

P. SATYANARAYANA

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v.

NANDYALA RAMA KRISHNA REDDY

(Special Leave Petition (Civil) No.11286 of 2021)

DECEMBER 16, 2021

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[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

Suit – Respondent-plaintiff filed suit inter alia for declaration that he is the absolute owner of the suit property – Also sought interim injunction restraining the petitioner-defendant from interfering with his possession thereof – Interlocutory application dismissed – Appeal by respondent – Allowed – While issuing notice in the petition, Supreme Court observed that the withdrawal of prior suit by vendor of the respondent would have bearing upon the prayer for interim injunction in the present suit – Held: Prior suit filed by the vendor of the respondent was only a suit for permanent injunction and the dismissal of the application for injunction without recording any finding relating to possession was of no consequence – Previous proceeding will not be an impediment in the way of the respondent filing the present suit and seeking an injunction – Impugned order of High Court does not warrant any interference – Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 – s.38-E – Constitution of India – Art.136 – Code of Civil Procedure, 1908 – Or.XLIII, r.1.

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Dismissing the petition, the Court

HELD : 1.1 The Division Bench of the High Court, while reversing the Order of the trial Court, pointed out: (i) that the predecessor of the respondent-plaintiff was issued a certificate under Exhibit P-21 dated 16.12.1975 under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950; (ii) that the said certificate is proof enough to show the passing of title in favour of the predecessor of the respondent-plaintiff; (iii) that Exhibit P-17, which is Form 1-B (Record of Rights) showed that prima facie the respondent was in possession of the land on the date of institution of the suit; and (iv) that therefore, the person in possession was entitled to an interim

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- A order of protection. The High Court pointed out that the person under whom the defendant claimed title could not have acquired any right, under the sale deed dated 08.07.1980, after the issue of the certificate under Section 38-E of the Act in favour of the predecessor of the respondent-plaintiff on 16.12.1975. Insofar as the prior suit filed by the vendor of the respondent plaintiff is concerned, the High Court pointed out that it was only a suit for permanent injunction and that the dismissal of the application for injunction without recording any finding relating to possession was of no consequence. The High Court took note of the fact that under Exhibit P-22, which is the Pahani for the year 2003-2004, there was a sub-division of the land in Survey No.272 into Survey No. 272/A and 272/AA and that the Pahanis of all subsequent years in respect of Survey no.272/A were in favour of predecessors-in-title of the respondent-plaintiff. On the basis of these findings, the High Court reversed the Order of the trial Court and granted an interim injunction in favour of the respondent-plaintiff. Therefore, this is not a case warranting interference under Article 136 of the Constitution. [Paras 10-13][493-G-H; 494-C-D; 495-A-B]

- 1.2 At the time when this Court ordered notice in the above special leave petition on 2.08.2021, this Court was impressed *prima facie* with the argument that the withdrawal of the prior suit by the vendor of the respondent-plaintiff would have a serious bearing upon the prayer for interim injunction in the present suit. Paragraph 52 of the Order of the High Court records reasons as to why the High Court thought that the previous proceeding will not be an impediment in the way of the respondent-plaintiff filing the present suit and seeking an injunction. As rightly observed by the High Court, the dismissal of the application for injunction in the prior suit, was on account of the fact that the photographs showed the land to be an open vacant land. [Paras 14, 16][495-B-C, G-H]

G *Thota Sridhar Reddy and Ors. vs. Mandala Ramulamma and Others 2021 SCC Online SC 851 – relied on.*

H CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No.11286 of 2021.

From the Judgment and Order dated 02.06.2021 of the High Court for the State of Telangana, Hyderabad in Civil Miscellaneous Appeal No.421 of 2020.

Shyam Divan, Sr. Adv., D. Venkat Reddy, Ms. Mehak Jaggi, A Sudipto Sircar, Challa Vivekananda Reddy, Ponnam Mahesh Babu, Somanadri Goud Katam, Advs. for the Petitioner.

D. Ramakrishna Reddy, S. Asif Ali Zaidi, Mrs. D. Bharathi Reddy, Advs. for the Respondent.

The Judgment of the Court was delivered by B

V. RAMASUBRAMANIAN, J.

1. The respondent herein filed a suit (*i*) for a declaration that he is the absolute owner in possession and enjoyment of the suit schedule property; (*ii*) for a further declaration that the Gift Settlement Deed dated 24.07.1987 executed in favour of the petitioner herein was null and void; and (*iii*) for a permanent injunction restraining the petitioner herein from interfering with his possession and enjoyment. C

2. Pending suit the respondent also moved an interlocutory application for an interim order of injunction restraining the petitioner herein from interfering with his peaceful enjoyment and possession of the suit property. By an Order dated 11.02.2020, the trial Court dismissed the application for injunction. D

