

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE TWENTY NINTH DAY OF JANUARY
TWO THOUSAND AND TWENTY ONE

PRESENT
THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

C.M.A. NO: 515 OF 2020

Appeal filed under Section 43 Rule (1) of Civil Procedure Code against the Order dated 27/11/2020 made in IA No.603 of 2020 in OS No.840 of 2016 on the file of the Court of the IX Additional Chief Judge, City Civil Court, at Hyderabad.

Between:

1. Dr. Mahesh Kumar Kedia, S/o. Late Sri. Gulzarilal Kedia, aged about. 64 Years, Occ. Business, R/o. 5-9-30/1/4/3, Basheerbagh Palace Colony, Hyderabad.
2. Sri. Umesh Kedia, S/o. Late Sri. Gulzarilal Kedia, Aged about. 64 Years, Occ. Business, R/o. 5-9-30/1/4/3, Basheerbagh Palace Colony, Hyderabad.

...APPELLANTS/ RESPONDENTS 2 & 8/ DEFENDANTS 2 & 8

AND

1. Sri. Jitender Kedia, S/o. Late Sri. Gulzarilal Kedia, aged about. 48 Years, Occ. Business, R/o. 5-9-30/1/4/3, Basheerbagh Palace Colony, Hyderabad.
.....Respondent/ Petitioner/ Defendant No.9
2. Vijender Kedia, S/o. Late Sri. Gulzarilal Kedia aged about. 60 Years, Occ. Business, R/o. 5-9-30/1/4/3, Basheerbagh Palace Colony, Hyderabad.
.....Respondent/ Respondent/ Plaintiff
3. Gulzarilal Kedia (since died), Defendants 3 to 9/respondents 3 to 9 being Children are already on record.
4. Smt. Premilatha, W/o. R.P. Agarwal, aged about. 69 Years, Occ. Household, R/o.5-9-30/1/17/D, Road No.4, Basheerbagh Palace Colony, Hyderabad.
5. Smt. Shakuntala Agarwal, W/o. M.P. Agarwal, aged about. 66 Years, Occ. Household, R/o. Flat No. 303, R.R. Kuteer, Street No. 20, Himayathnagar, Hyderabad.
6. Smt. Santosh Agarwal, W/o. S.P. Agarwal, aged about. 62 Years, Occ. Household, R/o. 5-9-30/17/D/1, Road No. 4, Basheerbagh Palace Colony, Hyderabad.
7. Smt. Usha Agarwal, C/o Satish Agarwal, aged about. 60 Years, Occ. Household, R/o. H. No. 7, Villa Grande, Toli Chowki, Hyderabad.
8. Smt. Anita Goel, W/o. M.K. Goel, aged about. 55 Years, Occ. Household, R/o. H. No. 14, Road No. 4, East Punjabi Bogh, New Delhi. (Respondent Nos 3 to 8 not necessary parties to this Appeal)

...RESPONDENTS/ RESPONDENTS/ DEFENDANTS

IA NO: 2 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the petitioner to file the material paper sale deed dated 8-5-1974 as additional material papers in CMA No. 515 of 2020 and receive the same

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the orders passed by the Hon'ble IX Additional Chief Judge, City Civil Court, Hyderabad,

in I.A. No. 603/2020 in O.S. No. 840 of 2016, Dt. 27-11-2020, pending disposal of the above CMA.

Counsel for the Appellants : SRI PAWAN KUMAR AGARWAL

Counsel for the Respondents : SRI SUNIL B GANU

The Court made the following: ORDER

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND

HONOURABLE SRI JUSTICE T. AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.515 OF 2020

JUDGMENT:

(Per T.Amarnath Goud, J)

- 1 This Civil Miscellaneous Appeal, under Order 43 Rule (1) CPC, is filed challenging the order dated 27.11.2020 passed in I.A.No.603 of 2020 in O.S.No.840 of 2016 on the file of IX Additional Chief Judge, City Civil Court at Hyderabad.
- 2 Second respondent herein filed the suit O.S.No.840 of 2016 on the file of the Court below for partition and separate possession. In the said suit, the first respondent herein who is 9th defendant in the suit filed I.A.No.603 of 2020 under Order 39 Rules 1 and 2 r/w Section 151 CPC seeking to grant interim injunction restraining the appellants herein who are defendant Nos.1 and 7 in the suit from carrying on any construction in the suit schedule property or changing the nature of the same in any manner pending disposal of the suit.
- 3 The case of the first respondent / 9th defendant was that the 2nd respondent who is plaintiff in the suit filed the suit for partition of the suit schedule property into 10 equal shares by metes and bounds and for separate possession of 1/10th share to him. During the pendency of the suit, the appellants herein have taken up illegal constructions in the suit schedule property behind back of the other co-sharers and if they proceed as such, he (1st respondent) would suffer irreparable loss and that till the rights of

the parties to the suit are determined, the appellants have no right to take up such constructions, which will have an impact on the final decree proceedings in the event the suit being decreed as they may claim equities on the basis of such constructions raised.

