HIGH COURT OF ANDHRA PRADESH

THURSDAY ,THE SIXTH DAY OF JANUARY

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL MISCELLANEOUS APPEAL NO: 67 OF 2020

Between:

1. BHIMAVARAPU NAGESWARAMMA W/o. late Lakshma Reddy, aged about 6Byears, Hindu, household, resident of Dr.No.3-65, Kaza village and Panchayath, Mangalagiri Mandal, Mangalagiri
2. Bhimavarapu Venkata Siva Reddy S/o. late Lakshma Reddy, aged about 48years, Hindu, cultivation, resident of Dr.No.3-65, Kaza village and Panchayath, Mangalagiri Mandal, Mangalagiri J.C.J.C.
3. Bhimavarapu Srinivasa Reddy, S/o. late Lakshma Reddy, aged about 48years, Hindu,
cultivation, resident of Dr.No.3-65, Kaza village and Panchayath, Mangalagiri Mandal, Mangalagiri J.C.J.C

...PETITIONER(S)

AND:

1. BOMMU SIVAREDDY S/o late Panakalareddy, aged about 54 years, Hindu, cultivation, r/o. Kaza Village, Mangalagiri Mandal, Mangalagiri J.C.J.C.
4. Bommu Sankara Reddy, S/o Siva Reddy, aged about 33 years, Hindu, cultivation, r/o. Kaza Village, Mangalagiri Mandal, Mangalagiri J.C.J.C.
5. Eeda Prabhakar Reddy S/o Sambireddy, aged about 55 years, r/o Flat No.FF 6, Mallika Enclave, Bypass Road,
Tadepalli village, Guntur District, Mangalagiri J.C.J.0

...RESPONDENTS

Counsel for the Petitioner(s): K H V SIVA KUMAR

Counsel for the Respondents: RAJA REDDY KONETI

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
&
THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL MISCELLANEOUS APPEAL No.67 of 2020

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri K.H.V.Siva Kumar, learned counsel for the appellants, Sri Raja Reddy Koneti, learned counsel for the 3rd respondent and perused the material on record.

2. This Civil Miscellaneous Appeal under Section 104 r/w. Order 43 (1)(r) of Code of Civil Procedure (for short "CPC") has been filed by the appellants/plaintiffs challenging the judgment and order, dated 27.12.2019, on the file of III Additional District Judge, Guntur in I.A.No.752 of 2016 in O.S.No.281 of 2016, by which their application for grant of temporary injunction under Order 39 Rules 1 and 2 CPC was rejected.

3. The appellants herein filed O.S.No.281 of 2016 (*Bhimavarapu Nageswaramma & 2 ors. vs. Bommu Sivareddy & 2 ors.*) for partition of A-schedule items of immovable properties and for *mesne* profits and for declaration of title over B-schedule immovable property and for consequential permanent injunction. The suit was instituted on 27.07.2016. Along with the suit, I.A.No.752 of 2016 for grant of temporary injunction was also filed with respect to B-schedule property.

4. The undisputed part of the case is that plaint B-schedule property originally belonged to Mr.Bommu Panakala Reddy. Mr.Panakala Reddy firstly married Venkata Subbamma and to them the 1st appellant-B.Nageswaramma was born. On the death of Venkata Subbamma, the first wife, Mr.Panakala Reddy married Venkayamma and out of that wedlock, the 1st respondent-B.Sivareddy was born. The further case of

the appellants herein is that marriage of the 1st appellant-B.Nageswaramma was solemnized by her father Mr.Panakala Reddy in the year 1966 and at that time, towards pasupukumkuma, he had given B-schedule property to her. The 1st appellant thereafter executed registered gift deed, Ex.P2, dated 08.06.2007, in favour of her children, i.e., 2nd and 3rd appellants herein. Since 1966 the 1st appellant was in possession of B-schedule property and under the gift deed, Ex.P2, appellants Nos.2 & 3 have been in possession of B-schedule property. The appellants, in order to show the line of possession from B.Nageswaramma and thereafter to B.Venkata Siva Reddy and B.Srinivasa Reddy, filed Ex.P12-adangal pahani dated 30.04.2016, Ex.P13-1B namuna ROR dated 30.04.2016 in favour 2nd appellant, Ex.P14-1B namuna ROR dated 30.04.2016 in favour of 3rd appellant, and in view of these documents, the appellants contended that they were in possession of plaint B-schedule property.

