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Court : Andhra Pradesh

Decided On : Dec-12-2002

Reported in : 2003(2)ALD208; 2003(1)ALT730

Judge : D.S.R. Varma, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 and 115(1) - Order 39, Rules 1 and 2; Code of Civil Procedure (CPC) (Amendment) Act, 1999

Appeal No. : CRP Nos. 5654 of 5655 of 2002

Appellant : N. Laxman Dev

Respondent : Nagarjuna Constructions Engineer and Builders and ors.

Advocate for Def. : Vilas Afzalpurkar and N. Ranga Rao for Respondent No. 1

Advocate for Pet/Ap. : Vijay B. Paropakari, Adv.

Judgement :

ORDER

D.S.R. Varma, J.

1. Both the revisions are filed challenging the common order and decree dated 25.09.2002 passed by the Court of Principal District Judge, Ranga Reddy District in C.M.A. Nos. 95 and 96 of 2002. By the impugned order, the lower appellate

Court confirmed the common order and decree dated 1.7.2002 passed by the Court of Principal Junior Civil Judge, Hyderabad East and North in I.A.No. 437/2002 in O.S. No. 159/2002 and in I.A.No. 438/2002 in O.S. No. 160/2002 in rejecting to grant the temporary injunction in favour of the plaintiffs, and thereby dismissed the appeals. Aggrieved by the concurrent orders of dismissal passed by the Courts below in the interlocutory applications, the plaintiffs in the suit filed these revision petitions.

2. Since the issue involved in both the revision petitions is similar and the respondents are common and also since the suit schedule property involved in both the revisions is situated in the same survey number, and also as the Court below passed common order, I am disposing of both the revisions by this common order.

3. The brief facts are that the plaintiffs filed the suits in O.S.Nos. 159 and 160 of 2002 for permanent injunctions. Along with the suits, they filed I.A.Nos. 437 and 438 of 2002 in the respective suits for grant of temporary injunction. Initially, the trial Court granted ex parte status quo on 14.2.2002 and the said order was vacated at the instance of the 1st defendant, who is the contesting defendant in both the suits. Challenging the same, the plaintiffs filed appeals before the lower appellate Court and the appeals were dismissed and hence the present revisions.

4. The learned Counsel for the plaintiffs - revision petitioners Sri Vijay B.Paropakari, contended that originally the plaintiffs filed O.S.No. 122/2001 against their vendors, (who are defendants 2 and 3 in the present suits), for the specific performance of the agreement of sale dated 7.1.1999 and the said suit was decreed and in pursuance of the same, a regular sale deed was executed in their favour on 9.1.2002. He further stated that the 1st defendant in the present suits, filed a suit in O.S. No. 107/ 2001 for specific performance of an agreement of sale dated 24.9.2002 and for possession against the present defendants 2 and 3, in respect of the very same suit schedule property and the said suit is pending. He further submitted that the plaintiffs having succeeded in their suits, have obtained a regular sale deed and they were in possession of the suit schedule property and since their vendors who are defendants 2 and 3 and the 1st

defendant who was also alleged to have entered into agreement of sale with their vendors, are interfering with their possession, they filed the present suits and since they are actually in possession, the plaintiffs are entitled to temporary injunction pending their suits. With these submissions, he sought for setting aside the impugned common order.

5. On the contrary, the learned Counsel appearing for the 1st defendant/1st respondent in both the revisions Sri Vilas Afzal Purkar raised two contentions. Firstly he contended that under proviso to Sub-section (1) of Section 115 of C.P.C., which is incorporated by way of Amendment Act 46 of 1999, unless the orders passed by the Court below is in the nature of disposing of the main suit itself, the High Court cannot interfere with the interlocutory orders passed by the Courts below under the revisional jurisdiction. In support of this contention, he relied on the judgment of a learned single Judge of this Court reported in D. Kyathappa v. K.L. Siddaramappa, : 2002(6)ALD834 . Secondly he contended that the Courts below have thoroughly considered the entire material on record and gave a categorical finding that the plaintiffs have approached the Court with unclean hands and that the decree obtained by them for specific performance in O.S.No. 122/2001 was collusive. With these submissions, he sought for dismissal of the revisions.

6. In order to appreciate the first contention raised by the Counsel for the 1st respondent that, in view of the amendment, High Court cannot interfere with the interlocutory orders in the revisional jurisdiction, it is necessary to look into Section 115 of C.P.C. prior to and after amendment Act 46 of 1999.

7. Section 115 of C.P.C. Prior to amendment Act 46 of 1999 reads as under:-

(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears --

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where--

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings; or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made;

(2) The High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation :--In this section, the expression 'any case which has been decided' included any order made, or any order deciding an issue, in the course of a suit or other proceeding.

