

**IN THE COURT OF THE I ADDL. CHIEF JUDGE:
CITY CIVIL COURT: SECUNDERABAD**

DATED: THIS FRIDAY THE 12TH DAY OF OCTOBER, 2018

PRESENT: **SMT.M.R.SUNITHA,**
I ADDL. CHIEF JUDGE
CITY CIVIL COURT, SECUNDERABAD

C.M.A.No.1 OF 2017

BETWEEN:

1. G.Jagan Mohan Reddy, S/o.Sri G.Krishna Reddy,
Aged about 55 years, Occ : Business, R/o.H.No.3-52,
Burtonguda, Bolarum, Secunderabad – 500 010.
(Died per L.R.s)
2. G.Shalini, W/o.Late Jagan Mohan Reddy, aged about 46 years,
Occ : Housewife, R/o.H.No.3-52, Burtonguda, Bolaram,
Secunderabad – 500 010.
3. G.Tejesvani, D/o.Late Jagan Mohan Reddy,
Aged about 26 years, Occ : Housewife, R/o.H.No.3-52,
Burtonguda, Bolarum, Secunderabad – 500 010.
4. G.Nitin Reddy, S/o.Late Jagan Mohan Reddy,
Aged about 24 years, Occ : Housewife, R/o.H.No.3-52,
Burtonguda, Bolarum, Secunderabad – 500 010.
(Proposed appellants 2 to 4).

... Petitioners / Proposed Appellants.

(As per the order passed in I.A.No.1331 of 2017 the appellants were
impleaded in CMA)

A N D

V.Ravi Raju, S/o.Late V.Kumara Swamy,
Aged about 55 years, Occ : Government Service (CMO),
R/o.H.No.12-7-276 to 285, Mettuguda, Secunderabad – 500 017.

... Plaintiff / Respondent.

**THIS CIVIL MISCELLANEOUS APPEAL IS FILED AGAINST
DECREETAL ORDER DATED 30/11/2016, PASSED BY THE XI
JUNIOR CIVIL JUDGE, CITY CIVIL COURT, SECUNDERABAD
IN
I.A.NO.250 OF 2016
IN
O.S.No.356 OF 2016**

BETWEEN:

V.Ravi Raju, S/o.Late V.Kumara Swamy,
Aged about 55 years, Occ : Government Service (CMO),
R/o.H.No.12-7-276 to 285, Mettuguda, Secunderabad – 500 017.
... Petitioner / Plaintiff.

A N D

G.Jagan Mohan Reddy, S/o.Sri G.Krishna Reddy,
Aged about 55 years, Occ : Business, R/o.H.No.3-52,
Burtonguda, Bolarum, Secunderabad – 500 010.
...Respondent / Defendant

This miscellaneous appeal is coming before me on 03.10.2018 for final hearing in the presence of Sri.N.Madhusudhan, Advocate for Appellants and of Sri L.Srinivas Patel, Advocate for Respondent and after the matter is having been stood over for consideration, today, this court made the following:

J U D G M E N T

1. This civil miscellaneous appeal is filed by the petitioners, who are the proposed appellants, aggrieved by the orders dt.30.11.2016 of the XI Junior Civil Judge, City Civil Court, Secunderabad in IA No.250 of 2016 in OS No.356 of 2016.

2. For the sake of convenience, the parties are referred to hereinafter as they are arrayed in the lower Court i.e. the appellants as the 'petitioners' and the respondent as the 'respondent' in this appeal.

3. IA No.250 of 2016 in OS No.356 of 2016 was filed by the respondent herein seeking grant of interim injunction restraining the 1st petitioner herein from interfering with the peaceful possession and enjoyment of the respondent over the suit schedule property.

4. The briefs facts that germane to filing of IA No.250 of 2016 are that the respondent herein succeeded suit property bearing H.No.12-7-276 to 285 admeasuring 5200 sq.yards situated at Mettuguda, Secunderabad after the demise of his mother viz. Smt.V.Prabhavati and has been in peaceful possession and enjoyment of the same and that the 1st petitioner herein was the tenant of a portion in the schedule property and vacated the same in the year 2014 on his own accord and handed over the vacant and peaceful possession of the same to the mother of the petitioner and after her death, all of a sudden on 11.06.2016 the 1st petitioner, along with one Mr.Veera Reddy and some other anti-social elements trespassed in to the property by breaking the lock and damaged the gate and kept Honda City car bearing No.AP 09 AJ 4633 and on coming to know the same, the respondent herein questioned the same to which, the 1st petitioner and his henchmen threatened him with dire consequences and abused him in vulgar and filthy language and that the respondent resisted their attempt with the help of neighbours and approached police of Chilkalguda and tried to lodge a complaint but on the advice of the police, he approached the Court.

5. The 1st petitioner herein filed his counter in IA No.250 of 2016 denying the allegations made against him mainly contending that he entered into a rental agreement with the mother of the respondent on 20.03.2002 but later as per orders in OS No.90 of 2007, of the I Addl. Chief Judge, City Civil Court, Secunderabad, he was directed to hand over possession of the subject matter

premises to Mr.Harshad N Shah, Smt.Maniben R Shah, Mr.Deepak P Shah, Smt.Sarala P Shah, Smt.Deena Shah and Smt.Bharathi Shah, who are the plaintiffs in that suit stating that they are the original owners of the property and also directed the 1st petitioner herein to pay mesne profits and that the said owners filed execution petition wherein the 1st petitioner filed EA No.111 of 2014 in EP No.93 of 2008 wherein this Court ordered the 1st petitioner to deposit the rents to the account of the EP until further orders declaring him as a tenant and hence the original owners became symbolic possessors of the suit property and that the respondent filed OS No.332 of 2006 against the original owners and obtained an ex-parte order, which order was later set-aside and that the 1st petitioner never vacated the premises and using the same for parking vehicles. Thus stating, he requested to dismiss this petition.

