

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No.667 of 2015

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JUDGMENT:

This appeal is filed aggrieved by the order dated 11.08.2015 passed in IA.No.374 of 2015 in OS.No.42 of 2015 by the Senior Civil Judge, Mahabubabad, Warangal District to the extent of directing the respondent/defendant No.1 who is the appellant herein to furnish unconditional undertaking affidavit to demolish all the structures with his own costs in the plaint 'B' schedule property, in case of the petitioner/plaintiff, who is the respondent No.1 herein, finally succeeding in OS.No.42 of 2015 by obtaining a decree for title and delivery of possession of the 'B' schedule property.

Learned counsel for the appellant submits that having found that the respondent No.1/plaintiff has not made out prima facie case, balance of convenience and irreparable loss and having found that the appellant herein is in possession of the schedule property, the Court below directed the appellant to give an unconditional undertaking, which is erroneous, illegal and not warranted. He also submits that by the time of filing the suit, the subject property is not open, structures made by the appellant, were existing and the same is evident from the photographs filed by the appellant. As such, giving undertaking does not arise.

On the other hand learned counsel for the 1st respondent/plaintiff submits that though the vendor of plaintiff and defendant No.1, is same, the purchase made by the appellant/defendant No.1 on 28.02.2014, is subsequent to the purchase made by the respondent No.1/plaintiff on 08.12.2010. He also submits that to safeguard the interests of both the parties the

Court below directed the appellant to give such undertaking.

The Court below after considering the facts and circumstances in the IA, refused to grant injunction and dismissed the IA filed by the respondent No.1/plaintiff and also directed the appellant/defendant No.1 to give unconditional undertaking which reads as follows;

“In the result, IA.No.374 of 2015 is dismissed and costs shall follow the event of the suit. Further, the respondent/defendant No.1 is directed to furnish an unconditional undertaking affidavit invariably also mentioning as follows;

“I shall unconditionally undertake to demolish all the structures with my own costs in the plaint ‘B’ schedule property, in case of the petitioner/plaintiff finally succeeding in this case by obtaining a decree for title and delivery of possession of the suit ‘B’ schedule property.”

A perusal of the aforesaid unconditional undertaking shows that it would come into force only in case the 1st respondent/plaintiff succeeds in the suit. I could not see any reason why the appellant/defendant No.1 is aggrieved to give such undertaking. In fact, the said undertaking would safeguard the interests of both the parties. As such I do not see any error in the impugned order warranting interference of this Court by exercising power under Order XLIII, Rule 1 of CPC.

Accordingly, the CMA is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

16.12.2015

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