

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

C.M.A.No.462 OF 2015

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JUDGMENT : (Per Hon'ble Justice R.Subhash Reddy)

This Civil Miscellaneous Appeal is filed by the appellant/plaintiff aggrieved by the order and decree dated 04.06.2015 in I.A.No.110 of 2013 in O.S.No.436 of 2013 passed by the XII Additional District Judge, Visakhapatnam, dismissing the application filed by the plaintiff under Order XXXIX Rules 1 and 2 of C.P.C., seeking ad-interim injunction restraining the respondent/defendants from interfering with the peaceful possession and enjoyment of the appellant over the petition schedule properties.

2. The appellant/plaintiff has filed suit in O.S.No.436 of 2013 for declaration that the sale deed registered as document No.1325 of 2010, dated 09.03.2010 relating to the suit schedule property as illegal, void and unenforceable and also for consequential relief of permanent injunction. In the aforesaid suit he filed I.A.No.110 of 2013 for grant of interim injunction restraining the respondent/defendants from interfering with his peaceful possession and enjoyment of the property. In the said I.A. no oral evidence was let in, but filed Exs.P.1 to P.5 on behalf of the plaintiff and no oral or

documentary evidence was filed on behalf of the respondents. After considering the evidence and the material available on record, the Court below has dismissed the said application through the impugned order dated 04.06.2015.

3. Having heard learned counsel appearing for the appellant, we have perused the impugned order and the material available on record.

4. Learned counsel for the appellant contended that inspite of the fact that the documentary evidence on record showing the possession of the appellant, the lower Court has refused to grant injunction as prayed for.

5. In this case, it is not in dispute that the suit schedule property in respect of which declaration is sought for, is already transferred in the name of the 1st respondent by way of registered sale deed. The 1st respondent in turn has created security interest in favour of the IDBI Bank and obtained loan. When the 1st respondent defaulted in paying the loan amount, the 2nd respondent already initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act') and after issuing demand notice under Section 132 of the said Act, further steps are taken by issuing notice under Section 134 of the Act. The appellant also questioned the said order before the Debts

Recovery Tribunal, Visakhapatnam. The 2nd respondent – bank also initiated steps for taking possession. It is stated that the petition filed by the 2nd respondent – bank under Section 14 of the Act is also pending.

6. The appellant claims that he was cheated by the 1st respondent and the document executed in favour of the 1st respondent was sham and nominal and possession of suit schedule property remains with him. It is submitted that by cheating the appellant, the 1st respondent obtained the document and created security interest in favour of the 2nd respondent – bank by mortgaging the said property for the loan amount.

7. It is to be noticed that the property is admittedly transferred in favour of the 1st respondent by registered sale deed and in turn the 1st respondent has created security interest with the 2nd respondent bank and obtained loan amount. Though the appellant pleads that the document obtained by the 1st respondent is sham and nominal, but unless there is a declaration to that effect by the Court below, he cannot plead that he is in continuous possession of the property and the property was already transferred by way of registered document in favour of the 1st respondent, the claim of the petitioner that he is in possession of the property, cannot be accepted. It is also to be noted that in view of the security interest created in

favour of the

2nd respondent, the 2nd respondent has already initiated recovery proceedings under the said Act, and hence, the appellant cannot question the same. In this connection, we deem it appropriate to refer to the provisions under Section 34 of the Act, which reads as under:

“No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 “

8. In view of the aforesaid provisions and in view of the reasons recorded above, the appeal is devoid of merit and the same is liable to be dismissed.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand closed. No order as to costs.

R. SUBHASH REDDY, J

A.SHANKAR NARAYANA, J

13.07.2015

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