



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE SIXTH DAY OF JANUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN
CIVIL MISCELLANEOUS APPEAL NO: 200 OF 2021

Between:

1. M R G REDDY S/o. N.SubbaReddy, aged 60 years, Occ Business, R/o. Villa No.88,
Aparna County Villa Community, Miyapur, Hyderabad

...PETITIONER(S)

AND:

1. N KESAVA REDDY S/o. GangiReddy, aged 52 years, Occ. Business, R/o. H.No. 20/726-D4-4B,Bommalasatram, Nandyal Town, Kurnool District.
2. Malikireddy Lalitha, W/o. Raja Gopal Reddy, aged 45 years, Occ. Housewife, R/o. H.No. 20/726-D4-4B,Bommalasatram, Nandyal Town, Kurnool District
3. Malikireddy Gouthami, D/o. Raja Gopal Reddy, aged 24 years, Occ. Business, R/o. H.No. 20/726-D4-4B,Bommalasatram, Nandyal ToAtn, Kurnool District
4. Malikireddy Ganga Charan Reddy, S/o. Late Srinivasa Reddy, aged 30 years, Occ. Business, R/o. H.No. 20/726-D4-4A,Bommalasatram, Nandyal Town, Kurnool District
5. Jupalle Sanjeeva Reddy, S/o. VenkataSubba Reddy, aged 50 years, Occ. Business, R/o. H.No.2/515-503, Balaji heights Balaji Complex, Nandyal Town, Kurnool District.
6. Kancherla Sujith Kumar Reddy, S/o. VeeraReddy, aged 42 years, Occ. Business, R/o. H.No.30/726, Bommalasatram, Nandyal Town, Kurnool District

...RESPONDENTS

Counsel for the Petitioner(s): N ASHWANI KUMAR

Counsel for the Respondents: P NAGENDRA REDDY

The Court made the following: ORDER



**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE B.KRISHNA MOHAN**

CIVIL MISCELLANEOUS APPEAL No.200 OF 2021

JUDGMENT : *(Per Hon'ble Sri Justice B. Krishna Mohan)*

This Civil Miscellaneous Appeal arises against the Order in I.A.No.435 of 2021 in O.S.No.9 of 2021 on the file of the III Additional District Judge, Nandyal dated 19.07.2021 dismissing the said interlocutory application with costs for grant of temporary injunction in favour of the petitioners/plaintiffs over the petition schedule properties pending disposal of the suit.

2. The appellants herein are the petitioners in the I.A., and the plaintiffs in the suit before the Court below. The respondents herein are the respondents in the I.A., and the defendants in the suit before the Court below.

3. Heard.

4. The appellants herein initiated an action in O.S.No.9 of 2021 on the file of the III Additional District Judge, Kurnool at Nandyal against the respondents herein seeking grant of permanent injunction and costs of the suit with respect to the plaint schedule properties consisting of item Nos.1 to 6. Pending the suit, the appellants filed an I.A.No.435 of 2021 in the above



said suit before the Court below for grant of temporary injunction against the respondents with respect to the petition schedule properties/plaint schedule properties contending that the wife of the 1st respondent purchased the petition schedule properties and constructed (G+3) floors building in Item Nos.1 to 3 and kept the other Item NOs.4 to 6 as vacant sites of the petition schedule properties, they have purchased the said petition schedule properties from her on 27.07.2015 under various registered sale deeds, she delivered the possession of the same to them and ever since they have been in possession and enjoyment of the said properties, the daughter of the 1st appellant by name Alekhya continued to run the existing school situated in petition schedule properties under the name and style of Keshava Reddy English Medium School, the appellants have been enjoying the said properties jointly and severally on mutation of the properties i.e., Item Nos.1 to 3 in the municipal records in the name of the 1st appellant, while so, the respondents tried to trespass into the petition schedule properties and as such they filed the above said I.A., for temporary injunction.

5. Per contra, the respondents filed counter in the above said I.A., opposing the above said averments and pleaded that the 1st respondent is the founder and the 2nd respondent is the



Secretary-cum-Correspondent of Kesava Reddy Educational Society and the suit is bad for mis-joinder of parties and they have been running the school in the name and style of Kesava Reddy English Medium School since the year 2003 and their society was recognized by the Government of Andhra Pradesh vide RC No.7911/B10/2014 for a period of ten years from the academic years 2014-2015 to 2023-2024, the 1st respondent is out of his residence to deal with certain criminal cases filed against him, taking advantage of his absence the 1st appellant fraudulently mislead the wife of the 1st respondent and got executed six sale deeds on 27.07.2015 with respect to the petition schedule properties assuring that they would be re-conveyed after settlement of all the disputes without paying any consideration for the said conveyances and even after the said conveyances dated 27.07.2015 the respondents have been running the school till date without there being any interruption for possession of the same, the said petition schedule properties were mortgaged by way of collateral security upon borrowing a sum of Rs.23.20 crores from the State Bank of India, Kurnool Branch, whereas the sale consideration was mentioned in the above said conveyances dated 27.07.2015 at Rs.3.71 crores only much less than the amount borrowed from the bank by the appellants, no explanation was offered for not delivering the original title deeds of petition schedule properties, the entire



