

IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE, HOSUR

PRESENT:Tmt. U. Monica, M.L.,
Principal Sub Judge, Hosur (FAC)

Wednesday, the 20th day of March 2019.

CMA.NO. 1 OF 2018

Narayana Reddy, S/o. Late.Linga Reddy, aged 71 years, residing at Mookondapalli, Sipcot Post, Hosur Taluk. ... Appellant

/Vs/

1. Munusamy Reddy, S/o. Late.Thimmaraya Reddy, age not known
2. M.Ananda Reddy, S/o. Munusamy Reddy, age not known
3. M.Chandra Reddy, S/o. Munusamy Reddy, age not known
4. M.Moorthy @ Muni Reddy, S/o. Munusamy Reddy, age not known,
all are residing at Motham Agraharam, Sipcot post, Hosur Taluk.

... Respondents

On appeal against the decree and judgment dated 18.12.2017 passed in O.S.No.268/2011 on the file of the court of Distirct Munsif of Hosur.

Between:

Narayana Reddy

... Appellant

/Vs/

1. Munusamy Reddy
2. M.Ananda Reddy
3. M.Chandra Reddy
4. M.Moorthy @ Muni Reddy

... Respondents

Date of Appeal : 01.2.2018

CF paid Rs. 100/-

Cause of action: 18.12.17, 04.01.18

Under Article 3 of Sch.II CF Act.

The petition filed under order to grant temporary injunction against the respondents/defendants 12 to 15 and their men and servants and others claiming under them not to level the petition schedule property and not to put any foundations and also not to construct any buildings or structures over the petition schedule property till the disposal of the suit and render justice.

This appeal coming before me for final hearing on 18.02.2019 in the presence of Thiru.K.Lakshminarayanan Advocate for the Appellant and Thiru.N.S.Vidhya Baskar, Advocate for the Respondents and Respondents and upon perusal of entire case records, and having stood over for consideration till this day, this Court delivered the following:

DECREE

1. that the CMA is disposed off with direction that trial court shall proceed with the trial of the Suit O.S.No. 268/2011 and dispose off the suit at the earliest.

Description of the Property

The landed properties are situated at Motham Agraharam village of Hosur Taluk with in the R.D. of Krishnagiril and S R D of Hosur, the properties bearing main S.No.1/2A dry an ext. of Hec. 1.93.0 asst. of Rs.1.20 commonly.

Given under my hand and seal of this Court, this the 20th day of March 2019.

Principal Subordinate Judge, (FAC)
Hosur.

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JUDGMENT

The petition filed under order to grant temporary injuction against the respondents/defendants 12 to 15 and their men and servants and others claiming under

them not to level the petition schedule property and not to put any foundations and also not to construct any buildings or structures over the petition schedule property till the disposal of the suit and render justice.

