

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.8447-8449 OF 2019
(Arising out of SLP(C)Nos.25368-25370/2019)

DR. SYED AFZAL (DEAD) THROUGH LRS & ORS.

... APPELLANTS

Versus

RUBINA SYED FAIZUDDIN & ORS.

... RESPONDENTS

O R D E R

Leave granted.

Aggrieved by an interim order passed in three interlocutory applications, pending a Regular Appeal arising out of a preliminary decree for partition, the legal representatives of one of the plaintiffs in the suit have come up with the present appeals.

We have heard Mr.Kapil Sibal, learned senior counsel appearing on behalf of the appellants and Mr.Ranjit Kumar, learned senior counsel appearing on behalf of respondent Nos. 1 to 5. Service of notice on the other respondents is not necessary as these appeals arise out of an order passed in the interlocutory applications filed before the High Court by respondent Nos.1 to 5 alone.

The appellants herein are the legal representatives of one Dr.Syed Afzal, who along with his brother Syed Hamza, filed a suit - O.S.No.123 of 1997 in the Court of the IX Additional Chief Judge, City Civil Court, Hyderabad for partition and separate possession of

their lawful shares in the suit schedule properties. By a judgment dated 24.09.2012, the trial court granted a preliminary decree for partition.

Aggrieved by the preliminary decree for partition, defendant Nos. 26 to 30 (respondent Nos.1 to 5 herein) filed a Regular Appeal in CCCA No.18 of 2013 on the file of the High Court of Judicature at Hyderabad. Initially, the High Court granted an interim stay of all further proceedings pursuant to the preliminary decree, but the same was later modified confining the stay only to the passing of final decree. The appeal is still pending and the interim order staying the passing of final decree is in force.

During the pendency of the appeal, respondent Nos.1 to 5 herein moved three interlocutory applications - I.A.Nos.3, 4 and 5 of 2019 praying *inter alia* for (i) an interim mandatory injunction directing respondent Nos.27, 35, 37 and 38 in the appeal to remove their henchmen from Item Nos. 2 and 3 of the decree schedule properties (ii) an injunction restraining the respondents in the appeal from interfering with their alleged peaceful possession of Item Nos.1 to 7 of the decree schedule properties and (iii) a direction to grant police aid to them for removing the so-called henchmen of respondent Nos.27, 35, 37 and 38 from Item Nos.2 and 3 of the decree schedule properties.

It appears that all the three interlocutory applications were filed on 14.10.2019 and the same were listed for hearing on 16.10.2019. According to the appellants herein, they sought time to file counter affidavits in all the three interlocutory applications. However, the High Court passed an order on 16.10.2019 granting an

interim mandatory injunction as well as police aid. Therefore, contending that without granting an opportunity of hearing, an interim mandatory injunction and police aid have been granted, the appellants have approached this Court with the instant appeals.

It is obvious from the impugned order that what was granted was only by way of interim measure and the interlocutory applications are not finally disposed of. We are informed that the interlocutory applications are likely to be listed before the High Court next week. Therefore, at this stage, we do not wish to enter into the merits of the dispute, as the same may prejudice either of the parties. Suffice it to say that the regular appeal pending before the High Court is of the year 2013 and the applications, out of which the present appeals arise, are of the year 2019. These applications are purportedly necessitated by the events that allegedly happened in the recent past. Therefore, this was not a case where an ad-interim mandatory injunction and police aid were required to be granted without affording an opportunity to the appellants herein to file a counter affidavit and to put forth their case. It is true that the Civil Court is not powerless to grant interim mandatory injunction, as such a power has been recognised by this Court in a long line of decisions, the important among them being Dorab Cowasji Warden vs. Coomi Sorab Warden & Ors, (1990) 2 SCC 117. But it does not mean that the same could be granted even without an opportunity to the other side, especially when the main appeal is pending for the past six years. By the impugned order, the High Court has not only granted an interim mandatory injunction, but also granted police aid, leaving all the interlocutory applications

lifeless, though the applications are technically pending.

Therefore, we are of the considered view that the impugned order is liable to be set aside and the High Court should be allowed to decide the interlocutory applications on merits after allowing the appellants herein to file a counter affidavit. Accordingly, the appeals are allowed and the impugned order is set aside. The High Court is requested to permit the appellants herein to file a counter affidavit in all the three interlocutory applications. The High Court is further requested to hear both sides and dispose of the applications in accordance with law, preferably within a period of four weeks.

In the meantime, both the parties shall maintain status quo, as it exists today, till the disposal of the interlocutory applications.

.....J.
(N.V.RAMANA)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
NOVEMBER 04, 2019.

ITEM NO.42

COURT NO.2

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).25368-25370/2019

(Arising out of impugned final judgment and order dated 16-10-2019 in IA No.3/2019, IA No.4/2019 and IA No.5/2019 passed by the High Court for the State of Telangana at Hyderabad)

DR. SYED AFZAL (DEAD) THROUGH LRS Petitioner(s)

VERSUS

RUBINA SYED FAIZUDDIN & ORS. Respondent(s)

(FOR ADMISSION and I.R.)

Date : 04-11-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. Kapil Sibal, Sr.Adv.
Mr. Mandeep Kalra, Adv.
Mr. Nishant Shankar, Adv.
Mr. Nitesh Shrivastava, Adv.
Ms. Isha Khurana, Adv.
Ms. Shefali Tripathi, Adv.
Mr. Shaurya Vardhan, Adv.
Ms. Jasmine Damkewala, AOR

For Respondent(s) Mr. Ranjit Kumar, Sr.Adv.
Mr. C.U.Singh, Sr.Adv.
Mr. Sunil Ganu, Adv.
Mr. D. Abhinav Rao, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

In the meantime, both the parties shall maintain status quo, as it exists today, till the disposal of the interlocutory applications.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