5. The appellants/plaintiffs/petitioners in I.A.No.752 of 2016 in O.S.No.281 of 2016 prayed for grant of temporary injunction restraining the respondents/defendants and their people from in any way interfering with their peaceful physical possession and enjoyment of the plaint B-schedule property pending disposal of the suit.

6. Plaint B-schedule property consists of the following property:

B-SCHEDULE FILED ON BEHALF OF THE PLAINTIFFS

Guntur District, Pedakakani Sub-District, Kaza village and Gram Panchayath, an extent of Ac.0.39 cents, D.No.491/2 and an extent of Ac.0.30 cents in D.No.491/4 making a total of Ac.0.69 cents of dry land bounded by:-

East : Land of Konanki Sambasiva Rao

South : Land of Bommu Rathamma

West : Circar Donka; and

North : Land of Jolla Subbareddy

7. The present respondent No.3-Eeda Prabhakara Reddy, defendant No.3 before the court below, filed written statement and denied the allegations made by the appellants and contended that the defendants/respondents Nos.1 & 2 B.Sivareddy and B.Sankarareddy respectively, along with Smt.B.Venkayamma, mother of B.Sivareddy, made him to believe that they succeeded the plaint B-schedule property on intestate death of B.Panakala Reddy on 26.11.1970 and since then they have been enjoying the property as absolute owners and at the family oral partition, B-schedule property fell to the share of B.Venkayamma and she got mutated her name in the revenue records. The defendants/respondents Nos.1 & 2 along with said B.Venkayamma executed an agreement of sale in favour of respondent No.3 for sale of Ac.0.69 cents of B-schedule property for Rs.2,00,000/-, out of which Rs.50,000/- was given as advance money. The said property was also alleged to be under mortgage towards bank loan and they agreed to discharge the mortgage loan. The further case of the 3rd respondent is that thereafter on 03.08.2007 Smt.Venkayamma died intestate and defendants/respondents Nos.1 & 2 became liable to perform the liabilities and obligations under the agreement. On 20.01.2009 both of them received an amount of Rs.75,000/- from the 3rd respondent and made an endorsement on the reverse of the 1st page of the agreement for sale that they would discharge the liabilities and obligations to sale. However, as in spite of defendants/respondents Nos.1 & 2 having received some more amounts on different dates under the same agreement, but having avoided to execute the sale deed, the 3rd respondent filed O.S.No.232 of 2014 on the file of the Senior Civil Judge, Mangalagiri for a decree for

specific performance, which suit was decreed on 22.12.2014. In execution of that decree, E.P.No.13 of 2015 was filed in which sale deed was executed and registered and the possession of the property was also delivered to respondent No.3 through process of law. The 3rd respondent, thus, claimed that he was in possession of plaint B-schedule property even prior to the institution of O.S.No.281 of 2016.

8. Initially *ex parte ad interim* temporary injunction was granted. The 3rd respondent filed I.A.No.2373 of 2017 to vacate the *ex parte ad interim* temporary injunction.

9. The III Additional District Judge, Guntur, by means of the order under challenge, dated 27.12.2019, rejected the application/petition I.A.No.752 of 2016 and the *ad interim* temporary injunction granted earlier was vacated.

10. The learned III Additional District Judge, Guntur while vacating the *ad interim* temporary injunction considered that respondent No.3 filed O.S.No.232 of 2014 for specific performance against the present respondents Nos.1 and 2, which was decreed on 22.12.2014 under Ex.P6 and in execution of the said decree in EP.No.13 of 2015 the court got executed a registered sale deed in favour of respondent No.3, Ex.P11, which is the extract of the sale deed, dated 22.02.2016. During execution proceedings, in pursuance of the delivery warrant Ex.P9, the B-schedule property was delivered to respondent No.3, of which delivery receipt is Ex.P10. In view of these documents, the learned court below held that the disputed property i.e., B-schedule property was delivered to the possession of respondent No.3 by the court officers on 10.03.2016 and on 04.04.2016 delivery was recorded by the executing court as per Ex.P7, and thus, according to the learned court below respondent No.3 appeared

to be in possession of the disputed plaint B-schedule property, meaning thereby that on the date of filling of the suit O.S.No.281 of 2016 on 27.07.2016 the 3rd respondent, *prima facie,* held in possession.

