

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

WEDNESDAY, THE THIRTY FIRST DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HONOURABLE SRI JUSTICE T.VINOD KUMAR
AND
THE HONOURABLE SMT JUSTICE P.SREE SUDHA**

CIVIL MISCELLANEOUS APPEAL NO: 528 OF 2021

Appeal under Order - 43 Rule -1 of CPC against the Order and decree dated 06-09-2021 in I.A.No.330 of 2020 in O.S. No. 215 of 2020 on the file of the Court of the VIII Additional District Judge, Ranga Reddy District, L.B. Nagar.

Between:

1. Cheemala Ilaiiah, S/o Late Cheemala Narsimha, Aged about. 57 years, Occ. Agriculture, R/o. Aushapur Village, Ghatkesar Mandal, Medchal Malkajgiri Dist., Telangana.
2. Cheemala Krishna, S/o Late Cheemala Narsimha, Aged about. 43 years, Occ. Agriculture, R/o. Aushapur Village, Ghatkesar Mandal, Medchal Malkajgiri Dist., Telangana.
3. Cheemala Pentamma, W/o Late Cheemala Narsimha, Aged about 70 years, Occ. Housewife, R/o. Aushapur Village, Ghatkesar Mandal, Medchal. Malkajgiri. Telangana.
4. V. Sharada, W/o V. Venkatesh, D/o Late Narsimha, Aged about. 46 years, Occ. Housewife, R/o. 4-2-61, Kowkur, Hyderabad, Telangana
5. A. Vijaya, W/o Narsimha, D/o Late Narsimha, Aged about. 40 years, Occ. Housewife, R/o 1-11, Hanumapur Village, Nalgonda District, TelanganL
6. A. Ranamma, W/o Meenaiah, D/o Late Narsimha, Aged about. 53 years, Occ. Housewife, R/o 17-52/1, Narayanagiri Village, Pochampalli/Mandal, Yadadri - Bhongiri District, State of Telangana.

... Petitioners/plaintiffs

AND

1. Cheemala Srisailam, S/o late Cheemala Veeraiah, Aged about. 59 years, Occ. Agriculture, R/o H. No. 1-27, Aushapur Village, Ghatkesar Mandal, Medchal- Malkajgiri District, Telangana.
2. Cheemala ChinnaMallu, S/o Late Cheemala Veeraiah Aged about. 57 year, Occ. Agriculture, Rio H. No.1-26, Aushapur Village, Ghatkes4rMandal, Medchal-Malkajgiri District, Telangana.
3. Cheemala Yadamma, W/o Late Cheemala Veeraiah, Aged about. 70 years, Occ. Agriculture, R/o H. No. 1-40, Aushapur Village, Ghatkesar Mandal, Medchal-Malkajgiri District., Telangana.