2. The averment in the petition in brief are as follows:

According to petitioner, that the property bearing S.No.1/2A dry an ext. of 1.93.0 hec. of Motham Agraharam village originally belonged to the brothers Veera Reddy, Thimmaraya Reddy and Nanjunda Reddy respectively of Motham Agraharam Village. The said brothers were died leaving behind them their respective legal heirs to succeed their properties. The said Veera Reddy died leaving behind him, his only son by name Chinnaswamy Reddy as his legal heir. The said Thimmaraya Reddy died leaving behind him, his three sons by names Rama Reddy, Nartayana Reddy and Munisamy Reddy as his legal heirs. The last brother of Veera Reddy and Thimmaraya Reddy by name Nanjunda Reddy died leaving behind him, his three sons Papi reddy, Gulla Reddy and Muni Reddy as his legal heirs. The son of Veera Reddy by name Chinnaswamy Reddy also died leaving behind him, his two sons Muni Reddy and venkata Reddy as his legal heirs. Even though the said Chinnaswamy Reddy has got two sons and his junior paternal uncles by names Thimmaraya reddy and Nanjunda reddy are having three sons each respectively, all the legal heirs who are the children of Chinnaswamy Reddy, Thimmaraya Reddy ;and Nanjunda Reddy respectively have divided their entire family properties by way of oral partition into 8 shares and each of them have taken 1/8th share in the entire joint family properties. After the said oral partition the son of Nanjunda Reddy by name Muni Reddy also died leaving behind him, his wife Gowramma and two sons by names Chinna reddy and Nanjunda Reddy as his legal heirs to succeed his properties. The patas for the respective shares have been separately granted to each son of the said Chinnaswamy Reddy, Thimmaraya reddy and Nanjunda Reddy during the period of UDR survey, except for the S.No.1/1 dry an ext. of 0.67.5 hec. and S.No. 1/2A dry an ext. of 1.93.0 hec. of Motham Agraharam Village because the said S.No.1/1 is a plain land and situated on the Northern side to the panchayat road and the said S.No. 1/2A is covered by the rocks and the said survey numbers 1/1 and 1/2A are together in one plot and the said lands are in triangular shape ;and it is unable to divide between them, so the pata for the said S.No.1/1 dry an ext. of 0.67.5 hec. and S.No. 1/2A dry an ext. of 1.93.0 Hec. have been jointly granted in the names of Muni Reddy and Venkata Reddy sons of Chinnasamy

Reddy, Rama Reddy, Narayana Reddy and Muniswamy Reddy sons of Thimmaraya reddy and Papi Reddy, Gulla Reddy and Gowramma wife of Muni Reddy under pata No. 212 of Motham Agraharam Village. After the said oral partition all the children of Chinnaswamy reddy, Thimmaraya reddy and Nanjunda Reddy have sold some of their respective shares of properties to various parties. In the said S.No. 1/2A dry an ext. of 1.93.0 hec. of Motham Agraharam village, the wife and children of late Muni Reddy and the daughter in law and grand sons of late Nanjunda Reddy by names Gowramma, Chinna reddy and Nanjunda Reddy respectively have sold their .../8th common share i.e., an ext. of 0.60 acres out of the total ext. of 1.93.0 hec. in S.No. 1/2A of Motham Agraharam village to me under a registered sale deed dt. 04.05.1990 vide doc. No. 1866/1990 and the same was registered in the office of the sub registrar, Hosur. The son of Thimmarayappa Reddy by name Muniswamy Reddy has executed a gift settlement deed for an ext. of 0.25 acres or 10950 sq.ft. of land measuring East to West 73 ft. and North to South 150 ft. out of the total ext. 1.93.0 hec. in s. No. 1/2A of Motham Agraharam village by showing the boundaries on the East by the land gifted to M. Chandra Reddy in the same S.No. 1/2A by the said Munisamy Reddy on the west by the land of land of Gulla Reddy and others and the land of L. Narayana Reddy (myself) on the North by the land of I, the plaintiff and A. Krishnappa and on the south by 20 ft. panchayat road, to and in favour of his son M. Ananda Reddy under a registered gift settlement deed dated 11.08.2006 vide doc. 9535/2006 and the same was registered in the office of the sub registrar, Hosur. Munisamy Reddy Son of late. Thimmaraya Reddy has created the above said three gift settlement deeds in favour of his sons by names the defendants 13 to 15 with an evil intention of create troubles to me and to get wrongful gains. Since the said property bearing S.No. 1/2A is an ancestral property, the defendants 12 to 15 are also the coparceners and are having coparcenary right over the said property and the gift settlement deeds executed by the coparcener Muniswamy Reddy in favour of the other coparceners by names the defendants 13 to 15 for the property in S.No. 1/2A of Motham Agraharam village is not valid as per the Hindu law and the said gift settlement deeds vide Doc No. 9535/2006, 9536/2006 and 9537/2006 on the file of the sub registrar, Hosur are not valid in law and the same are not binding on the plaintiff or to his vendores. The petitioner came to know that the said S.No. 1/2A has been sub divided and separate patta has been granted to the defendant No.13 for the sub divided S.No. 1/2A2 for an ext. of 0.10.0 hec. under patta