staff of the school including teaching and non-teaching staff are working under the above said society of the respondents and there are about 1300 students studying in the above said school under the management and control of the respondents herein, even after the year 2015 the wife of the 1st respondent is in physical possession of the petition schedule properties by paying property taxes and electricity charges etc., the appellants have also suppressed the fact that the Government of Andhra Pradesh had issued G.o.Ms.No.13 Hone (General) Department, dated 17.02.2016 attaching the said properties under Section 3 of the A.P. Protection of Depositors of Financial Establishments Act, 1999 and the said interim attachment was made absolute by the Principal District and Sessions Court, Kurnool in Criminal M.P.No.665 of 2018 in Crime No.113 of 2015 dated 31.10.2018, suppressing the above said facts the appellants obtained an *ex parte* interim injunction order against the respondents in the above said I.A., in the above said suit, and tried to take forcible possession of the petition schedule property by substantially damaging the school building, furniture, benches, doors and windows and threatened the staff of the 1st respondent school with dire consequences and the respondents herein with the support of the neighbours and the CID Police of the State resisted the appellants and protected their possession by lodging the written complaint with the



support of the Police, Kurnool. It is further averred that the daughter of the 1st appellant had never run the above said school and the property tax receipt dated 29.04.2021 was paid for the period from 01.04.2021 and Mee Seva copy of the Name Change Certificate issued by the Electricity Department dated 27.04.2021 was relied upon by the appellants by obtaining the same just two days prior to the institution of the above said suit. Taking advantage of the *ex parte* interim injunction order passed in the above said I.A. dated 30.04.2021 the appellants have unauthorizedly and illegally demolished a part of the school building on 08/09.05.2021 by abusing the process of law and as such the respondents sought for dismissal of the above said I.A.

The appellants in reply stated that they have interest over the petition schedule properties and as such for avoiding the multiplicity of proceedings they have instituted the above said suit commonly by joining together and as such it is maintainable and the certificate issued by the State Government with regard to the recognition of the said school does not confer any title and possession for the respondents over the above said properties and I.P.No.104 of 2015 on the file of II Additional Senior Civil Judge's Court, Nandyal is pending against the wife of the 1st respondent in which she stated that the above said properties are her self acquired properties and she made the



above said constructions over the said land and the above said conveyances have been made in favour of the appellants with an intention not to defraud the creditors and they are not aware in this case about the amounts borrowed by the respondents from the State Bank of India on creation of mortgage by way of deposit of title deeds of the above said properties. Hence, sought for grant of temporary injunction before the Court below.

6. Exs.A1 to A18 were marked for the petitioners and Exs.B1 to B8 were marked for the respondents before the Court below in the above said I.A.

7. On consideration of the matter basing upon the above said documents marked and hearing of the parties the Court below came to a conclusion that the appellants are not in possession of the petition schedule properties as on the date of institution of the suit and they have not established the *prima facie* case, balance of convenience and an irreparable loss in the event of non granting of temporary injunction. Hence dismissed the above said I.A. vacating the *ex parte ad-interim* injunction orders vide its order dated 19.07.2021. Against which, the present Civil Miscellaneous Appeal arises.



8. The learned Senior Counsel for the appellants submits that the Court below ought to have relied upon the sale deeds executed in favour of the appellants dated 27.07.2015 and opined that the title follows the possession of the petition schedule properties. He further states that the Court below ought to have relied upon the property tax receipt dated 29.04.2021 and Mee Seva copy of name Change Certificate issued by the Electricity Department dated 27.04.2021 for the purpose of possession of the appellants prior to the institution of the suit.

9. On the other hand the learned Senior Counsel for the respondents submits that the Court below rightly discussed and gave a reasoned order in the above said I.A., while dismissing the said I.A., by its order dated 19.07.2021 and as such it does not require any interference by this Hon'ble Court. The above said conveyances dated 27.07.2015 relied upon by the appellants are only sham and nominal transactions without any intention to act upon the same and the wife of the 1st respondent is taking necessary steps for invalidation of the above said sale deed dated 27.07.2015 on the ground of fraud and undue influence, the appellants could not establish any possession over the petition schedule properties even after 27.07.2015 till the date of institution of this suit. The Court



below rightly found that the respondents have been in possession and enjoyment of the petition schedule properties right from the year 2015 till date in view of the contra evidence produced by the respondents dispelling the submissions and contentions of the appellants. Hence, sought for dismissal of the Civil Miscellaneous Appeal.

10. Then the learned Senior Counsel for the appellants referred to the order passed by the learned Single Judge of this Court in Criminal Appeal No.243 of 2021 dated 09.08.2021 wherein the appellants herein questioned the order of the Sessions Court in Crl.M.P.No.665 of 2016 dated 31.10.2018 in including the subject matter of this appeal at Serial Nos.18 to 20 in Annexure-I of G.O.Ms.No.13, Home (General) Department dated 17.02.2016 and contended that the said criminal appeal was allowed on the ground of non issuance of notice to the parties concerned/the appellants herein before attaching the subject properties.

