

HON'BLE SRI JUSTICE M.VENKATA RAMANA

I.A.No.1 of 2021 in I.A.No.1 of 2020 in S.A.209 of 2020

ORDER :

The respondent in this second appeal has come up with this petition to vacate interim order dated 18.08.2020 in I.A.No.1 of 2020.

2. O.S.No.239 of 2010 was instituted by the petitioner/respondent for grant of permanent injunction against the respondent/appellant in respect of three agricultural lands set out in the plaint schedule basing on Ex.A1-sale deed dated 09.09.2010. The petitioner/respondent is also contending that in the earlier litigation in O.S.No.364 of 2001, which ultimately ended in S.A.No.1138 of 2008 by the judgment dated 20.06.2009 in this Court, the father of the appellant/respondent and two others suffered a decree of injunction by which they were restrained from interfering with the peaceful possession and enjoyment of these lands by Sri Putchalapalli Seetharama Reddy, who was the plaintiff therein. The petitioner/ respondent is claiming by virtue of Ex.A1-sale deed from the legal heirs of Sri Putchalapalli Seetharami Reddy, his right, title and interest as well as possession of these lands.

3. O.S.No.239 of 2010 filed by the petitioner was dismissed by the trial Court and A.S.No.17 of 2018 preferred by him on the file of the Court of the learned Senior Civil Judge, Kavali was allowed by the decree and judgment dated 19.02.2020 setting aside the decree and judgment of the trial Court, granting the relief of permanent injunction in his favour and against the respondent from interfering with his peaceful possession and enjoyment of these lands.

4. This second appeal is preferred by the respondent/appellant against the decree and judgment of the appellate Court.

5. On 18.08.2020, considering the nature of the judgments of both the Courts below as well as decrees, upon hearing the learned counsel for the respondent/appellant, this second appeal was admitted formulating substantial questions of law.

6. In I.A.No. 1 of 2020 an interim order was passed on the same day, which reads as under:

"Heard learned counsel for the petitioner.

Since the second appeal is admitted, having regard to the nature of the dispute and since the property in question requires to be preserved in same status pending disposal of the second appeal, there shall be interim stay of operation of decree and judgment dated 19.02.2020 in A.S.No.17 of 2018 on the file of the Court of learned Senior Civil Judge, Kavali, Nellore District, until further orders.

The petitioner shall not in any manner meddle with the property in dispute under the guise of this interim order of stay."

7. The grievance of the petitioner/respondent is against this order and in the course of hearing, it is the complaint on his behalf that the respondent/appellant is misusing this order, with the influence locally he has and is disturbing the peaceful possession and enjoyment of these lands, held by him.

8. On behalf of the petitioner/respondent several disputed facts are referred to and also against the findings recorded by the learned trial Judge where the predominant view was that the petitioner/respondent should have sought the relief of declaration of his right, title and interest to this property and that on the date of the suit, he was not in possession and enjoyment of these lands. The learned counsel for the petitioner/

respondent referred to the findings in the judgment of the appellate Court and drawing support therefrom, it is contended that the respondent/appellant has no case at all in the second appeal and in view of clear and categorical findings recorded by the learned appellate Judge setting aside the decree and judgment of the trial Court, this second appeal cannot be maintained nor interim order of the nature granted by this Court should continue, since there is no occasion to grant such order.

9. However, the learned counsel for the respondent/appellant referring to the observations of the trial Court as well as the appellate Court in their respective judgments contended that in as much as there are substantial questions of law requiring consideration in this second appeal, which has already been admitted, these contentions on behalf of the petitioner/ respondent need not be considered. Even otherwise, it is contended for the respondent/ appellant that the interim order granted by this Court has laid down sufficient safeguards and that there is no necessity to vacate this order.

10. This second appeal is admitted. Substantial questions of law raised are open for consideration and determination. The role of the petitioner/ respondent, is to point out that these substantial questions did not arise on the material. The learned trial Judge took into consideration the material on record and recorded to the effect that there is a serious dispute relating to title and therefore, a suit for bare injunction could not have been laid. Further to note that S.A.No.1138 of 2008 was disposed of on 10.06.2009 and within a short period therefrom the respondent claimed that he purchased the lands in dispute under Ex.A1 sale deed on 09.09.2010.

11. Now, the contention of the petitioner is that the continuity of things in terms of Section 114 of the Evidence Act should be presumed and the benefit Sri Seetharami Reddy-the predecessor of his vendors had, should therefore be tagged on to him. In this context, the learned counsel for the petitioner relied on a judgment of learned single Judge of High Court for the State of Telangana at Hyderabad in S.A.No.83 of 2019 dated 21.02.2019.

12. The effect of Section 114 of the Evidence Act in this context needs consideration when final arguments are addressed in the second appeal. Particularly considering the fact situation, more so, when the 1st appellate Court placed reliance on oral evidence to favour the petitioner/respondent in respect of possession and enjoyment of these lands, which the learned trial Judge considered differently, to the extent of rejecting their testimony, it is too early for this Court to consider the observations of the appellate Court with reference to possession and enjoyment of the lands in dispute. It is open for the parties to canvass all these questions in the course of final hearing.

13. Having regard to the background of this matter, since the material presented that there is scramble for possession, interim order was granted on 18.08.2020 in I.A.No.1 of 2020. The contention of the learned counsel for the petitioner/respondent that the respondent/appellant is misusing this interim order using local influence, affecting his possession and enjoyment of these lands, is not stated with all necessary particulars in the affidavit filed in support of this petition. There is bare reference that the respondent/ appellant is misusing this order and is trying to interfere with the lands in dispute.

14. Nonetheless, finding no justification to vacate the interim order already granted, this petition has to be dismissed. This order itself is reflecting that it was granted with a view to preserve the status of the property in dispute pending disposal of the second appeal with a rider that the respondent/appellant shall not in any manner meddle with the property in dispute under the guise of this interim order.

15. Therefore, I.A.1 of 2021-the vacate petition is dismissed and interim order granted on 18.08.2020 in I.A.No.1 of 2020 shall continue till disposal of the second appeal.

Dt:12.08.2021
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JUSTICE M.VENKATA RAMANA