4. D. Ramesh, S/o Mallaiah, Aged about. 44 years, Occ. Business, R/o H. No.2-12, Gundlapally Village, Yadagirigutta Mandal, Yadadri-Bhongiri District, Telangana.
5. D. Veeraiah, S/o Mallaiah, Aged about. 40 years, Occ. Business, R/o H. No. 2-12/h, Kothagundlapally Village, BhongiriMandal, Yadadri-Bhongiri District, Telangana.
6. Thotakura Manjula, W/o Mallesh, Aged about. 36 years, Occ. House Wife, R/o H. No. 2-31, Anjapur Village, Bhongiri mandal, Yadadri-Bhongiri District, Telangana.
7. P. Anasuya, W/o Mallesh, Aged about. 32 years, Occ. House Wife, R/o H. No. 1-08, Bommaipally Village, Bhongiri Mandal, Yadadri-Bhongiri District., Telanagana.
8. Syed Nayeemuddin @ Salman, S/o. Late. Syed Jamaluddin Sarwar, Aged about . 59 Years, Occ. Business, R/o. 16-2-740/C/59, Asmanghad, TV Tower, Malakpet, Hyderabad, Telangana.
9. Syed Ahmed Mohinuddin @ Rizwan, S/o Late Syed Jamaluddin Sarwar, Aged about. 51 years, Occ. Business, R/o 16-2-741/C/59, Asmangadh, T.V Tower, Malakpet, Hyderabad, Telangana.
10. Syed Arifuddin @ Noman, S/o. Late Syed Jamaluddin Sarwar, Aged about . 40 yrs, Occ. Business, R/o. H.No. 16-2-141/A, Government Press road, TV Tower Malakpet, Hyderabad.
11. M/s. Edifice Constructions, Rep.by its Managing Partner, C. Venkat Srinivas Reddy, S/o. Sathi Reddy, Aged about . 47 Years, Occ. Business, R/o. Plot No. 55, GV Reddy Colony, Tirumalgiri, Bollaram, Secunderabad, Telangana.
12. Ws. Edifice Constructions, Rep.by its Managing Partner C. Venkat Srinivas Reddy, Office at 4th floor, Nandanwanam Chamber, 1-2-4/1, Kalasiguda, Park Lane, Secunderabad, Telanganai
13. The Metropolitan Commissioner, Metropolitan Development Authority, HMDA Complex, HMDA Building, Tarnaka, Secunderabad, Telangana.
14. The Secretary, Grampanchayath, Aushapur Village, Ghatkesar Mandal, Medchal Malkajgiri Dsitrict, Telangana.

...Respondents/Defendants

IA NO: 2 OF 2021

Petition under Order - 43 Rule -1 & 2 R/w Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant ad-interim injunction by restraining the Respondents / Defendants No 8 to 12 and any other persons claiming through them from alienating, creating any kind of encumbrances over the Petition scheduled Property to third parties pending disposal of the suit.

Counsel for the Appellant : Sri M Vijaya Kumar Goud

Counsel for the Respondent No.8 to 10 : Sri Sunil B Ganu

Counsel for the Respondent No.11 : Sri Chandrasen Law Offices

The Court delivered the following: Judgment

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR
AND
THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL MISCELLANEOUS APPEAL No.528 of 2021

JUDGMENT: *(per Hon'ble Smt. Justice P.Sree Sudha)*

This Civil Miscellaneous Appeal is filed against the Order dated 06.09.2021 in I.A.Nos.330 of 2020 in O.S.No.215 of 2020 passed by the learned VIII - Additional District Judge, Ranga Reddy district at L.B.Nagar.

2. Petitioners/plaintiffs filed an application before the trial Court for grant of temporary injunction restraining respondents No.8 to 12 from alienating and also from creating any kind of interference over the petition schedule property till the disposal of the suit. The trial Court considering the arguments of both sides dismissed the application. Aggrieved by the said Order, they preferred the present Civil Miscellaneous Appeal.

3. Petitioners/plaintiffs mainly contended that respondents No.8 to 10 have not filed any suit for specific performance basing on the Agreement of Sale dated 08.12.1980 or 21.03.1992 within the limitation and also stated that they filed

suit for partition, as if the property is sold to third parties it leads to multiplicity of litigation. Respondents No.11 & 12 in their counter stated that they entered into Agreement of Sale with prospective purchasers. The trial Court observed that "whether the possession of respondents No.8 to 10 is lawful or not and whether Checemala Narsimha along with respondent No.1 and 2 and others have sold out the petition schedule property in favour of Syed Jamaluddin Sarwar in 1980 and his possession was in pursuance of said Agreement of Sale dated 08.12.1980 are the questions to be decided after full trial", and dismissed the application as a result the petitioners will be put to irreparable loss. The ancestors of the petitioners are Pattedars and the father of the respondents No.8 to 10 was the tenant, but his name was shown in the possessor's column even when there was no absolute sale transaction.