11. Sri K.H.V.Siva Kumar, learned counsel for the appellants submits that the finding recorded by the learned court below on the point of possession for purposes of I.A.No.752 of 2016 is vitiated by error of law, as the documents Ex.P12-adangal pahani, Ex.P13-1B namuna ROR in favour of the 2nd appellant and Ex.P14-1B namuna ROR in favour of the 3rd appellant of dated 30.04.2016 have not been considered at all, whereas the entries in Exs.P12, P13 and P14, all dated 30.04.2016, clearly demonstrated the actual possession of the appellants over B-schedule property. While considering the question of possession even for grant of temporary injunction, those documents could not be brushed aside by the court below.

12. Sri K.H.V.Siva Kumar further submits that the order of the court below is based on Ex.P10 alleged copy of delivery receipt of immovable property in pursuance of Ex.P9 copy of delivery warrant in EP.No.13 of 2015 in O.S.No.232 of 2014, but in the said suit or in execution proceedings the appellants herein were not party and therefore the decree passed in O.S.No.232 of 2014 or any subsequent proceedings pursuant to the decree are not binding on the appellants. He has placed reliance on the judgment in the case of ***Payappar Sree Dharmasastha Temple A.Com. v. A.K.Josseph & Ors.***[1] of the Hon'ble Apex Court in support of his contention that a decree would be binding on the parties to the suit and not on third party. For the same proposition reliance has also been placed on the judgment of this court in ***Atluri Kuchela Rao vs.***

[1] 2009 (14) SCC 628

The District Collector and Another[2]. He has further placed reliance on the judgment of the High Court of Punjab & Haryana in the case of ***Mehar Singh son of Soran Singh v. Ram Diya Verma***[3] to contend that the injunction will be issued on the basis of materials brought at the time when the suit was instituted and not when the evidence was collected during the course of trial.

13. On the other side, Sri Raja Reddy Koneti, learned counsel for the 3rd respondent, submits that the 3rd respondent is in possession of plaint B-schedule property in pursuance of the decree for specific performance passed in O.S.No.232 of 2014 in execution of which the 3rd respondent was delivered possession by court. He submits that the delivery warrant Ex.P9 and Ex.P10 the immovable property delivery receipt, on record, clearly show that the immovable property was delivered after removing the physical possession of the judgment debtors in O.S.No.232 of 2014 without any obstruction from anybody in the presence of the mediators. He submits that the finding recorded by the court below that on the date of institution of O.S.No.281 of 2016 the 3rd respondent was in possession and not the appellants/plaintiffs, is a finding of fact and being based on the documents above mentioned does not call for any interference and consequently, the order rejecting the I.A.No.752 of 2016 also does not suffer from any error of law or jurisdiction.

14. We have considered the submissions advanced by the learned counsels for the parties and perused the material available on record.

15. The point that arises for determination is as follows:

"*Whether the rejection of the I.A.No.752 of 2016 by the court below is justified?*"

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[2] 2012 (3) ALD 83
[3] 2013 (0) Supreme (P&H) 966

16. From perusal of the record it is undisputed that the appellants/plaintiffs prayed for grant of temporary injunction with respect to plaint B-schedule property. The said application has been rejected only on the ground that *prima facie* the appellants/plaintiffs are not in possession, but it is the 3rd respondent who is in possession over the B-schedule property. This has been so recorded considering Ex.P9, which is the warrant for possession and Ex.P10 the delivery receipt in E.P. No.13 of 2015 for execution of decree passed in O.S.No.232 of 2014. It is undisputed that the appellants/plaintiffs were not party in O.S.No.232 of 2014 or in E.P.No.13 of 2015. Ex.P10 mentions the removal of physical possession of the judgment debtors. The appellants/plaintiffs not being party in O.S.No.232 of 2014 cannot be the judgment debtor.s. While considering Ex.P10 the court below did not consider it in correct perspective.

17. The appellants herein claim to be in possession of plaint B-schedule property and in support of their claim, they filed documentary evidence Ex.P12-adangal pahani, Ex.P13-1B namuna ROR and Ex.P14-1B namuna ROR, all dated 30.04.2016, i.e, of a date after the date of Ex.P10, which is dated 10.03.2016. Ex.P12 records the name of Bhimavarapu Srinivasa Reddy, 3rd appellant, in the columns of 'name of pattadar' and 'name of enjoyer' with respect to Sy.No.491-2, Ac.0.39 cents in Fasali No.1425. Ex.P13, which is Land Records Pattadar's 1-B Namuna (ROR), shows the name of the 2nd appellant-Bhimavarapu Venkata Siva Reddy in the column of 'name of pattadar' with respect to Sy.No.491-2 and Ex.P14, the Land Records Pattadar's 1-B Namuna (ROR) also shows the name of the 3rd appellant-Bhimavarapu Srinivasa Reddy in the column of 'name of pattadar' with respect to Sy.No.491-2, Ac.0.450 cents.