4 First appellant filed counter denying the material averments made in the petition contending that he is not at all carrying on any new constructions in the suit schedule property and that the structures over the entire property have been existing since long time and that he is only making interior and renovation work, that too in the upper floors and that the main structures of the suit schedule property are not effected. He undertook that he will not claim any equity with respect to the work being carried out in the portion of the suit schedule property or expenditure incurred in the said work in the event the suit being decreed. Second appellant / 8th respondent adopted the counter filed by the first appellant.

5 The trial Court, having perused the entire material available on record, allowed the petition holding that in the absence of any evidence to show that the appellants are only carrying out only interiors and renovation works on the upper two floors, their undertaking cannot be considered and granted the relief as prayed. As stated supra, aggrieved thereby, the appellants filed the present Civil Miscellaneous Appeal.

6 The learned counsel for the appellants submitted that except the plaintiff and the 9th defendant in the suit, no other family member has got any kind of objection with respect to the

renovation work being carried out by the appellants. He further submitted that the nature of the suit schedule property is not effected by the renovation work being carried out by the appellants.

7 All through the contention of the first and second respondents herein, who are 9th defendant and plaintiff respectively, is that the suit schedule property is a joint family property. The suit was filed for partition of the joint family property into ten equal shares and for allotment of one such share to the plaintiff. Of course, the first respondent herein who is 9th defendant in the suit is sailing with the second respondent/plaintiff. On the other hand, the case of the first appellant is that the title deed of the suit schedule property itself is self explanatory which *prima facie* proves that he is the absolute owner of the said property and neither the plaintiff nor any other defendant in the suit have got any kind of right, title or claim in the same. However, the first and second respondents claim that the suit schedule property was acquired from out of the joint family funds in the name of the first appellant being the eldest son of the family for the benefit of the joint family business. Needless to observe that whether the suit schedule property is acquired from out of the joint family funds or whether the suit schedule property is the absolute property of the first appellant are all issues of trial. In interlocutory stage it is not just and proper for the Court to give any findings on the respective contentions of the parties, since they may have bearing on the final decision of the

suit. The Court has to see *prima facie* case and balance of convenience of the parties to grant the relief.

8 It is to be seen from the appendix of evidence of the impugned order that neither of the parties have let in any kind of evidence, either oral or documentary, in support of their respective claims. It is borne out from the record that *pendente lite* the trial Court passed an injunction order on 10.3.2017 in I.A.No.1777 of 2016 in favour of the 2nd respondent/ plaintiff as against the alienation of the suit schedule property by the defendants in the suit and the said injunction order is still subsisting. The appellants have not taken any steps to get that order vacated. Therefore, it is just and proper to pass an injunction order in favour of the first respondent because any kind of changes to the suit schedule property, be it new illegal construction or only an interior and renovation work, will effect the ultimate rights of the parties in the event the suit being decreed and while working out equities. The trial Court, having observed so, has rightly granted the injunction order, which, in our considered view, needs no interference.

9 The appellants by way of I.A.No.2 of 2020 in this Civil Miscellaneous Appeal filed sale deed dated 08.5.1974 and a release deed dated 22.9.1980 to establish the flow of title in favour of the first appellant. This is not a regular appeal to mark those documents as additional evidence. This appeal arises out of an order passed in an interlocutory application. Hence those documents cannot be looked into at this stage. The appellants are

always at liberty to file those documents in the Court below and get them marked on their side.

10 For all these reasons, we see no grounds to disagree with the finding of the Court below and we also see no merit in the Civil Miscellaneous Appeal as well, and it is accordingly dismissed, confirming the orders dated 27.11.2020 passed in I.A.No.603 of 2020 in O.S.No.840 of 2016 on the file of IX Additional Chief Judge, City Civil Court at Hyderabad. No order as to costs.

11 As a sequel, miscellaneous petitions pending, if any, in this Appeal, shall also stand dismissed.

Sd/-K.SREENIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The IX Additional Chief Judge, City Civil Court, at Hyderabad.
2. One CC to Sri Pawan Kumar Agarwal, Advocate (OPUC)
3. One CC to Sri Sunil B. Ganu, Advocate (OPUC)
4. Two CD Copies

Kj.



HIGH COURT

DATED:29/01/2021



JUDGMENT

CMA.No.515 of 2020

DISMISSING THE CMA NO COSTS.

5
KMA
02/03/2021