THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.244 of 2015

JUDGMENT:

The unsuccessful defendants/respondents had filed this appeal under Order XLIII Rule 1 of the Code of Civil Procedure assailing the order dated 25.08.2014 of the learned IV Senior Civil Judge, City Civil Court of Hyderabad passed in I.A.No.162 of 2014 in O.S.No.238 of 2014 filed by the petitioner/plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code requesting to grant temporary injunction restraining the respondents/ defendants from demolishing the structures in the schedule property or dealing with the same in any manner pending final disposal of the suit.

2. I have heard the submissions of the learned counsel for both the sides. I have perused the material record. The parties shall herein after be referred to as 'the plaintiff' and 'the defendants' for convenience and clarity.

3. The basic facts that lead to the filing of this appeal by the defendants, in brief, are as follows: 'The sole plaintiff had sought a temporary injunction as stated above against the defendants in respect of a building bearing Dr.No.8-2-293/82/A/253 admeasuring 1190 square yards comprising of ground and first floors constructed on plot No.253 situated at Jubilee Hills of Hyderabad, more fully described in the schedule annexed to the petition. At the time of hearing of the application before the trial Court, exhibits P1 to P14 were marked. Exhibit P1 is the unregistered development agreement dated 23.07.2007 between the 1st defendant and the plaintiff, exhibit P2 is the registered development agreement-cum-General Power of Attorney dated 12-02-2009 between the 1st defendant and the 2nd & 3rd defendants, exhibit P3 is the Memorandum of Understanding dated 04.05.2010 between the 1st defendant and the plaintiff, exhibit P4 is the petition filed under Section 9 of the Arbitration & Conciliation Act by the 1st defendant before the II Additional Chief Judge, City Civil Court of Hyderabad, exhibit P5 is the copy of the order dt.14.8.2012 passed by the learned II Additional Chief Judge, City Civil Court, Hyderabad, exhibit P6 is the decree in Arbitration O.P.No.1881 of 2010, exhibit P7 is the letter dated 18.12.2012 addressed by the 1st defendant to the Arbitrators and the 2nd defendant, exhibit P8 is the letter dated 24.12.2012 addressed by the defendant no.2 to the defendant no.1, exhibit P9 is the legal notice dated 23.01.2014 addressed by the counsel for the plaintiff to the defendant no.1 to 3, exhibit P10 is the reply notice dated 28.01.2014 got issued by the defendant no.1 to the plaintiff, exhibits P11 to P13 are the postal acknowledgments and exhibit P14 is a pair of photographs with CD. No documents are marked on the side of the defendants. On merits, the trial Court directed the defendants to maintain *status quo* in respect of the position that was obtaining in respect of the subject matter of the suit pending disposal of the suit and further directed the parties to expedite trial of the main suit having regard to the circumstances of the case. Aggrieved of the said orders, the defendants had preferred this appeal.

