
(2004) 06 AP CK 0010

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2572 of 2004

Mr. Mohd Abdul Rehaman Quadri

APPELLANT

Vs

Mr. P. Gangadhar Rao

RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 39 Rule 1, Order 39 Rule 2

Citation : (2004) 4 ALD 717 : (2004) 5 ALT 238 : (2004) 2 APLJ 440

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Khaja Manzoor Ali, for the Appellant; Suresh Shiv Sagar, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This C.R.P. is filed against the order of the learned Chief Judge, City Civil Court, Hyderabad, in C.M.A. No. 40 of 2004. C.M.A., in turn, was filed against the order passed by the learned VIII Junior Civil Judge, City Civil Court, Hyderabad, in I.A. No. 1306 of 2003 in O.S. No. 7724 of 2003.

2. The respondent filed the suit for the relief of injunction - simpliciter against the petitioner. It is his case that the suit schedule property was part of an extent of Ac.7.28 guntas of land in Sy. No. 257 of Miralam Tank Road, Bahadurpura Mandal, Hyderabad, and that it was purchased in the name of his minor brother, Venkat Rao, by his father. He further pleaded that after the death of their father, the said Venkat Rao, himself and his mother, succeeded to the property, and that in a partition that was effected among them, the suit schedule property, along with another property fell to his share. The remaining extent is said to have been sold long back. He also filed I.A. No. 1306 of 2003 against the petitioner for temporary injunction under Order 33 Rule 1 C.P.C., alleging that his possession is being interfered with.

3. Petitioner filed counter affidavit stating that he purchased the suit schedule

land from the brother of the respondent on 28-5-2002, through an oral transaction and paid the entire consideration. It is his case that ever since the date of purchase, he is in possession of the property, and also paid the municipal tax.

4. The respondent filed Exs.P-1 to P-8, and the petitioner filed Exs.R-1 to R-8. Ex.P-1 is the registered sale deed, Ex.P-2 is the lay-out plan, Exs.P-3 to P-7 are photographs, and Exs.P-8 is the caveat, dated 17-11-2003, submitted by the petitioner herein. Ex.R-1 is the tax receipt, dated 22-07-2002, Ex.R-2 is the acknowledgement of receipt of self-assessment, Exs.R-3 to R-7 are photographs, and Ex.R-8 is the cash bill. The trial Court passed an order dated 24-02-2004, dismissing the I.A. Aggrieved by the same, the respondent filed C.M.A. No. 40 of 2004 before the learned Chief Judge, City Civil Court, Hyderabad. Through order dated 27-04-2004, the lower appellate Court reversed the order passed by the trial Court.

5. Learned counsel for the petitioner submits that, in an application filed under Order 39 Rules 1 and 2 C.P.C., it is always for the parties, seeking temporary injunction, to establish prima facie case and balance of convenience. He submits that the respondent herein miserably failed to establish his prima facie title or even possession, and in that view of the matter, the lower appellate Court ought not to have interfered with the orders passed by the trial Court, dismissing the I.A. Learned counsel for the respondent, on the other hand, submits that the respondent placed ample material before the trial Court in proof of his prima facie title and possession; whereas the only plea of the petitioner was that he purchased the property through an oral transaction.

6. There is absolutely no doubt that it is always for the party seeking temporary injunction to establish prima facie case and balance of convenience. The respondent traces his right and title to the property through sale deed-Ex.P-1, which is in the name of his brother. It is his specific case that substantial extent of the property was sold and the remaining was partitioned. The suit schedule property is said to have been allotted to the respondent. For the purpose of consideration of prima facie case, this material should be sufficient, in the ordinary course. However, where the party opposing the grant of temporary injunction, pleads any stronger case than this, the onus may shift to the party, claiming temporary injunction, to come forward with a more reliable evidence. It is in this context, that the version presented by the petitioner becomes relevant.

7. The petitioner did not dispute that the brother of the respondent was the original owner of the property. Then, it has to be seen as to how he acquired right, title and interest in that property from the brother of the petitioner, by name, Venkat Rao. The petitioner categorically stated that it is on 28-05-2002, that he has purchased the suit schedule property from Venkat Rao, through an oral transaction. No receipt is placed before the Court, evidencing the payment, much less any traces of sale transaction. For the purpose of deciding the question of prima facie case, or balance of convenience, it would have been

sufficient for the petitioner to have established that the possession of the property was delivered to him. The best person to speak about this was his vendor. However, in this case, the alleged vendor has filed an affidavit, denying the very transaction. That being the case, the plea put forward by the respondent deserves to be accepted. This is exactly what the lower appellate Court did. No exception can be taken to the same. Hence, this Court does not find any basis to interfere with the order under revision. The C.R.P. is accordingly dismissed.

8. It is, however, directed that the respondent shall not alienate or otherwise encumber the property. The trial Court is directed to expedite the disposal of the suit, as early as possible, and not later than the end of December, 2004. No costs.