Section 115 of C.P.C. after amendment Act 46 of 1999 is extracted as under for ready reference:-

'115(1) The High Court may call for the record of any cause which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears:-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

8. The High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

2. The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

3. A revision shall not operate as stay of suit or other proceedings before the Court except where such suit or other proceedings is stayed by the High Court.

Explanation :--In this section, the expression 'any case which has been decided' includes any order made, or any order deciding an issue, in the course of a suit or other proceedings.

9. From a perusal of the Section 115 of CPC prior to amendment Act 46 of 1999 and after the amendment, the only difference appears to be that Clause (b) of proviso to Sub-section (1) of Section 115 alone has been deleted and Clause (a) of the proviso remained to be the same and adding Sub-section (3), is only by way of guideline to the subordinate Courts not to adjourn the cases on the ground that C.R.P, is pending without there being any interim orders. Hence, no much discernable and substantial alteration as regards the revisional jurisdiction of the High Court after the amendment Act 46 of 1999, is made. Therefore, the contention of the Counsel for the 1st respondent that in view of the amendment, the powers of the High Court are restricted or that no revision can be entertained against the interlocutory orders of the Courts below unless they are in the nature of disposing of the suit itself, cannot be sustained.

10. In my considered view the so called restricted power under the proviso to Sub--section (1) of Section 115 after the amendment Act 46 of 1999, has to be read and understood in different contexts and connotations depending upon the facts and circumstances of each case. In other words, the said restriction imposed under the proviso, shall not be understood as totally taking away or drastically slashing down the revisional jurisdiction of the High Court, which may render the

very Sub-section (1) of Section 115 as ineffective.

11. Further as per Clause (b) to proviso of Sub-section (1) of Section 115 prior to amendment, the High Court can interfere with the interlocutory orders passed by the Courts below, under revisional jurisdiction, if they are allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

12. In fact the specific contingencies where the High Court can exercise its revisional jurisdiction have been made clear under Clauses (a), (b) and (c) of Sub-section (1) of Section 115 of C.P.C. Hence in my view, Clause (b) of proviso to Sub-section (1) of Section 115 of unamended Code in fact is redundant so long as Clauses (a), (b) and (c) of Sub-section (1) of Section 115 are allowed to remain in the Code. Hence, I am also of the view that, in effect the revisional jurisdiction of the High Court under Section 115 did not undergo any perceptible material change by virtue of the Amendment Act 46 of 1999.

13. Coming to the decision of the learned single Judge, relied on by the Counsel for the 1st respondent in D.Kyathappa 's case (supra) is concerned, it is clear that the learned single Judge of this Court (Justice A. Gopal Reddy) primarily dealt with the question whether the amendment Act 46 of 1999 is prospective or retrospective, and after elaborately dealing with the subject, laid down the following guidelines at paragraph No. 23:-

(a) Section 115 as amended by Act 46/99 which had come into force with effect from 1.7.2002 is applicable to all revisions applications pending adjudication whether admitted or not and the same will have to be dealt with strictly in accordance with the proviso to Section 115 with effect from 1.7.2002.

(b) On coming into force of the amended Act, 46/1999 if the order complained is interlocutory in nature and that will not have/effect of disposal of the suit or other proceedings, the same cannot be varied or reversed in exercise of revisional jurisdiction under Section 115.

(c) In the absence of any saving clause under Section 32, pending revisions which were initiated prior to 1.7.2002 have to be dealt with in accordance with the provisions of Section 6 of the General Clauses Act, 1897.

14. The discussion of the learned single Judge and the above guidelines are unexceptionable. But as already pointed out, the effect of proviso to Sub-section (1) of Section 115 after the amendment, which was already there even prior to the amendment has to be applied depending upon facts and circumstances of each case and the proviso is always subject to the revisional jurisdiction under Clauses (a), (b) and (c) of Sub-section (1) of Section 115 of C.P.C., instead of, being the other way.

15. Coming to the merits of the case on hand, it has to be examined whether the impugned common order suffers from any illegality. For this purpose and in order to appreciate the second contention of the learned Counsel for the 1st defendant/respondent, it is necessary to look into the facts of the case.

16. It is on record that the 1st defendant filed suit in O.S. No. 107/2001 against defendants 2 and 3 for specific performance of the agreement of sale dated 29.4.2002 and for possession and the same is pending adjudication. This prayer manifests that the 1st defendant is not in possession of the suit schedule property in pursuance of the alleged agreement of sale. Had he been in possession, definitely he would not have sought for a decree for possession and he would have prayed only decree for specific performance. Therefore, unless the said suit is decreed and followed by execution of a regular safe deed, the 1st defendant will not be entitled for possession.

17. Whereas, the plaintiffs have admittedly obtained a decree for specific performance and also got a regular sale deed executed by the same vendors in their favour in respect of the suit schedule property. Hence, the contention of the learned Counsel for the 1st respondent relying on the observations and findings of the Court below with regard to conduct of the plaintiffs cannot be appreciated while dealing with the applications under Order 39, Rules 1 and 2 of C.P.C. and the same is liable to be rejected.

