the context of the lapse on the part of the plaintiff in initiating prompt action in relation to Ex.A1 transaction. Certain findings had been recorded. No doubt these are prima facie findings, recorded by the learned Judge for the purpose of deciding the application praying for temporary injunction and nothing beyond thereto.

13. Reliance was placed on the decision in Durga Prasad and Another Vs. Smt. Lilawati and Another, , wherein the learned Judge while dealing with Section 19(b) of the Specific Relief Act, 1963 held that where the agreement of sale with "A" subsequent sale to two other vendees and notice of earlier agreement of sale to one of them would not be of avail to the earlier vendee and his suit for specific performance of the contract cannot succeed on that ground.

14. Reliance was also placed on the decision in Sanga Thevar Vs. Thanukodi Ammal and Others, , wherein the learned Judge of the Madras High Court in relation to contract to sell house and the deed executed and presented for registration and the deed not registered and a subsequent sale to third person held that in a suit for specific performance against transferee plaintiff must allege that transferee was not a bona fide purchaser and had notice of plaintiff's contract with transferor and that the plaintiff was willing to perform his part of the contract.

15. Reliance was also placed on the decision in Premji Ratnasey Shah and Ors. v. Union of India and Ors. 1994 (3) ALT 25 wherein it was held that issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession and it is not mandatory that for mere asking such relief should be given. Injunction is a personal right u/s 41(j) of the Specific Relief Act, 1963 and the plaintiff must have personal interest in the matter and the interest or right not shown to be in existence, cannot be protected by injunction. Injunction would not be issued against the true owner. An injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against the true owner.

16. Strong reliance was placed by the Counsel for the first respondent on the decision of the Apex Court in Maharwal Khewaji Trust (Regd) Faridkot v. Baldev

Dass 2005 (1) LS 19 (SC) : 2005 AILD 65 (SC) wherein the Apex Court at Paras 7, 8, 9 and 10 observed as hereunder:

Mr. R.S. Sachhar, learned Senior Counsel appearing for the appellant, contended that generally during the pendency of litigation Courts protect the status quo existing on the date of the suit and it is only in exceptional circumstances where irreparable damage is feared, the Courts permit change of status quo. His further contention was that in the present case no such case is made out by the respondent and the trial Court was justified in protecting the status quo as on the date of the suit.

Mr. A.V. Palli, learned Counsel for the respondent, contended that both the lower appellate Court and the High Court were justified in making the impugned order because the appellant has not established any prima facie case and if the suit property is to be allowed to remain in the present condition the respondent will be put to great hardship and an irreparable loss.

While it is true that the lower appellate Court did go into the question of prima facie case and held that the appellant had not made out any such case, the High Court did not go into that question at all.

Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property being changed which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate Court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately. It is always open to the respondent to claim damages, or. In an appropriate case, the Court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same. We think both the Courts below, namely, the lower appellate Court and the High Court erred in making the impugned orders. The said orders are set-aside and the order of the trial Court is restored.

17. Suffice to state that while deciding the interlocutory application of this nature, the findings, which had been recorded would only be prima facie findings and the suit to be decided on its own merits on the basis of the evidence, which may be adduced by the parties. It is true that the non-issuance of notice to the subsequent purchaser also to be taken note of. These are the aspects, which

may have to be gone into at the appropriate stage.

18. It is also true that some comment had been made in relation to the close relationship between those parties, the truth or otherwise of the stand taken by the appellant-third respondent in the application also may have to be gone into at the appropriate stage. Suffice to state that certain of the findings, which had been pointed out by the learned Counsel representing the appellant are only prima facie findings for the purpose of deciding the interlocutory application and nothing beyond thereto and hence the learned Judge to arrive at an independent conclusion de hors these findings in deciding the main suit. However, in the light of the facts and circumstances, though several submissions were made in relation to the scope and ambit of Section 54 of the Transfer of Property Act 1882 and Section 19(b) of the Specific Relief Act, 1963 inasmuch as this Court as appellate Court to be slow in disturbing such order since virtually what had been granted is an order of status quo to be maintained, by the parties during the pendency of the suit, this Court is not inclined to disturb the said order at this stage and accordingly the civil miscellaneous appeal shall stand dismissed. No costs.

19. However, inasmuch, it is stated that there is urgency in the matter, the learned Judge to make an endeavour to dispose of the suit itself at an early date preferably within a period of three months from the date of receipt of this order.