4. Before proceeding further, it is necessary to refer to the cases pleaded by both the parties.

5. The case of the plaintiff, in brief, is this: 'The 1st defendant is the owner of the schedule property. He had offered to give the property for development for its effective utilization and the plaintiff had agreed to develop the property. The plaintiff and the 1st defendant had entered into a development agreement dated 23.07.2007 under exhibit P1. The plaintiff had paid Rs.10,00,000/- to the 1st defendant as a non-refundable amount towards good will having agreed to construct a residential complex on the schedule property within (24) months from the date of the delivery of possession of the said property by the 1st defendant to the plaintiff and on obtaining permission from the Greater Hyderabad Municipal Corporation (GHMC, for short). The 1st defendant had agreed to handover possession within three months after clearing the dues and hand loans. Subsequently, some disputes and misunderstandings had arisen between the plaintiff and the 1st defendant, in view of the breach by the 1st defendant of the terms of the exhibit P1-development agreement. The 1st defendant had clandestinely entered into exhibit P2-registered development agreement-cum-General Power of Attorney dated 12.02.2009 with defendants 2 and 3 vide document no.415/2009 in respect of the schedule property and the 1st defendant had received certain amount from them as hand loan to clear the existing debts. The plaintiff had made efforts through some common friends and well-wishers and on fructification of the said efforts, the 1st defendant had renewed the exhibit P1-development agreement and had accordingly, a Memorandum of Understanding (MOU) dated 04.05.2010 was executed between the plaintiff and the 1st defendant. In the said MOU, the 1st defendant had admitted that the exhibit P1-development agreement is still a valid and enforceable document. Having understood the nature of disputes *inter se* amongst the defendants 1 to 3, the plaintiff had come forward, negotiated and settled the disputes amongst them and undertook to pay the amounts payable by the 1st defendant to the defendants 2 and 3 and it was agreed that such amount paid by the 1st defendant to the said defendants shall be treated as refundable advance deposit towards the development of the property. It was also further agreed that the 1st defendant shall refund all the amounts payable to the defendants 2 and 3 after completing the construction of the proposed residential complex and delivery of his share of 50% of constructed area and that in case the 1st defendant is not in a position to refund the said amount, the same shall be adjusted in the constructed area that would fall to his share. Even after the MOU under exhibit P3, the disputes between the 1st defendant on one hand and the defendants 2 and 3 on the other were not settled and ultimately, two arbitrators by names Venkateswara Rao and T.Ravi Krishna were appointed to settle the disputes between them. Before the Arbitrator, defendants 2 and 3 had filed a claim petition for enforcement of the exhibit P2-registered development agreement-cum-GPA dated 12.02.2009 and had also claimed a huge amount as damages. The 1st defendant had filed a defence statement contending that the said registered document was executed only as a security and that the said document was never intended to be a development agreement and that the said document does not bind him in any manner. The 1st defendant had also filed an arbitration application in A.A.No.44 of 2011 before this court for appointment of a presiding Arbitrator. In the said application also, the 1st defendant had reiterated his stand that the registered development agreement-cum-G.P.A under exhibit P2 was executed only as a security measure, but not for the development of the property. The said application was dismissed on 19.07.2011 holding that the Presiding Arbitrator shall be appointed by the two arbitrators already appointed, if there is any difference of opinion between them. The 1st defendant had filed O.P.No.1881 of 2010 before the Court of the learned II Additional Chief Judge, Hyderabad under Section 9 of the Arbitration & Conciliation Act ('the Act', for brevity) against the defendants 2 and 3 seeking an interim injunction not to dispossess him from the said property or not to alienate the same to third parties. The said petition was allowed and an injunction was granted in favour of the 1st defendant. The plaintiff had pursued the litigation on behalf of the 1st defendant and had incurred necessary expenditure in that regard. The 1st defendant had given a notice dated 18.12.2012 to the arbitrators calling upon them to desist from illegal and immoral activities of threatening him and the plaintiff, terming him as a close associate of the 1st defendant. In that notice, the 1st defendant had categorically stated that the plaintiff has been helping and assisting the 1st defendant in pursuing the arbitration proceedings and also protecting the property and that by force, he was whisked away on 16.12.2012 at the behest of the 2nd defendant and that he was produced before one C.M.Ramesh, who is said to be a powerful political leader belonging to Telugu Desam Party. It was also stated in the said notice that the plaintiff was forced and coerced by the said Ramesh and his followers and an attempt was made to prevail upon the plaintiff to hand over the said property for development to the 2nd defendant and that when the plaintiff did not yield to such pressures, the said Ramesh and his followers tried to assault him. The 2nd defendant gave a reply dated 24.12.2012 admitting that he had negotiated for settlement between the 1st defendant on one hand and the defendants 2 and 3 on the other to release the property from the litigation and that the matter was settled for Rs.56 lakhs payable to the respondents 2 and 3. The plaintiff had obtained a banker's cheque dated 22.02.2013 drawn on Bank of Baroda, Hyderabad for Rs.56 lakhs, by arranging funds. However, the settlement did not take place. As such, he had cancelled the said banker's cheque after two months. The plaintiff had received a caveat petition lodged by the 1st defendant in the Court of the learned Chief Judge, City Civil Court. In that caveat petition, it was stated that the 1st defendant had entered into a registered development agreement-cum-GPA dated 12.02.2009 with the defendants 2 and 3 for development of the property and the said development agreement is still in force. In the said caveat petition, it was falsely alleged that the plaintiff had fabricated the exhibit P1-development agreement dated 23.07.2007 and also the exhibit P3-MOU dated 04.05.2010 to harass the 1st defendant and to make a wrongful gain and that the acts of the 1st defendant clearly attract the ingredients of the offences of perjury, cheating and criminal breach of trust punishable under the provisions of the Indian Penal Code. The plaintiff had spent Rs.20 lakhs in protecting the property and towards the litigation charges besides the sum of Rs.10 lakhs, which was paid as good will to the 1st defendant at the time of execution of the exhibit P1-development agreement. The plaintiff came to know through the Arbitrator-K.Venkateshwar Rao that the said Arbitrator received a letter from defendants 1 to 3 that the matter has been compromised between them and that the arbitration proceedings should be dropped. The exhibit P2-registered development agreement-cum-GPA dated 12.02.2009 executed by 1st defendant in favour of the defendants 2 and 3 in respect of the schedule property is not binding in any manner on the plaintiff as a valid and enforceable development agreement dated 23.07.2007 under exhibit P1 that was already executed is in subsistence and as the 1st defendant had already received Rs.10 lakhs towards one time good will under the said exhibit P1-unregistered development agreement. The exhibit P2-registered development agreement dated 12.02.2009 is still in force is quite contrary to the pleadings and sworn statement made by the 1st defendant in the above said proceedings before the Arbitrator and the High Court. In the circumstances, the plaintiff got issued a notice dated 23.01.2014 calling upon the defendants to deliver the property to him for development in terms of the exhibit P1-development agreement dated 23.07.2007 and exhibit P3-MOU dated 04.05.2010. The 1st defendant had issued a litigious reply. Hence, the plaintiff is constrained to file the suit for specific performance of the exhibit P1-development agreement dated 23.07.2007 and the exhibit P3-MOU dated 04.05.2010 and also the present application for temporary injunction to restrain the defendants from demolishing the structures in the petition schedule property and dealing with the property in any manner, in the interests of justice.'