3. Challenging the said order of dismissal, the respondent filed an appeal under Order XLIII, Rule 1 of the Code of Civil Procedure. By an Order dated 2.06.2021, the High Court for the State of Telangana at Hyderabad allowed the appeal and granted an interim order of injunction in favour of the respondent, pending disposal of the suit. It is against the said order that the defendant in the suit has come up with the present special leave petition. E

4. We have heard Mr. Shyam Divan, learned senior advocate appearing for the petitioner and Mr. D. Ramakrishna Reddy, learned advocate appearing for the respondent. F

5. The suit schedule property is an agricultural dry land measuring acres 1.00 Gts, out of the total extent of acres 2.20 Gts, in Survey No. 272/A, in Turkayamjal Village, Hayathnagar Revenue Mandal, Ranga Reddy District, Telangana. The case of the respondent-plaintiff in the suit was: G

(*i*) that he purchased the suit schedule property under a registered Sale deed dated 09.12.2015 from one Mekala Ram Reddy; H

- A *(ii)* that the said Mekala Ram Reddy had purchased the suit property under a registered sale deed dated 25.11.2008 from one Pannala Ram Reddy and others;
- (iii)* that after the purchase, he got the revenue records mutated in his name;
- B *(iv)* that the vendor of the plaintiff held Patta bearing No.1159 and the respondent himself got a Pattadar passbook under Patta No.1464;
- (v)* that when he started construction of a compound wall and a room in the suit property in January, 2016, the defendant attempted to interfere, forcing the respondent-plaintiff to lodge a police complaint on 6.01.2016;
- C *(vi)* that since the police did not take any action, the petitioner-defendant came to the spot on 08.01.2016 and tried to demolish the compound wall;
- D *(vi)* that the petitioner-defendant also lodged a police complaint, admitting the construction of the compound wall by the respondent plaintiff;
- (v)* that when he perused the police compliant, he came to know that the petitioner-defendant was claiming title by virtue of a Gift Settlement Deed dated 24.07.1987;
- E *(vi)* that however, the enquiries made with the office of the Tehsildar indicated that what was in possession of the petitioner-defendant was the land in Survey No.272/AA and not Survey No.272/A; and
- (vii)* that, therefore, he was constrained to file the suit.
- F 6. In the written statement, the petitioner-defendant claimed:
- (i)* that the vendor of the respondent-plaintiff had earlier instituted a suit in O.S. No.603 of 2015 seeking a decree of permanent injunction;
- G *(ii)* that the application for interim injunction filed in the said suit was dismissed on 11.08.2015;
- (iii)* that thereafter, the vendor of the respondent-plaintiff sold the property to the plaintiff under a registered Sale Deed dated 9.12.2015;
- (iv)* that after such sale, the vendor of the respondent-plaintiff withdrew his suit as not pressed on 2.03.2016;

(v) that the petitioner-defendant got the suit scheduled property A under a Gift Settlement Deed dated 24.07.1987;

(vi) that, therefore, all subsequent sale transactions are not valid;

(vii) that any mutation in revenue records and the issuance of Pattadar passbook are of no consequence; and B

(viii) that, therefore, the suit was liable to be dismissed.

7. To substantiate his claim, the respondent-plaintiff filed the registered Sale deed in his favour, the registered sale deed in favour of his vendor, the original Pattadar Passbook in the name of his vendor, the original Pattadar passbook in his own name, the original proceedings for mutation, the copies of the Pahanis for the years 2007 to 2015 in favour of the plaintiff, Pahani for the year 2015 in favour of the defendant in respect of Survey No.272/AA and the copies of the police complaints. C

8. The petitioner-defendant, on his part filed the Gift Settlement Deed in his favour dated 24.07.1987, the sale deed dated 08.07.1980, the Raithu passbook of himself and his predecessor, the encumbrance certificate, the copies of the plaint and written statement in the prior suit, the order of dismissal of the application for injunction in the prior suit, the order of dismissal of the prior suit after withdrawal and the copy of the quash petition filed by the plaintiff before the High Court. D

9. The trial Court dismissed the application for injunction primarily on the ground *inter alia* that the suit instituted by the vendor of the respondent-plaintiff was dismissed as withdrawn, after the dismissal of the interim application for injunction; that the proceeding of Revenue Division Officer dated 08.04.1996 filed by the petitioner-defendant showed that the petitioner was in possession and enjoyment; and that since there were nothing to show the sub-division of the land in Survey No.272, no case was made out by the respondent-plaintiff for the grant of an interim injunction. E F

10. The Division Bench of the High Court, while reversing the Order of the trial Court, pointed out: (i) that the predecessor of the respondent-plaintiff was issued a certificate under Exhibit P-21 dated 16.12.1975 under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950; (ii) that the said certificate is proof enough to show the passing of title in favour of the predecessor of the respondent-plaintiff; (iii) that Exhibit P-17, which is Form 1-B G H

A (Record of Rights) showed that *prima facie* the respondent was in possession of the land on the date of institution of the suit; and (iv) that therefore, the person in possession was entitled to an interim order of protection.