No. 867 of Motham Agraharam village, separate patta has been granted to the defendant No. 14 for the sub divided S.No.1/2A3 for an ext. of 0.10.0 hec. under patta No.868 of Motham Agraharam village and separate patta has been granted to the defendant No.15 for the sub divided S.No. 1/2A4 of Motham Agraharam village by showing the patas allegedly obtained with an intention to create unnecessary problems to me and if any alienation made by the defendants 12 to 15 against the said properites in favour of any third parties, it will become the multiplicity of the proceedings in future . With that regard I have already filed a petitionl under Order 39 Rule 1 of CPC by praying the court not to alienate the suit schedule proprties in favour of anybody else till the disposal of the suit and the said petition was taken on file by the court in IA 1049/2011 and the same is pending before the court in the above suit. During the pendency of the above suit and the above IA .1049/2011 the defendants 12 to 15 in the above suit and the respondents herein have came with their men and JCB on 02.08.2017 and tried to level the land situated in S.No. 1/2A and its other sub divided survey numbers and the way situated on the Southern side to the said property was also leveled and put up a wire net fence to the entire property and dug the foundation pits to construct the buildings in the said land . Immediately after knowing the said fact, I have rushed to the spot and prevented the respondents/defendants 12 to 15 from further levelling the land and to ut up foundation on the already dug foundation pits. I have taken the photographs of the illegal acts done by the respondents/defendants 12 to 15 and the same are produced along with this affidavit and the accompanying petition for the perusal of the court. Since the respondents 12 to 15 are having only 1/8th common share in the main S.No. 1/2A and are not having the particlar place or land in the said survey number as their separate property, while being so the respondents 12 to 15 have no right to put up the foundation on the sub divided survey numbers made to the main surynmber 1/2QA which are morefully detailed in the accompanying petition schedule.If any such fencing or the foundation are going to be put up by the respondents 12 to 15, I will be put to irreparable loss and hardship. In the above circumstances I have no other option except approaching the court to grant temporary injunction against the respndents 12 to 15 not to put up any foundations and not to construct any structures or buildings in the petition schedule property till the disposal of the suit. To grant temporary injunction against the respondents 12 to 15 and their men and servants and others claiming under them not to level the petition schedule property and

not to put up any foundations and also not to construct any buildings or structures over the petition schedule property till the disposal of the suit render justice.

3. The Averments in the counter in brief are as follows :

The petition filed by the plaintiff/petitioner at this stage for appointment of court commissioner and also injunction petition are not maintainable either in law or on facts. These defendants do not admit any of the allegations in the affidavit filed in support of the commission petition and also injunction petition except those that are specifically admitted herein. These defendants do not admit any the allegations in the affidavit filed in support of the commission petition and injunction petition. These defendants have filed a detailed written statement setting forth their claim fully and clearly. Most of the allegations in the affidavits are repetitions of the plaint allegations which are already suitably countered in the written statement. Therefore, except the facts that are specifically admitted herein, the other allegations are deemed to have been specifically denied. These defendants submit that even in the written statement these defendants categorically stated that the description of the suit property as given in the plaint is vague and confusing. The plaintiff has filed the suit for declaration his so called title in respect of a common extent of Ac.0.40 cents in S.No.1/1 out of the total extent of Ac.1.67 cents and similarly, he has prayed for the relief of declaration of title in respect of his so called common rights in an extent of Ac.1.20 cents out of the total extent of Ac.4.58 in the suit S.No.1/2A No boundaries are mentioned for the above said portions vaguely mentioned in the plaint schedule of property. Similarly, in the plaint, the plaintiff alleges in one place that the suit property. Similarly, in the plaint, the plaintiff alleges in one place that the suit S.Nos are still in common enjoyment without any division and in another place he claims to have purchased specific portions without any boundaries. Even in the written statement, these defendants have stated that the plaintiff should clarify the suit property and give specific identification for the properties claimed by him in the suit without vaguely describing them. By vaguely describing the alleged extents in the suit S.No.1/1 and 1/2A, the plaintiff is trying to claim the lands of these defendants bearing S.No.1/2A2, 1/2A3 and 1/2A4 for which, pattas have also been issued in favour of these defendants. More details with regard to their valid title to these portions are elaborately mentioned in the written statement these lands belong to these defendants family ancestrally and family partition mentioned in the written statement.