6. The case of the 1st defendant is this: 'The averments that he had executed any unregistered development agreement dated 23.07.2007 and MOU dated 04.05.2010 are false. The said documents are fabricated. The alleged development agreement is an unregistered document and will not affect his rights in immovable property comprised therein. It cannot be received in evidence. This defendant had executed in favour of defendants 2 and 3, a registered development agreement-cum-GPA dated 12.02.2009. The same is a superior document. There are differences between the 1st defendant on one hand and the defendants 2 and 3 on the other. The said dispute was referred to arbitrators by names, A.Venkateshwar Rao and T.Ravi Krishna is true. It is agreed to resolve the dispute between them and hence, the arbitration proceedings were withdrawn. The arbitration proceedings have nothing to do with the plaintiff and are not relevant for the purpose of the present suit. The disputes *inter se* between the 1st defendant on one hand and the defendants 2 and 3 on the other have nothing to do with the plaintiff. The suit is filed with an ulterior motive. In view of the settlement between the 1st defendant on one hand and the defendants 2 and 3 on the other, the 1st defendant is entitled to withdraw the earlier litigation. The plaintiff had paid Rs.10 lakhs as advance is denied. He had had spent Rs.20 lakhs to protect the property is also false.'

7. The case of the defendants 2 and 3 is as follows: 'The suit is filed by the plaintiff on fabricated and unregistered documents, which are unenforceable in law. The development agreement dated 23.07.2007 which is unregistered cannot be relied upon to claim any relief. The registered development agreement-cum-GPA dated 12.02.2009 in favour of these defendants is a superior document and under law, it has a precedence over the unregistered development agreement being relied upon by the plaintiff. The differences between the 1st defendant on one hand and the defendants 2 and 3 on the other were referred to arbitration and later, the disputes were resolved amicably without taking recourse to arbitration and as such, the arbitration proceedings were withdrawn. The plaintiff has nothing to do with the disputes in that regard. The plaintiff had paid Rs.10 lakhs as advance and had spent Rs.20 lakhs in protecting the property are all false. The registered development agreement-cum-GPA executed by the 1st defendant in favour of defendants 2 and 3 is valid and subsisting.'

8. Now the point for consideration is – "whether the orders of *status quo* granted by the trial Court while allowing the petition of the plaintiff in part are unsustainable and are liable to be set aside in the facts and circumstances stated by the appellants/defendants?"

9. Both the learned counsel had advanced arguments in line with the respective cases of the parties, which are extracted supra. The details of the documents exhibited on the side of the plaintiff are already stated supra. No documents are marked on the side of the defendants.