11. On the other hand, the learned Senior Counsel appearing for the respondents relied upon the following decisions of the Hon'ble Supreme Court of India reported in (1) "***Gujarat Bottling Company Limited and Others - Appellants v. Coca***



Cola Company Limited and others - Respondents”¹ wherein it was held at para 43 and para 47 that:

43. “The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court 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; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before 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 weighed against the corresponding need of the defendant to be protected against injury resulting from his having

¹(1995) 5 Supreme Court Cases 545



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 where the 'balance of convenience' lies. [see: Wander Ltd. v,. Antox India (P) Ltd., (SCC at pp.731-32.]. In order to protect the defendant while granting an interlocutory injunction in his favour the Court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.”

47. “In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct



should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings.”

(2) *“Wander Ltd. And another - appellants v. Antox India P. Ltd.² wherein it was held at para 14 and para 20 that:*

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. 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 under

² 1990 (Supp) Supreme Court Cases 727



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. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. V. Pothan Joseph¹: (SCR 721)

20. We, accordingly, allow these appeals; set aside order dated January 19, 1990 of the Division Bench insofar as it pertains to Civil Suit of 1220 of 1988 and restore the order dated March 2, 1989 made by the learned Single Judge on Applications Nos. 4941 and 4942 of 1988. Since we are examining the matter at an interlocutory stage, none of the observations contained in this order shall affect the final decision of the suit on the merits after evidence.

(3) “Mohd. Mehtab Khan and others - appellants v. Khushnuma Ibrahim Khan and others - respondents”³ wherein it was held at para 21 and para 22 that:

21. Para 14 of the aforesaid judgment which is extracted below would amply sum up the situation: (Wander Ltd. case⁵, SCC p.533)

³ (2013) 9 Supreme Court Cases 221



“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. 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 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. After referring to these principles Gajendragadkar, J. in [Printers \(Mysore\) Private Ltd. v. Pothan Joseph](#)⁶: (AIR p. 1159, para 9)



‘9. ... These principles are well established: but, as has been observed by Viscount Simon in Osenton (Charles) & Co. v. Johnston⁷: (AC p.138)

“...The law as to the reversal by a Court of Appeal of an order made by [a] Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case’.”

The appellate judgment does not seem to defer to this principle.”

22. Though the above discussions would lead us to the conclusion that the learned Appellate Bench of the High Court was not correct in interfering with the order passed by the learned trial Judge we wish to make it clear that our aforesaid conclusion is not an expression of our opinion on the merits of the controversy between the parties. Our disagreement with the view of the Division Bench is purely on the ground that the manner of exercise of the appellate power is not consistent with the law laid down by this Court in Wander Ltd.⁵ Accordingly, we set aside the order dated 09.10.2012¹ passed by the Appellate Bench of the Bombay High Court and while restoring the order dated 13.04.2012 of the learned trial Judge we request the learned trial Judge, or such other court to which the case may, in the mean time, have been transferred to dispose of the main suit as expeditiously as its calendar would permit with



the expectation that the same will be possible within a period of six months from the date of receipt of this order. The appeal shall stand disposed of in terms of the above.

12. In the light of the above said decisions, basing upon the rival contentions, the order under appeal and the material available on record, it is clear that except the conveyance deeds in favour of the appellants dated 27.07.2015 with reference to petition schedule properties, the said property tax receipt dated 29.04.2021 and Mee Seva Copy of Name Change Certificate issued by the Electricity Department dated 27.04.2021 just prior to the institution of the suit, there is no other material for the appellants to establish the possession over the petition schedule properties as on the date of institution of the suit whereas the respondents established prima facie running of school from the year 2003 onwards showing possession over the said properties even after the year 2015 by paying continuously the property tax and electricity charges etc and the recognition of the school in the said premises issued by the Government of Andhra Pradesh from the Academic years 2014-2015 to 2023-2024 establishing their possession over the said properties. Whereas the order of this Court in Criminal Appeal No.243 of 2021 dated 09.08.2021 discloses only the claim of the appellants for non-issuance of the



notice under A.P. Protection of Depositors of Financial Establishment Act, 1999, but not for establishing possession over the petition schedule properties as on the date of institution of the suit. There is no prima facie case, balance of convenience in favour of the appellants and in the event of non granting of temporary injunction in their favour, the appellants would not suffer any irreparable loss pending the suit. This Court finds that the discretion exercised by the Court below in passing the order under challenge is neither arbitrary, capricious nor perverse and it is adhering to the settled principles of law regulating grant of refusal of interlocutory injunctions. Hence, there is no scope to interfere with the order of the Court below. However it is made clear that the court below shall dispose of the suit on its own merits as per law.

13. In the result, this Civil Miscellaneous Appeal is dismissed, no costs.

As a sequel, miscellaneous petitions, if any pending in this case, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE B. KRISHNA MOHAN

6th January, 2022

Note: L.R. Copy to be marked.

B/o.

Yvk.