4. The respondents No.8 to 12 played fraud by colluding with revenue official and converted the agricultural land into plots and thus petitioners proved that they are Pattedars of agricultural land and balance of convenience is in their favour as the entire process of mutation, obtaining layout permission, execution of gift deed, mortgage deed and Development cum Agreement of Sale done within six months. Respondents No.8 to

10 are claiming themselves as the owners of the suit property by virtue of the Agreement of Sale which was impounded. They also made a counter claim seeking Specific Performance of Agreement of Sale dated 21.03.1992 and it clearly shows that they are admitting the ownership of the plaintiff. The respondents No.8 to 10 in their counter claim sought for alternative relief to declare them as absolute owners of the suit property on the ground of adverse possession and it is contrary to Section 35 of Transfer of Property Act and "Doctrine of Election". The Agreement of Sale is not enforceable as it is hit by "Doctrine of Frustration" and it is contrary to Section 56 of Indian Contract Act, 1872. The Order of the Tahsildar is basing on the unregistered document which is subsequently impounded. The trial Court failed to observe that under Section 54 of Transfer of Property Act, registration of sale deed is mandatory to convey the title, as such the proceedings issued by the Tahsildar are contrary to the law, not valid and *void ab initio* and thus, requested the Court to set aside the Order of the trial Court.

5. The sons and daughters of one Cheemala Narsimha filed the suit in O.S.No.215 of 2020 seeking to pass preliminary decree for partition and separate possession in favour of

plaintiffs No.1 to 5 by allotting 1/10th share each in the suit schedule property and defendants 1 to 4 are entitled to 1/10th share each and defendants 4 to 7 are jointly entitled for 1/10th share and requested the Court to appoint an Advocate Commissioner to divide the suit schedule property and also to declare the unregistered impounded Agreement of Sale dated 21.03.1992, registered Development agreement cum G.P.A vide document No.7306 of 2019 dated 20.07.2019, registered agreement and Deed of Mortgage vide document No.3623 of 2020 dated 16.07.2020 and registered Gift deed vide document No.3622 of 2020 dated 15.07.2020 as null and void, inoperative and not binding on the plaintiffs and defendants No.1 to 7 and also to direct defendants No.8 to 14 to deliver the physical possession of the suit property.

6. Petitioners/plaintiffs stated that one Cheemala Chinna Mallaiah was the pattedar and possessor of the agricultural land admeasuring Acs.13 - 32 gts in Sy.No.77 situated at Aushapur village, Ghatkesar Mandal (hereinafter referred as suit schedule property) and in the revenue records and in the pahanies for the years 1970-71, 1974-75 his name was reflected as pattedar and possessor of the suit schedule property. He died in the year 1977, leaving behind his two sons namely Cheemala

Vecraiaha and Cheemala Narsimha as his legal heirs and successors. Their names were also recorded in the Pahanies for the year 1980-81. The Cheemala Veeraiah died intestate leaving behind his wife, his two sons i.e., defendants No.1 to 3 and his two daughters i.e., plaintiff No.6 and one Ilamma. The said Ilamma died leaving behind her two daughters and two sons i.e., defendants No.4 to 7. Cheemala Narsimha died on 01.08.1995 leaving behind his wife, his two sons and two daughters i.e., plaintiffs No.1 to 5. As per the Certified Copy of the Pahanies which are mentioned in the plaint, the names of Cheemala Narsimha, Cheemala Srisailam and Cheemala Chinna Mallu were recorded as pattedars and possessors of the suit schedule property. The plaintiffs and defendants No.1 to 7 have jointly succeeded the suit property from their common ancestor Cheemala China Mallaiah, their father Cheemala Vecraiah and Cheemala Narsimha and they became joint owners. There was no partition took place between them. They are the co-owners and enjoying the suit schedule property without any interruption, but due to shortage of water it was not under cultivation since 6 years and at present it was fallow land.