18. From perusal of the judgment under challenge, it is evident that Exs.P12, P13 and P14 were filed before the court below, but these documents do not find consideration by the court below. Once there was an entry of the name of the appellants in the revenue records, mentioned above, in the column of 'name of enjoyer' also those documents could not be ignored and the finding on possession could not be rested solely on Exs.P9 and P10. This is not to say that the appellants are in possession and not the 3rd respondent, but to say that these documents Exs.P12, P13 and P14 which have bearing on the point of possession on the date of institution of the suit, for considering the application for temporary injunction, were required to be considered along with the other documents/material on record, and on such consideration a finding on the point of possession ought to have been recorded. Non-consideration of the material documents on record on the point in issue, vitiates the finding recorded by the court below.

19. In ***Dalpat Kumar v. Prahlad Singh***[4] the Hon'ble Supreme Court has held that grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. It has further held that there should be *prima facie* case in favour of the

[4] (1992) 1 SCC 719

applicants which needs adjudication at the trial. The court has to satisfy that non-interference by the court would result in irreparable injury to the party seeking relief and that there is no other remedy available, and thirdly that balance of convenience must be in favour of the applicant granting injunction. It is relevant to re-produce paragraphs Nos.4 and 5 as under:

> "**4.** Order 39 Rule 1(*c*) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing … or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission clause (*c*) was brought on statute by Section 86(*i*)(*b*) of the Amending Act 104 of 1976 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151 CPC to grant ad interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled 721law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

20. In ***Wander Ltd. v. Antox India P.Ltd.***[5] the Hon'ble Supreme Court has held that usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration

[5] 1990 (Supp) SCC 727

of this form of interlocutory remedy which is both temporary and discretionary. It was further held that the interlocutory remedy is intended to preserve in *status quo,* the rights of parties which may appear on a *prima facie* case.

21. In ***Shiv Kumar Chadha v. Municipal Corpn. of Delhi***[6] it has been held by the Hon'ble Supreme Court that the grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the *status quo*. The court grants such relief according to the legal principles – *ex debito justitiae*. Before any such order is passed the court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. Paragraph No.30, in which the Hon'ble Supreme Court has held as under, is being reproduced:-

> **"30.** It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the court. In such a suit the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles — ex debito

[6] (1993) 3 SCC 161

justitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him."

22. From the order passed by the court below it is not possible to come to the conclusion that on an appropriate advertence from the relevant materials, *prima facie* finding has been rendered by the court below on the aspect of possession. Further, it is evident that with respect to *prima facie* case, balance of convenience and irreparable loss or injury there is no consideration at all nor any finding has been recorded on these aspects. It is well settled that for considering the temporary injunction matter, the court has to record specific findings on all the above three considerations.

23. With respect to the exercise of appellate powers in relation to the exercise of discretion by the trial court in deciding an application for temporary injunction, the Hon'ble Supreme Court in ***Wander Ltd. v. Antox India P.Ltd.*** (5 supra) held that in such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not re-assess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion

under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

24. In ***Esha Ekta Appartments Chs Ltd. v. Municipal Corpn.of Mumbai***[7] the Hon'ble Supreme Court again considered the scope of appellate court power to interfere in an interim order passed by the court at the first instance and held in paragraphs Nos.19, 20 and 21, which are re-produced, as under:

> **"19.** We have considered the respective submissions and carefully scrutinised the record. The scope of the appellate court's power to interfere with an interim order passed by the court of first instance has been considered by this Court in several cases. In *Wander Ltd.* v. *Antox India (P) Ltd.*1, the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent's 698prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations: (SCC p. 733, para 14)
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> "*14*. … In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion

[7] (2012) 4 SCC 689

under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

20. In *Skyline Education Institute (India) (P) Ltd.* v. *S.L. Vaswani*[2], the three-Judge Bench considered a somewhat similar question in the context of the refusal of the trial court and the High Court to pass an order of temporary injunction, referred to the judgments in *Wander Ltd.* v. *Antox India (P) Ltd.*[1], *N.R. Dongre* v. *Whirlpool Corpn.*[3] and observed: (*S.L. Vaswani case*[2], SCC p. 153, para 22)

"*22*. The ratio of the abovenoted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."