Whereas, the plaintiff claims to have purchased common 2/8th share in the main suit S.No.1/1 and 1/2A from the other family members Therefore, the plaintiff is only an outsider/intermeddler. By wrongly describing the property in his fraudulent sale deed, the plaintiff is now trying to claim the portions of these defendants bearing S.Nos 1/2A2,1/2A3 and 1/2A4 and with that object in mind, all the confusing allegations are made and wrong description of property are given. These defendants submit that the suit is filed in respect of a common extent of Ac.0.40 cents in S.No.1/1 and common extent of Ac.1.20 cents in S.No.1/2A vaguely stating that "these properties start from the southern side existing panchayat road" though, no such description of the property is given in his alleged Sale deed , whereas, in the injunction petition, the plaintiff has shown the schedule of peroperty as common extent of Ac.1.20 cents out of larger extent of Hec.1.93.0 in s.No.1/2A and also showing this portion as sub divided as S.No.1/2A2 extent Hec.0.10.0 and 1/2A3 extent Hec.0.10.0 and S.No.1/2A3 extent Hec.0.10.0 whereas, in the commission application, the schedule of property is vaguely given as " 1/2A extent Hec.1.93.0 Asst.Rs.1.20 and it is sub divided S.Nos if any commonly belong to the petitioner/plaintiff and the defendants/respondent 12 to 15 and others" Therefore, it is evident that the plaintiff is not at all sure about the identity of the property purported to have been purchased under the fraudulent sale deeds created by him. He has also not chosen to given the boundaries for the protions claimed by him either in the plaint of injunction application/ he does not openly admit the sub division proceedings for the purpose of claiming S.No.1/2A2,1/2A3 and 1/2A4 which belong exclusively to these defendants. While things are as above, the said commission petition is filed with a prayer " to identify the petition schedule property" Whereas, in the schdule of property given in the commission petition he has not given the particulars of the portion claimed by him in S.No.1/2-A. The commission petition gives only one S.No.namely 1/2A and the plaintiff has not mentioned the other suit S.No.1/1A. Similarly, even in the injunction application, only S.No.1/2A and its sub division S.No.1/2A2,1/2A3 and 1/2A5 are alone mentioned though he is questioning thses sub divisions in his plaint. The plaintiff has purposely not mentioned 1/1and also 1/2A1. Thus, it is highly confusing to note that the plaintiff is trying to abuse the process of the Hon'ble Court at the expense of taking out the commission to identify his own property which he could not describe in the plaint itself. These defendants submits that it is too much on the part of the plaintiff to take out a commission to identify the property when he himself has

not clarified the suit property by giving more particulars or by amending the description of the property inspite of objections taken by these defendants it is the bounden duty of the plaintiff to come before the Hon'ble Court with clean hands and he should have described the property properly in order to enable the court to find out the merit of his claim and his eligibility to get the necessary relief. Whereas, the plaintiffs so called fraudulent sale deeds and the allegations in the plaint and the petitions under reference and also the description of the property given in the plaint, injunction petition and commission petition are all contradictory, vague and confusing. Taking out a commission alone will not establish the case of the plaintiff. On the other hand, the plaintiff is trying to create more confusion and he is trying to claim the portions of these defendants. The plaintiff should have clarified the suit property and then only he can take out a commission to substantiate the allegations and his so called possession of the property claimed by him. On the other hand, it is strange that the plaintiff is alleging that he has purchased common extents in the suit properties and in the same breath, he alleges that he is in possession of the property, without knowing where his property is and he is also alleging that there is no partition and the suit property is still remain joint. All these unbelievable allegations are alleged. The Hon'ble court may be pleased to note the inconsistency and contradictions in the case of the plaintiff. There is absolutely no justice, equity or balance of convenience to entertain the so called injunction petition and also the commission petition by taking out a commission, cannot substantiate the facts which should have been originally pleaded by him. Even the court commissioner will not be able to locate the "Commonly Extents" claimed by the plaintiff in the absence of boundaries and proper identification details. The plaintiff cannot give different schedule of property to suit his convenience one in the plaint, and another one in the injunction application and a totally different description for the purpose of commission petition. When the suit property is one and the same according to the plaintiff, it is not clear as to how the plaintiff is giving three different versions of the same property. All these facts are submitted to show to the Hon'ble court is is highly prejudicial and dangerous to the interest of these defendants to allow the plaintiff to take out a commission without clarifying the very identity of the property claimed by the plaintiff in the suit and if the commission is appointed at this stage before even the plaintiff could clarify it by giving proper description in the plaint, the plaintiff will try to adjust his case suitably after the commissioner's report is filed and this cannot be permitted under law or