7. They further stated that one Syed Jamaluddin Sarwar had obtained the suit schedule property on oral lease from

Cheemala Narsimha for five years in the year 1981 and the said lease expired in the year 1986. From then onwards it was under cultivation and physical possession of plaintiffs and defendants No.1 to 7. The said Jamaluddin Sarwar was lessee and hence his name was reflected in the revenue records as possessor. Though he died long back, it was not rectified by oversight. The Jamaluddin Sarwar is not concerned with the suit schedule property and he has no right over the suit schedule property. The defendants No.8 to 10 are posing themselves as the sons of Jamaluddin Sarwar and hatched a plan to grab the suit schedule property by creating unregistered Agreement of Sale dated 21.03.1992 and it is a bogus and fabricated document. As per the Agreement of Sale Cheemala Narsimha, defendants No.1 & 2 along with two others have jointly alienated the suit schedule property in favour of defendants No.8 to 10 by receiving total sale consideration of Rs.90,000/- and delivered the physical possession of the suit schedule property. As per the contents of Agreement of sale the father of defendants No.8 to 10 had already purchased the suit schedule property in the year 1980 from Cheemala Narsimha, defendants No.1 and 2 and he was in possession. The father of defendants No.8 to 10 paid Rs.50,000/- in installments and totally paid an amount of

Rs.90,000/- and a receipt was also executed by Cheemala Narsimha, defendants No.1 and 2.

8. Plaintiffs also disputed the thumb impressions which are reflecting in the said Agreement of Sale. The said Agreement of Sale was impounded on 23.04.2019 before the District Registrar, Medchal Malkajgiri District. The defendants No.8 to 10 in collusion with the revenue authorities got mutated their names and obtained E-passbook from Tahsildar, Ghatkesar Mandal vide proceedings No.B/1600/2019 dated 13.06.2019. They also contended that the Tahsildar mutated their names without calling for objections. The revenue authorities shall issue mutation proceedings basing on the registered documents. The application for mutation was submitted on 03.06.2019 and mutation proceedings were issued within 10 days i.e., 13.06.2019, and as per the ROR act the orders shall be passed after 30 days from the date of submitting the application.

9. Plaintiffs further stated that defendants No.8 to 10 along with anti-social elements tried to occupy the suit schedule property forcibly on 14.08.2020 and 17.08.2020. Plaintiffs approached the Tahsildar, Ghatkesar Mandal and obtained encumbrance certificate on 27.08.2020 as the suit schedule

property was mortgaged to defendant No.13 under registered document No.3623 of 2020 dated 16.07.2020 and registered gift deed No.3622 of 2020 executed by defendant No.12 in favour of defendant No.14 and registered Development Agreement cum GPA executed by defendants No.8 to 10 in favour of defendants No.11 and 12. They disputed all the documents as null and void and further stated that if defendants succeeded to get the final approved layout from Hyderabad Urban Development Authority, they may alienate the suit schedule property to third parties by way of plots, as such plaintiffs filed suit for partition.

10. In the Written Statement filed by the respondents No.8 to 10, they denied all the allegations and further stated that the suit schedule property is in their possession since 1980 itself as agreement holders for valid consideration, and it was also acknowledged in the subsequent Agreement of Sale dated 21.03.1992. The suit was filed on 14.08.2020, but the suit itself is not maintainable and it is barred by limitation. As the plaintiffs denied the Agreement of Sale dated 21.03.1992, the possession of the defendants and their father does not remain permissive. They stated that Cheemala Chinna Mallaiah was the pattedar and possessor of the suit schedule property and his name was reflected in the Pahanies.

11. They further stated that Syed Jamaluddin Sarwar passed away on 21.01.2016 and they filed original Death Certificate. They denied the allegation that Syed Jamaluddin Sarwar created the Agreement of Sale dated 21.03.1992 and they are not the legal heirs of Syed Jamaluddin Sarwar. They filed certain documents to prove that they are the sons of Syed Jamaluddin Sarwar. They further stated that Syed Jamaluddin Sarwar was dealing in the business of Mines and Minerals under the name and style of "Minerals Link" and held valid mining license in his name. In fact, he held a valid mining license in respect of suit schedule property for excavation of 'amethyst' stone and they filed concerned G.O's. The said Cheemala Narasimha and Cheemala Srisailam executed another Agreement of Sale dated 18.06.1989 and acknowledged the receipt of sale consideration and execution of agreement dated 08.12.1980.