10. The 1st defendant is the owner of the schedule property. According to the plaintiff, the 1st defendant had executed the exhibit P1, the unregistered development agreement dated 23.07.2007 in favour of the plaintiff in respect of the plaint schedule property to enable the plaintiff to develop the property and that the plaintiff had paid Rs.10 lakhs to the 1st defendant towards non-refundable good will amount and that as per the terms of the exhibit P1, the plaintiff has to construct a residential complex on the subject property within twenty four months from the date of delivery of possession of the property to him by the 1st defendant and also after obtaining necessary permissions from the GHMC and that the 1st defendant had agreed to deliver possession of the property within three months after clearing dues and hand-loans. Nonetheless, the 1st defendant had also executed exhibit P2-registered development agreement-cum-GPA dated 12.02.2009 in favour of defendants 2 and 3 in respect of the very same property. The defendants 1 to 3 had *inter alia* contended that it is a true, valid and superior document and that the unregistered development agreement under exhibit P1 is fabricated and unenforceable. But, according to the plaintiff, the exhibit P2, the registered development agreement dated 12.02.2009 executed by the 1st defendant clandestinely in favour of defendants 2 and 3 is never intended to be a development agreement and that it is a collateral security document for certain amount received by the 1st defendant from the defendants 2 and 3 as hand loan to clear the existing debts and that at the intervention of the friends and well wishers, the 1st defendant had executed MOU under exhibit P3 on 04.05.2010 affirming exhibit P1 and stating that it is a valid and enforceable and that the 1st defendant himself had admitted that in the arbitration proceedings before the Arbitrators and in the connected proceedings before the High Court that the exhibit P2, the registered development agreement-cum-GPA is a mere security document and that the same does not bind him in any manner and that therefore, exhibit P2 being a document not intended in reality to be a development agreement is not a superior document and that he had tried to resolve the disputes between the 1st defendant on one hand and the defendants 2 and 3 on the other and that he had not only paid Rs.10 lakhs but also had spent Rs.20 lakhs in protecting the property when there was an intervention of a person said to be a powerful political leader belonging to TDP and that when the matter was settled, and Rs.56 lakhs was payable to defendants 2 and 3, he had obtained a banker's cheque dated 22.02.2013 for the said sum on Bank of Baroda, Hyderabad, but, later the said settlement did not fructify and as such, he had cancelled the banker's cheque and that thereafter, the 1st defendant had filed a caveat petition with false allegations and asserting that he had executed exhibit P2-registered development agreement-cum-GPA and that subsequently, from one of the arbitrators the plaintiff had also learnt that there was a compromise between the 1st defendant on one hand and defendants 2 and 3 and that despite a notice dated 23.01.2014 under the original of exhibit P9, there was no positive response and that therefore, he is constrained to seek specific performance by filing the suit.

11. In this background of pleadings and rival contentions, what is to be noted is that the plaintiff relies upon exhibits P1 and P3 and asserts that he is having a development agreement executed by the 1st defendant in his favour and that he is entitled to specific performance and the temporary injunction as prayed for. On the other hand, the defendants 2 and 3 place reliance upon exhibit P2, the registered development agreement-cum-GPA and claim that it is a superior document as exhibit P1 is an unregistered development agreement. Be that as it may, the 1st defendant supports the case of the defendants 2 and 3 though he was said to have stated in the earlier proceedings that exhibit P2, the registered development agreement-cum-GPA is not intended to be a development agreement and that it was executed as a collateral security for certain amounts received towards hand loan to clear his existing debts. At this interlocutory stage, there is no need to deeply examine the contentious issues and record any findings which will have a bearing on the merits of the issues involved in the suit. Moreover, any final finding can be reached only after full-fledged trial. The property is a valuable property with a building comprising of ground and first floors and is located in Jubilee Hills, which is a prime area in the twin cities. Until a decision is made on merits, it is just and fair to preserve the *status quo* as such a course sub-serves the ends of justice. Generally, an order of temporary injunction is granted not to alter the *status quo* and to preserve the *status quo.* If the property is preserved without any demolitions and alterations during the pendency of the suit, the same would inure to the benefit of the party, who may ultimately be successful in the suit. Having regard to the facts and circumstances, this court is of the well considered view that the order of *status quo* granted by the Court below does not call for any interference as the learned Senior Civil Judge having analyzed the pros and cons had held that it would be just and fair, in the facts and circumstances of the case, to order the parties to maintain *status quo*.

12. Viewed thus, this Court finds that the order impugned is sustainable both under facts and in law and does not brook interference.

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

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.SEETHARAMA MURTI, J

14th August 2015
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