equity. The plaintiff must stand or fall on his own case and a commissioner's report cannot be a substitute for him. Thus, for the afore said reasons, these defendants submit that the plaintiff should be directed to clarify the suit property in the plaint by giving specific details and prayer in the plaint is also to that effect that he wants the court to declare his 2/8th common right and interest and a permanent injunction without specifying the property in the schedule of property in the plaint. No such reliefs on vague prayers can be granted by Hon'ble Court. These defendants submit that there was small family temple in North West portion in Surey Number 1/2A4 and the deity was called Sri Paiseemamma Temple. The deity was a stone inside stone slab and it was erected by the elders of the defendants' family very many years ago. Since, the family wanted to put up a pucca construction to house the deity, the old stone slabs are removed and these defendants have raised concrete pillars and cover the same with RCC roof in an area of about 10X 10 feet. Apart from that there is a small shed put up near the temple to store the building material. Except these superstructures, these defendants have not put up any other larger structures. But, the plaintiff has purposely not described the nature of construction alleged. On the other hand, these defendants have utilized only a small portion in their own land, and they are constructing a small temple in the same place where the old stone temple was there. Since these defendants are planning to construct "Gopuram", they have to dig foundation to strengthen the construction. The entire village knows that there was an old stone covered temple in the same place and only in the same place, the construction was carried out. At any rate, these defendants are entitled to utilize their ancestral property as they like. The plaintiff being outsider, now cannot question the rights of these defendants from enjoying their property, There is no justice, equity and balance of convenience for grant of any injunction in favour of the plaintiff when the very suit property does not belong to him. Whereas, these defendants are entitled to use their property legally and lawfully. Therefore, these defendants submit that there is absolutely no justifiable reason or ground to allow the plaintiff to take out a commissioner at his stage to identify his property and there is absolutely no balance of convenience for grant of any injunction to stop the construction work of the temple in the property of these defendants. These defendants pray leave of the Hon'ble Court to file an additional counter if need be at a later stage if need be. Therefore, the Hon'ble Court may be pleased to dismiss the petition with cost and compensatory cost and render justice.

4. Point for Determination : s

1. Whether the CMA is liable to be allowed or not ?

5. No Oral or documentary evidences have been adduced by both parties. Before the trial court after hearing both sides dismissed the petition. Aggreived by the order of the trial court the petitioner has come forwarded with this petition.

6. Grounds of appeal:

1. The Fair and Decretal order of the lower court are contrary to law and facts of the case.

2. The lower court has filed to mark even the documents filed along with the plaint, but the lower court has taken the affidavit and as well as counter allegations, as basis of the order, which is not in accordance with law.

3. The lower court has filed to note that admittedly there is no dispute regarding the title of the appellant/petitioner to the 2/8th share ie.purchased from two co owners, and so there is primafacie case for injunction, but the lower court is wrong in rejecting the claim of the appellant for temporary injunction, restraining the respondents, their men, servants, and power of attorney from altering the nature of the land, because there is no actual partition by metes and bounds of the entire survey numbers 1/1 and 1/2A.