12. They also stated that as per the Stamps and Registration Act prevailing then, there is no legal requirement to register the document, as such the said documents are even otherwise admissible in evidence. Though the registered Power of Attorney was executed in favour of Syed Jamaluddin Sarwar vide document No. 121/93, one of the executants in document

No.121/93 passed away in the year 1994, hence the General Power of Attorney could not be acted upon. It was stated that Syed Jamaluddin Sarwar continued to carry on mining operations over the years by renewing the license for every five years. The original receipts executed by the plaintiffs and defendants No.1 to 7 and their parents on 08.12.1980, 29.11.1987, 30.06.1981 and 03.12.1987 were also filed. In the year 1993, M/s.Pride Homes Private Limited and one Narendranath Reddy tried to interfere with the possession of Syed Jamaluddin Sarwar in respect of the land in Sy.No.77 and also the land in Sy.No.66/part of Aushapur village, Ghatkesar Mandal, R.R.District. The defendant No.8 filed O.S.No.533 of 1993 for permanent injunction, but after due contest, a compromise decree was passed in the said suit. The said Pride Homes Private Limited again interfered with the possession of the Syed Jamaluddin Sarwar, as such he filed O.S.No.323 of 1996 and obtained injunction Orders against it. The defendants further stated that if at all they dispossessed plaintiffs on 14.08.2020, they should have given a complaint by taking diligent steps, but they failed to do so. They also stated that the rights if any vested with the original pattedars and their legal heirs including plaintiffs and defendants No.1 to 7 stood extinguished long ago by 1992 itself or in any case within 12

years from 1992. The plaintiffs instead of seeking substantial relief of declaration of title along with recovery of possession, filed suit for partition and they also gave the details of factual matrix which are as follows:

- a) Late Syed Jamaluddin Sarwar, originally obtained lease in respect of the suit schedule property in Sy.No.77 for extracting minerals from the pattedars i.e., predecessors in-title of the plaintiffs.
- b) Late Syed Jamaluddin Sarwar entered into an agreement with the original owners/pattedars to purchase the suit schedule property i.e., the entire extent of Sy.No.77 admeasuring Acs.13 - 32 gts on 08.12.1980 for valuable consideration.
- c) The owners acknowledged the existence of the agreement dated 08.12.1980 by entering into another agreement on 18.06.1989.
- d) Last agreement was executed between the owners i.e., the pattedars and the defendants No.8 to 10 herein at the instance of Syed Jamaluddin Sarwar while referring to the original agreement April 1980 on 21.03.1992. The receipt of entire sale consideration was duly acknowledged including the fact that the property has always been in possession of Syed Jamaluddin Sarwar since 1980 itself as an agreement holder.
- e) Registered Power of Attorney was executed by the owners in favour of Syed Jamaluddin Sarwar under document No.121/93.
- f) The revenue records and pahanies continuously mentions the name of Syed Jamaluddin Sarwar as possessor from 1995 onwards to the knowledge of the Plaintiffs and their predecessors in-title.
- g) Way back in the year 1993 and 1996, when third parties tried to interfere in respect of the suit schedule property and adjacent land, Syed Jamaluddin Sarwar and the Defendant 8 herein took diligent steps for filing

O.S.No.533/93 and in O.S.No.323/1996 before the concerned court and protected the property diligently.

h) Over the years, Syed Jamaluddin Sarwar and the defendants 8 to 10 continued in open, uninterrupted, continuous and adverse occupation and enjoyment of the suit schedule property to the knowledge of one and all including the Plaintiffs herein.

