
(2017) 07 AP CK 0053
In the Andhra Pradesh High Court
Case No : 527 of 2017

Smt.R.Parijatham, & Anr.

APPELLANT

Vs

Smt.M.Kameshwari, & Ors.

RESPONDENT

Date of Decision : 21-07-2017

Acts Referred:

Citation : (2017) 07 AP CK 0053

Hon'ble Judges : C.V.Nagarjuna Reddy, Anis

Bench : DIVISION BENCH

Advocate : Vedula Sriniv, V.Ravinder Rao, M.Jayaram Reddy, Altaf-Ur-Rahman, K.K.Waghray

Final Decision : Allowed

Judgement

1. As the subject matter is common in these appeals, they are heard and being disposed of together.
2. For convenience, the parties are hereinafter referred to as they are arrayed in C.M.A.No.564 of 2017.
3. We have heard Mr.Vedula Srinivas, learned counsel for the appellants, Mr.V.Ravinder Rao, learned senior counsel representing Mr.M.Jayaram Reddy, learned counsel for respondent No.1 and Mr.Ataf-Ur-Rahman, learned counsel representing Mr.K.K.Waghray, learned counsel for respondent Nos.3, 4 and 5.
4. Respondent No.1, who is the daughter of appellant No.1 and sister of appellant No.2, filed O.S.No.301 of 2016 for partition and separate possession of her 1/7th share in plaint A to D schedule properties. Respondent Nos.2 to 5 are the sisters of respondent No.1/plaintiff. It is the pleaded case of respondent No.1 that plaint A schedule property, which is a house in Malakpet, Hyderabad was purchased in the year 1969 by her father during his life time with his earnings in the name of his wife/appellant No.1. She has also pleaded that plaint B schedule property, which is an open land of 4512 sq.yds. was purchased by her father in his own name and that with the demise of her father in the year 2004, she and

respondent Nos.2 to 5 - her sisters are entitled to 1/7th share each in both plaint A and B schedule properties. Respondent No.10, who is the appellant in C.M.A.No.607 of 2017, was impleaded as defendant No.11 in the suit as the appellants purportedly entered into a development agreement with it in respect of plaint A schedule property. Along with the suit, respondent No.1 has filed I.A.No.801 of 2016 for restraining the appellants and respondent No.10 from altering and alienating plaint A and B schedule properties. She has also filed I.A.No.957 of 2016 against respondent No.10/appellant in C.M.A.No.607 of 2017 for similar relief in respect of plaint B schedule property. Both the I.As. were allowed by the Court below by separate but identical orders, dated 28.04.2017. Feeling aggrieved, defendant Nos.1 and 2 filed C.M.A.No.564 of 2017 against the order in I.A.No.957 of 2016 and C.M.A.No.527 of 2017 against the order in I.A.No.801 of 2016 and defendant No.11 filed C.M.A.No.607 of 2017 against the order in I.A.No.957 of 2016.

5. At the hearing, Mr.Vedula Srinivas, learned counsel for the appellants, has submitted that though both the parties have adduced their respective documentary evidence, the Court below has neither marked them nor referred to them, while passing the orders of injunction. He has further submitted that as regards plaint A schedule property, admittedly the same was purchased by way of a registered sale deed executed in favour of appellant No.1/defendant No.1 and even in the urban land ceiling proceedings also the said property was shown as her property and that the Court below has ignored this fact and granted injunction only based on the ipse dixit of respondent No.1/plaintiff.

6. Mr.V.Ravinder Rao, learned senior counsel representing Mr.M.Jayaram Reddy, learned counsel for respondent No.1/plaintiff, has lamented that though his client has filed many documents including the written statement filed by her late father in another suit proceedings, wherein he averred that plaint A schedule property was purchased with his earnings in the name of his wife, the Court below has not either marked those documents or referred to them, while passing the orders of injunction. The learned senior counsel has, therefore, fairly suggested that the matters may be remanded to the Court below for fresh disposal after marking the documents and hearing the counsel afresh. Mr.Vedula Srinivas, learned counsel for the appellants, has supported this suggestion.

7. In the light of the above submissions of the learned counsel for the parties, the orders under appeals are set aside. The Court below is directed to mark the documents filed by both the parties, hear both sides after such marking and dispose of I.A.Nos.801 and 957 of 2016 in O.S.No.301 of 2016 afresh, as expeditiously as possible and not later than three months from the date of receipt of a copy of this order. Till disposal of the I.As., status quo subsisting as on today shall be maintained.

8. Before closing these cases, we feel the necessity of observing that instances have been coming to the notice of this Court, where some Subordinate Courts have not been marking the documents while disposing of the interlocutory

applications. In this context, we are reminded of a Division Bench judgment of this Court in T.Bhoopal Reddy vs. K.R.Laxmi Bai [1998(1) ALT 292 (D.B.)], wherein it was observed that in order to come to a prima facie conclusion, both the trial Court and the Appellate Court should necessarily be able to locate the documents and know its contents to agree with either of the contentions; that nowhere it is envisaged that the case of the contesting parties can only be decided on the affidavits and not on any other material and that in the absence of any specific rule so far as marking of documents at the interlocutory stage is concerned, the Courts would not be justified in not giving any marking at all to such of the documents on which both sides would rely. Regrettably, despite this authoritative pronouncement of the Division Bench, some Courts have been ignoring the same and not marking the documents. The case on hand reflects one such instance. We, therefore, direct the High Court on administrative side to issue a Circular directing the Subordinate Courts to mark the documents filed by the parties to the interlocutory applications before deciding such applications.

9. Subject to the above directions, these Civil Miscellaneous Appeals are allowed.

10. As a sequel to allowing these appeals, C.M.A.M.P.Nos.874 and 1206 of 2017 filed in C.M.A.No.527 of 2017, C.M.A.M.P.Nos.933 and 1189 of 2017 filed in C.M.A.No.564 of 2017 and C.M.A.M.P.Nos.999 and 1190 of 2017 filed in C.M.A.No.607 of 2017 shall stand disposed of as infructuous.