6. As per orders IA No.1331 of 2017, dt.18.12.2017, the petitioner Nos.2 to 4 were impleaded into the case on account of death of the 1st petitioner.

7. After hearing both sides and perusing the material on record, the trial Court allowed IA No.250 of 2016 making absolute the ex-parte ad-interim injunction granted on 16.06.2016.

8. Aggrieved by the same, the petitioners herein, filed this appeal mainly on the following grounds :

(a) The order of the lower Court is neither inconsonance with the facts nor in proper appreciation of law and without proper exercise

of jurisdiction vested with it and grossly erred in appreciating the self served statement of the respondent regarding his alleged possession failed to consider the fact that the 1st petitioner was declared by the superior Court as a tenant and until and unless the said findings are set-aside, he should not be disturbed.

(b) The respondent approached the trial Court with unclean hands and suppressing the material acts.

(c) The trial Court failed to observe the main ingredients like prima-facie case, balance of convenience and irreparable loss to be sustained by the party if injunction is not granted, while granting injunction, which were in-fact not in favour of the respondent.

(d) Trial Court had overlooked rather ignored the judgment and orders passed by a superior Court in EA No.111 of 2014.

9. Heard the arguments of both sides.

10. Now the point for determination is :

Whether the order and decretal order dt.30.11.2016 in IA No.250 of 2016 in OS No.356 of 2016 of the XI Junior Civil Judge, City Civil Court, Secunderabad, holds good or needs interference of this Court ?

11.**Point :**

(a) This civil miscellaneous appeal is filed by the appellants, who are the defendants in OS No.356 of 2016 aggrieved by the orders of the trial Court in IA No.250 of 2016, dt.30.11.2016.

(b) The facts germane for the case are that the plaintiff filed the suit for perpetual injunction against the defendant since he is interfering with his peaceful possession and enjoyment of the schedule property. While the main suit is filed for perpetual injunction, the present interlocutory application under challenge is filed to seek temporary injunction from the Court until disposal of the suit.

(c) In a suit for injunction simplicitor, the Court has to look into the possession of the parties as on the date of filing of the suit. Nevertheless, the Court dwelves into the aspect of title in a suit for injunction simplicitor but for incidentally. The petitioner has shown his prima-facie possession over the suit schedule property by filing ample of documents like electricity bills and water bills in the name of the petitioner.

(d) Since the relief was temporary one, the documents were exhibited for the purpose of the interim application and on perusal of the said exhibits, it is crystal clear that the plaintiff has made out his case of being in possession over the suit schedule property and the illegal interference of the defendant. The respondent is denying the ownership of the petitioner on one hand and the possession on the other hand stating that, the petitioner was never in possession of the schedule property and this respondent had never vacated the premises.

(e) The respondent relied upon Ex.R.1 which is the certified copy of judgment and decree in OS No.90 of 2007, dt.29.08.2008, on the

file of this Court. The said judgment pertains to a suit for eviction filed by Sri Harshad N Shah and others against V.Ravi Raju, who is the petitioner herein, for eviction and this Court, on merits, decreed the suit of the plaintiffs therein passing eviction orders against the defendant therein, who is the petitioner in IA No.250 of 2016. Ex.R.2 is the certified copy of decree and order in EA No.111 of 2014 in EP No.93 of 2008, passed in OS No.90 of 2007.

(f) The execution petition is filed by the plaintiffs in OS No.90 of 2007 to evict the judgment debtor / plaintiff in the present suit. The respondent in the present suit filed a claim petition vide EA No.111 of 2014. The court passed an order holding that the claim petitioner is also one of the tenants in the suit schedule property and except claiming himself as a tenant do not have any right over the suit schedule property. The Court has also given liberty to the plaintiffs therein to get the claim petitioner evicted from the schedule property by due process of law.

(g) On perusal of the said documents, it is crystal clear that the respondents have nothing to establish their possession over the schedule property on par with the petitioners. The respondent has to agitate for his rights with the so called original owners as alleged by him. As of now, since the plaintiff has established his prima-facie possession over the suit schedule property and the same has to be yet for consideration during the trial, the trial Court has rightly granted ad-interim injunction to protect the interests of the plaintiff.

Hence, for the above stated reasons, this CMA deserves to be dismissed.

12. In the result, this CMA is dismissed.

Written and Pronounced by me in the Open court on this the 12th day of October, 2018.

Sd/-

I ADDL.CHIEF JUDGE
CITY CIVIL COURT, SECUNDERABAD
APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR APPELLANT/S:

- None -

FOR RESPONDENT/S:

- None -

DOCUMENTS MARKED

FOR APPELLANT/S :

- Nil -

FOR RESPONDENT/S :

- Nil -

Sd/-

I ADDITIONAL CHIEF JUDGE,
CITY CIVIL COURT, SECUNDERABAD.