While continuing mining operations by obtaining renewal of license from the Government from time to time and thereafter, cultivating the land as well as raising temporary structures thereon.

i) The defendants 8 to 10 had obtained permission/sanction for construction of a house and the same has been assessed to Property Tax and authorities have assigned H.No. 4-57 and the said property is having electricity connections over the house and land vide Service Connection Nos. 110400961 & 110400997 from the concerned authorities evidencing continuous enjoyment by payment of electricity bills over the years.

j) The Plaintiffs or their predecessors-in-title never claimed any right in respect of the suit schedule property all these years but for filing of the present suit on 10.09.2020.

k) For the first time, the Plaintiffs denied the existence of the agreement dated 21.03.1992 and receipt of consideration by claiming that the agreement is created, concocted and forged document while filing the present suit on 10.09.2020."

13. They further stated that agreement between the parties was denied by the plaintiffs for the first time on 10.09.2020 and defendants received notice on 26.09.2020 through Court and defendants stated that they have every right to protect their possession. They also stated that as plaintiffs denied the

Agreement of Sale, they have right to seek Specific Performance of Agreement dated 21.03.1992 and requested the Court to dismiss the suit.

14. During the pendency of the Suit, I.A.No.330 of 2020 was filed and the contents of the plaint are reiterated. In the Counter filed the respondent No.8 and also in the amended counter affidavit, the contents of the Written Statement were reiterated at length. In the counter affidavit filed by defendants No.11 & 12, the Managing Partner stated that plaintiffs in collusion with respondents No.1 to 7 filed the false suit only to harass them under the threat of litigation. They also stated that respondent No.11 engaged in the business of construction and real estate field to develop the land into residential layout and construction of apartments. The respondents No.8, 9 and 10 have approached them to develop the suit schedule property and adjoining land admeasuring Ac.0 - 16 gts in Sy.No.66 of Aushapur village by obtaining necessary sanctions and approvals and Development Agreement was also entered for Rs.1,50,00,000/- as refundable advance to respondents No.8 to 10. They paid all requisite fees for conversion of land into non-agricultural land vide proceedings No.B2/1837/2019 dated 06.09.2019 issued by Revenue Divisional Officer, Keesara

Division and also entered into registered Development Agreement cum General Power of Attorney vide document No.7306 of 2019 dated 20.07.2019 in the office of the Sub-Registrar, Ghatkesar. The respondent Nos.8 to 10 before entering into Development Agreement produced all the documents with regard to title and possession i.e., Pattadari Passbook and also digital passbook. They also stated that they are not aware whether Cheemala Chinna Mallaiah, Veeraiah and Narsimha were the owners and pattedars of the suit schedule property or not. They mainly contended that petitioners/plaintiffs have no locus-standi to file the suit and to claim share in the suit schedule property.

15. The trial Court considering the arguments of both sides, dismissed the application. Aggrieved by the said Order, the present Civil Miscellaneous Appeal is preferred. The Petitioners/plaintiffs stated that their grand-father Cheemala Chinna Mallaiah was the pattedar and possessor of the suit schedule property and his name was reflected in the pahanics for the years 1970-71, 1974-75. After his death his sons Cheemala Vecraiah and Cheemala Narsimha were in possession of the property, but they leased out the land to Syed Jamaluddin Sarwar in the year 1981 only for five years i.e., till