18. Further a perusal of the impugned order would disclose that the Courts below have gone into the merits of the case in depth and made some observations and also gave an adverse finding with regard to the transaction between the plaintiffs and their vendors, with regard to obtaining of the sale deed dated 9.1.2002, pursuant to the decree in O.S.No. 122/2001, stating that the same is collusive and further held that the plaintiffs approached the Court with unclean hands. In coming to the above conclusion, the Courts below have relied on some dates relating to the transactions and the filing of the earlier suit by the plaintiffs for specific performance. In my considered view these findings at the initial stage of the suit while deciding interlocutory applications for temporary injunctions, are unwarranted. In other words, such findings could and should be given only after the full trial of the suit, basing on the evidence available on record, both oral and documentary.

19. It is to be further seen that there is a regular sale deed in favour of the plaintiffs and so long as the same is valid or that the decree obtained by them for specific performance and consequent sale deed are set aside, I do not find any justifiable reason for the Courts below to give a findings with regard to validity or otherwise of the sale deed. Further in my considered view finding with regard to the collusiveness or otherwise, at the threshold, would amount deciding the suit itself even before the completion of the trial and the same is not permissible.

20. My above is fortified by a decision of the Supreme Court in Hindustan Petroleum Corporation Ltd. v. Sriman Narayan, : AIR 2002 SC2598 , wherein Their Lordships held at paragraph Nos. 7 and 8 as under:-

7. It is elementary that grant of an interlocutory injunction during the pendency of the legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court normally applies the following tests:

(i) whether the plaintiff has a prima facie case;

(ii) whether the balance of convenience is in favour of the plaintiff;

(iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

8. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighted against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine whether the 'balance of convenience' lies, (see Gujarat Bottling Co. Ltd. v. Coca Cola Co. : AIR 1995 SC2372 .

In view of the above judgment of the Apex Court, in my considered view what all has to be looked into while granting temporary injunction is prima facie case, balance of convenience etc. But these aspects have not been adverted to and also they were given little significance by the Courts below and they were carried away by other disputed facts. As already pointed, these findings would definitely have a bearing on the final decision of the suit and would tantamounts to would put the plaintiffs out of race, even before its commencement.

21. Another important factor to be noted is that when the 1st defendant came to know about the alleged collusiveness of the plaintiffs and his vendors, who are defendants 2 and 3 and with regard to decreeing of the earlier suit in O.S.No. 122/2001 and the subsequent obtaining of the regular sale deed, he did not actually take any steps, but only stated that steps are being taken to get cancelled the decree in O.S.No. 122/2001. Of course it is on record that the suit in O.S.No. 107/2001 filed by the 1st defendant for specific performance and possession is

earlier to the present suits for injunction, and that he also filed petitions for impleading the present plaintiffs recently which are yet to be ordered. But that is not sufficient, as stated above, as and when the 1st defendant came to know about the present suits or with regard to the present sale deed, he could have filed the suit with due promptitude, for declaring the sale deed as null and void or at least he could have sought for amendment of the prayer in his suit. This he did not do. However, the learned Counsel for the petitioner submitted that the plaintiffs have no objection for being impleaded in the suit in O.S.No. 107/2001.

22. Another significant factor that could be noticed from the impugned order is that the finding with regard to collusion is mainly attributed to defendants 2 and 3 who are the vendors. But of course these findings against these defendants are as goods as against the plaintiffs, in view of the fact that the plaintiffs entered into agreement of sale with their vendors. In view of these factors, the claim of the petitioners basing on the registered sale deeds, cannot be so easily brushed aside.

23. Further there are so many questions of fact which have to be established by both the parties by adducing evidence both oral and documentary and basing on the material made available on record, the suits have to be decided either way.

24. Even before the above procedure is completed, since the Courts below had given findings which may adversely affect the final decision of the suits, I am of the view that they are in the nature of deciding the suit itself and therefore, the impugned order falls within the scope of Clause (c) of Sub-section (1) of Section 115 of CPC, and as such the same warrants interference.

25. Further the learned Counsel for the plaintiffs- revision petitioners submits the suit land is a vacant land and till the disposal of the suit, the plaintiffs will not undertake any construction activity and they will not change the nature of the land and they will not also alienate the land.

26. For the foregoing reasons and also in the interest of both the parties, I pass the order as under:

27. The impugned common order is set aside and absolute status quo obtaining as on today with regard to possession shall be maintained till the disposal of the suit. Further the plaintiffs shall not undertake any construction activity or change the nature of the land and that shall not alienate the same. Revision petitions are allowed accordingly.

28. In view of the magnitude and complexity involved in the suit, the trial Court shall dispose of the suits as expeditiously as possible, if need be, on priority basis. The parties also shall take appropriate steps for clubbing their respective suits, so as to enable the Court to decide the issue once for all comprehensively. No Costs.

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