4. The lower court has failed to note that the Ac.1.20 cents out of Hect.1.93.0,admittedly belongs to the appellant, and infact there is no specific allotment among the co owners, though their shares were defined s 1/8th. In other words if there is no actual division the other co owners have no right to alter the nature of the property or put up any structure without seeking partition by metes and bounds, and when the property is a common property, yet to be divided, and so the lower court has failed to note that there is no balance of convenience, but there is primafacie case for the title and also there is balance of convenience infavour of appellant for seeking temporary injunction, restraining other co owners from putting any permanent structure, including any temply etc. without seeking specific portion by compromise or through court.

5. The lower court has failed to note that the property involved in the appeal is Ac.1.20 cents in S.No.1/2A, for which there are two sale deeds viz. 28.06.1996 from Narayana Reddy and others, and another sale deed dated 04.05.1990 from Muni Reddy, son of Nanjunda Reddy.

6. The lower court has failed to note that the respondents are representing 1/8th share of Munusamy Reddy, S/o.Thimmaraya Reddy only, whereas the appellant has purchased from 2 sharers amounting to 2/8th share, and that is why in the description of property Ac.1.20 cents is mentioned as commonly belonging to the appellant under the sale deeds in his favour.

7. The lower court has failed to note that there is clear evidence for prima facie title, because in the counter, the respondents have not disputed the title, nor denied common possession, and so the lower court is wrong in stating that the appellant has not proved the prima facie title.

8. The lower court has failed to note that no party to the suit can alter the nature of the property or put up any permanent structure without proper allotment of the portion, in which the proposed parties are attempting to put up construction. In other words the parties cannot alter the nature of the property, because the property is only agricultural land, and admittedly for the entire S.No.1/1 and 1/2A the only approach is only from the Panchayat Road, and the respondents are attempting to put up construction so as to prevent the other co owners including the appellant to use their right and in this case the appellant is entitled to 2/8th share in the entire extent of S.No.1/1 and 1/2A, So there is prima facie case for grant of temporary injunction, and also there is balance of convenience only in favour of the appellant.

9. The lower court has failed to note that altering the nature of the land or preventing the other co owners from interfering with the nature of the property against the interest of other co owners is to be prevented by this Honorable court, by grant of temporary injunction only.

10. The other reasons given by the lower court in dismissing the petition, and in this connection in another I.A.No.545 of 2017 temporary injunction is granted against the same respondents, after upholding the title of the appellant and possession.

11. The lower court ought to have allowed the I.A.No.499 of 2017 as it is only a preventive injunction, and so the lower court ought to have granted temporary injunction in order to avoid hardship to both parties.

7. Points for determination :

1. Whether the trial court is correct in dismissing the petition?

8. Point :

1. The unsuccessful petitioner is appellant in this case.

2. The trial court has dismissed the petition on merits.

3. When matter was posted for arguments, the learned appellant counsel and respondent counsel contended that the suit may be sent to trial court for earlier disposal. The appellant counsel made endorsement in docket sheet as follows.

" Appellant humbly prays that the original suit itself ripe for trial. Hence this appellate court may be direct the trial court to dispose suit the suit as early as possible and render justice."

4. The learned respondent counsel made following endorsement in the docket sheet. **"The respondent have no objection to remand the petition to the lower court."**

6. In view of the endorsements made by the appellant and respondent counsel this court is of the view no purpose would be served by deciding the case on merits and as the suit is of the year 2011, in interest of justice the trial court has to be directed to dispose of the main Suit OS No.268/2011 at the earliest. Hence the point for determination is answered accordingly.

In the result, the CMA is disposed off with direction that trial court shall proceed with the trial of the Suit OS No. 268/2011 and dispose off the suit at the earliest.

Dictated by me to the Steno – Typist, typed by her directly on the laptop, and pronounced by me in open court, this the 20th day of March 2019 .

Principal Subordinate Judge,(FAC)
Hosur.