1986, but the name of Syed Jamaluddin Sarwar was reflected as possessor even afterwards. Admittedly, Syed Jamaluddin Sarwar was a tenant who took lease of the property from the plaintiff, but he created unregistered Agreement of Sale and jointly alienated the suit schedule property and delivered the possession to respondents No.8 to 10 and the Agreement of Sale was also impounded and validated on 23.04.2019. Accordingly, their names were mutated in the revenue records and E - Pattadar Passbook was also got issued. The trial Court also discussed regarding the filing of the suit in O.S.No.533 of 1993 wherein compromise decree was recorded in it and the filing of O.S.No.244 of 1981 and O.S.No.158 of 1981. The copy of the Judgments were also filed under Ex.R40. The mining permit was filed under Ex.R36 which was issued in favour of Syed Jamaluddin Sarwar for excavating amethyst stone. The respondents created Agreement of Sale dated 21.03.1992 and impounded the same and got mutated their names in the revenue records. The respondents No.1 to 7 executed the Agreement of Sale on 08.12.1980 and further executed another Agreement of Sale on 18.06.1989 and 21.03.1992 in favour of respondents No.8 to 10 and respondents No.8 to 10 were in continuous possession by virtue of the said Agreement of Sale. As per Exs.R1 to R41, respondents No.8 to 10 are in continuous

possession for more than 40 years over the suit schedule property. *Whether the possession of respondents No.8 to 10 is lawful or not and whether Cheemala Narasimha along with respondents No.1 and 2 and others have sold the petition schedule property in favour of Syed Jamaluddin Sarwar in 1980 itself and his possession was in pursuance of the said Agreement of Sale dated 08.12.1980 are the questions to be decided after full trial.* The trial Court relied upon the documents filed by the respondents and observed that balance of convenience is in their favour, if interim injunction is granted in favour of petitioners, respondents will suffer irreparable loss and accordingly dismissed the application.

16. The rights of the parties are relied upon basing on the Agreement of Sale entered between the parties way back in the year 1980 and again in the year 1992. Though the entire sale consideration was received, registered sale deed was not executed, but basing on the said documents the Development Agreement was entered. The authenticity of the said documents is to be decided in the main suit. The trial Court observed that respondents No.8 to 10 are in continuous possession for more than 40 years and the petitioners failed to rebut the said version. The other questions regarding the authenticity of the

documents are to be decided only after full-fledged trial, therefore dismissed the application, as the application was filed to restrain the respondents not to alienate the suit schedule property during the pendency of the suit.

17. The learned Counsel for the respondents No.8 to 10 relied upon the decision of the Hon'ble Supreme Court in the case of **Mandali Ranganna and others Vs. T.Ramachandra and others**¹ dated **30.04.2008**, in which the Hon'ble Supreme Court in Para No.25 relied upon its decision in the case of **Seema Arshad Zaheer Vs. Municipal Corporation of Greater Mumbai**, in which it was held as follows:

"30. The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the Court with clean hands."

¹ (2008) 11 SCC 1

18. Admittedly, grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is very valuable one. Grant or refusal of the injunction has serious consequence depending upon the nature of the case. The Courts dealing with such matters should protect the interest of the parties. Though plaintiffs filed suit for partition and also for cancellation of all the documents filed by the defendants in the suit, it is for the plaintiffs to stand on their own legs to ascertain their rights. In this case, they relied upon the Agreement of Sale which was executed way back in the year 1980, they stated that lease deed was entered with Syed Jamaluddin Sarwar in the year 1981 only for five years and from 1986 onwards they are in possession of the property and cultivating the same, but the lease was given for mining purpose, then how can the land be cultivable after five years was not explained and thus the trial Court rightly relied upon the documents filed by the respondents and held that balance of convenience is in their favour and rightly dismissed the injunction application and it needs no interference.

19. In the result, the Civil Miscellaneous Appeal is dismissed confirming the Order of the trial Court dated 06.09.2021 in I.A.Nos.330 of 2020 in O.S.No.215 of 2020. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The VIII Additional District Judge, Ranga Reddy District, L.B. Nagar.
2. One CC to Sri M Vijaya Kumar Goud, Advocate [OPUC]
3. One CC to Sri Sunil B Ganu, Advocate [OPUC]
4. One CC to Sri Chandraseh Law Offices, Advocate [OPUC]
5. Two CD Copies

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HIGH COURT

DATED:31/07/2024

JUDGMENT

CMA.No.528 of 2021



DISMISSING THE CMA

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