21. In these cases, the trial court and the High Court have, after threadbare analysis of the pleadings of the parties and the documents filed by them concurrently held that the buildings in question were constructed in violation of the sanctioned plans and that the flat buyers do not have the locus to complain against the action taken by the Corporation under Section 351 of the 1888 Act. Both the trial court and the High Court have assigned detailed reasons for declining the petitioners' prayer for temporary injunction and we do not find any valid ground or justification to take a different view in the matter."

25. In ***Anand Prasad Agarwalla v. Tarkeshwar Prasad***[8] the Hon'ble Supreme Court has held that when the contesting respondents were in possession as evidenced by the record of rights, it cannot be said that such possession was by a trespasser. In the present case in the

[8] (2001) 5 SCC 568

record of rights the appellants are recorded with respect to the plaint B-schedule property, and in view of such documentary evidence, it cannot be said that those documents were of no relevance. The same could not be ignored. Though there is mention of these documents filed by the appellants/plaintiffs, but there is absolutely no discussion by the trial court and it has not adverted to those documents nor the entries made therein.

26. In the matter of granting temporary injunction, it is the duty of the court to take into consideration the affidavit and the relevant documents before it records a finding. Taking into consideration the documents does not mean merely referring the same in the judgment but there must be some discussion about them before any conclusion arrived at. Unfortunately, the court below has not adverted to the documents filed by the appellants/plaintiffs at least *prima facie*. The interim injunction is no doubt a discretionary relief, but it has to be granted only after applying judicial mind and on a proper discussion of the evidence on record. Mere reference to the documents filed and the affidavits placed before the court does not satisfy the requirement of exercise of discretionary power in a judicial manner.

27. So far as the judgments in the cases of ***Payappar Sree Dharmasastha Temple A.Com. vs. A.K.Josseph & Ors.*** (1 supra) and ***Atluri Kuchela Rao vs. The District Collector and Another*** (2 supra) upon which reliance has been placed by the learned counsel for the appellants are concerned, there is no dispute on the proposition of law that a decree would be binding on the parties to the suit and not on third party, but the question as to whether on the date of institution of O.S.No.281 of 2016 the appellants were in possession or not, is to be considered and a finding to be recorded on the basis of the material

available before the court. The decree may not be binding on a person unless he was party to the suit or stood in the shoes of the party to the suit, but if in execution of the decree, the actual position of possession is changed, then a non-party to the suit cannot say that actual position of possession be ignored for grant of temporary injunction only because such person was not party in the suit and the decree passed therein was not binding on such non-party.

28. Since we are of the view that the matter deserves to be remanded for fresh consideration of I.A.No.752 of 2016 in O.S.No.281 of 2016, we refrain ourselves from making any observation with respect to the proposition as laid down in ***Mehar Singh son of Soran Singh v. Ram Diya Verma*** (3 supra), keeping it open to the parties to raise such point before the court below.

29. For all the aforesaid reasons, We set aside the order, dated 27.12.2019, passed by the III Additional District Judge, Guntur in I.A.No.752 of 2016 in O.S.No.281 of 2016 and remand the matter to the court below for consideration afresh of I.A.No.752 of 2016 in O.S.No.281 of 2016, in accordance with law, after affording opportunity of hearing to all the parties concerned.

30. As the suit pertains to the year 2016 and involves determination of rights of the parties to immovable property, we direct the court below to make earnest endeavour to expeditiously decide the suit, subject to cooperation of the parties.

31. In the suit there was *ex parte* temporary injunction. In the present appeal also there is order of *status quo* with regard to possession of the subject property. As such it is provided that till disposal of I.A.No.752 of 2016 or for a period of 6 months from today whichever is

earlier the *status quo* shall be maintained with regard to possession of the subject property.

32. We make it clear that any observations made herein shall not affect the disposal of I.A.No.752 of 2016 in O.S.No.281 of 2016 afresh on its' own merits.

33. The Appeal is accordingly allowed in part. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

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C.PRAVEEN KUMAR,J

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RAVI NATH TILHARI,J

Date: 06.01.2022
Dsr

Note:
LR copy to be marked
B/o
Dsr