11. The High Court also found Exhibit R-6 filed by the petitioner-defendant which is the Occupancy Right Certificate issued on 08.04.1996, to be unbelievable, as the predecessor in title of the respondent-plaintiff had already been issued a certificate under Section 38-E of the aforesaid Act way back on 16.12.1975. The High Court pointed out that the person under whom the defendant claimed title, namely Gopamma Yadaiah, could not have acquired any right, under the sale deed dated 08.07.1980, after the issue of the certificate under Section 38-E of the Act in favour of the predecessor of the respondent-plaintiff on 16.12.1975.

12. Insofar as the prior suit filed by the vendor of the respondent-plaintiff is concerned, the High Court pointed out that it was only a suit for permanent injunction and that the dismissal of the application for injunction without recording any finding relating to possession was of no consequence. The relevant portion of the impugned order of the High Court reads as follows:

- E “52. It also seems to have misread the order passed on 11.08.2015 in I.A. No. 510 of 2015 in O.S. No. 603 of 2015 (Ex. R10). In the said order, the Principal Senior Civil Judge, Ranga Reddy District observed merely that the photographs filed by the appellant’s vendor show that the land is open land without any construction and so also was the property of the respondent, and easementary rights of air and light are prescriptive rights, and the appellant’s vendor has to prove acquisition of the said rights for the prescribed period. There is no mention therein about lack of possession and enjoyment of the appellant’s vendor. The above finding as recorded by the trial court also contradicts the claim of the respondent of constructing a compound wall around Acs. 2.00 gts. of land and possessed by him as stated in para no.4 in Written Statement filed in O.S. No. 603 of 2015.”

H 13. The High Court took note of the fact that under Exhibit P-22, which is the Pahani for the year 2003-2004, there was a sub-division of the land in Survey No.272 into Survey No. 272/A and 272/AA and that

the Pahanis of all subsequent years in respect of Survey no.272/A were in favour of predecessors-in-title of the respondent-plaintiff. On the basis of these findings, the High Court reversed the Order of the trial Court and granted an interim injunction in favour of the respondent-plaintiff. Therefore, we do not think that this is a case warranting interference under Article 136 of the Constitution.

14. At the time when this Court ordered notice in the above special leave petition on 2.08.2021, this Court was impressed *prima facie* with the argument that the withdrawal of the prior suit by the vendor of the respondent-plaintiff would have a serious bearing upon the prayer for interim injunction in the present suit. Therefore, this Court, while ordering notice on 2.08.2021 recorded as follows:

"Learned counsel for the petitioner contends that the predecessor of the plaintiff filed O.S. No.603 of 2015 claiming permanent injunction in respect of land measuring 1 acre comprising Survey No.272 ad measuring 2 acres. Such suit was dismissed as not pressed on 02.03.2016. The plaintiff has purchased the property comprising in Survey No.272 on 09.12.2015. The purchaser filed a suit after purchase of the land in respect of which predecessor of the plaintiff has withdrawn suit. Therefore, the suit of the 2 plaintiff was not maintainable.

Notice, returnable within four weeks. In the meantime, parties to maintain status quo regarding possession."

15. On the basis of the above order, it was contended by Mr. Shyam Divan, learned senior counsel for the petitioner that the respondent-plaintiff was a purchaser *pendente lite* and that when his suit itself is barred by law, he cannot be rewarded with an interim injunction.

16. But we are not impressed with the said submission. We have already extracted paragraph 52 of the Order of the High Court which records reasons as to why the High Court thought that the previous proceeding will not be an impediment in the way of the respondent-plaintiff filing the present suit and seeking an injunction. As rightly observed by the High Court, the dismissal of the application for injunction in the prior suit, was on account of the fact that the photographs showed the land to be an open vacant land.

A 17. In ***Thota Sridhar Reddy and Ors. vs. Mandala Ramulamma and Others***¹, this Court had an occasion to consider in extenso the rights conferred by Section 38-E of the Tenancy Act.

B 18. Paragraph 48 of the said decision which reads as follows actually supports the view taken by the High Court in paragraph 49 of the impugned order.

C *"The appeals allegedly filed by the protected tenant against the grant of occupancy rights certificate and subsequently being withdrawn is wholly inconsequential as after the grant of ownership certificate in terms of Section 38-E of the Tenancy Act, the protected tenants are deemed to be owners. Once the protected tenants are deemed to be owners, there could not be any occupancy rights certificate as the purchasers were divested of their ownership by virtue of the grant of ownership certificate under Section 38-E of the Tenancy Act. Such certificate was also not disputed by the purchasers. Therefore, title of the protected tenants is complete and the ownership unambiguously vests with them."*

D 19. In view of the above, we are of the considered opinion that the impugned order of the High Court does not warrant any interference under Article 136 of the Constitution. Hence, this Special Leave Petition E is dismissed.

Divya Pandey

Petition dismissed.

¹ 2021 SCC Online SC 851