

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA
CIVIL MISCELLANEOUS APPEAL No.1091 of 2014**

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

This Civil Miscellaneous Appeal is filed by the appellants/plaintiffs aggrieved by the order and decree dated 05.11.2014 in I.A.No.159 of 2014 in O.S.No.3 of 2014 passed by the IX Additional District Judge, Kamareddy, Nizamabad District, dismissing the application filed by them under Order 39 Rules 1 and 2, r/w. Section 151 of C.P.C., seeking to grant temporary injunction restraining the respondents/defendants from alienating the petition schedule property pending disposal of the suit.

2. The appellants/plaintiffs have filed the aforesaid suit for specific performance of agreement of sale dated 2.7.2009 in respect of Acs.8.26 guntas of land situated at the outskirts of Kamareddy, owned by the respondents/defendants. Along with the suit, they have also filed an application being I.A.No.159 of 2014 for grant of temporary injunction restraining the respondents/defendants from alienating the petition schedule property. By the said agreement of sale, the respondents/defendants agreed to sell the said land for a total consideration of Rs.81,00,000/- and received a sum of Rs.1,00,000/- towards advance sale consideration with a condition that the balance sale consideration amount of Rs.80,00,000/- should be paid within a period of one year or immediately after disposal of W.P.No.16550 of 2005 pending

before this Court, whichever is earlier. It is the case of the appellants/plaintiffs that subsequently, though they have paid a sum of Rs.40,00,000/- on 2.1.2013 and another sum of Rs.40,00,000/- on 4.1.2013 after obtaining valid receipts from the respondents/defendants, the respondents/defendants are not executing the sale deed by delivering possession of the petition schedule property, without any reason or justification, The respondents/defendants filed counter affidavit, denying various averments made in the aforesaid I.A. In the said counter, though it is stated that they have received Rs.1,00,000/- towards advance sale consideration, the respondents/defendants denied receipt of Rs.40,00,000/- on 2.1.2013 and another sum of Rs.40,00,000/- on 4.1.2013 as pleaded by the appellants/plaintiffs and stated that the receipts in respect of the said amounts were fabricated. It is also their case that as per the terms of the agreement, though the balance sale consideration was payable within one year, admittedly, the payments were said to be made on 2.1.2013 and 4.1.2013, whereas the agreement of sale was entered into on 2.7.2009. The Court below, having considered the pleas of both sides, dismissed I.A.No.159 of 2014 through the impugned order dated 5.11.2014, mainly on the ground that the respondents/defendants have disputed receipt of the amount of Rs.40,00,000/- on 2.1.2013 and another sum of Rs.40,00,000/- on 4.1.2013, as pleaded by the appellants/plaintiffs. Hence, the present Civil Miscellaneous Appeal.

3. We have heard Sri V. Venugopala Rao, learned counsel for the appellants/plaintiffs and Sri J. Srinivasa Rao,

learned counsel for the respondents/defendants.

4. During the course of hearing, it is brought to the notice of this Court that in a writ petition being W.P.No.22423 of 2009 filed by College Education Society, Kamareddy, Nizamabad District, wherein the respondents/defendants are shown as unofficial respondents, this Court granted interim order dated 21.10.2009 in W.P.M.P.No.29124 of 2009 in W.P.No.22423 of 2009, directing both the parties therein to maintain *status quo* obtaining as on that date. In view of the said *status quo* orders, the respondents/defendants are prevented from conveying the property by executing a registered sale deed.

5. In this case, it is to be noticed that this Court granted interim order dated 26.2.2015 directing the respondents/defendants not to alienate the subject property or create any third party rights thereupon and the said order is extended from time to time. It is also to be noticed that though the respondents/defendants have admitted about entering into an agreement of sale dated 2.7.2009 and also receipt of Rs.1,00,000/- towards advance sale consideration, there is a dispute with regard to receipt of balance sale consideration, which is a matter to be decided by recording cogent reasons, only after full-fledged trial of the suit, but not at this stage. Therefore, having regard to the admission of the respondents/defendants about entering into an agreement of sale dated 2.7.2009 and also receipt of Rs.1,00,000/- towards advance sale consideration and further in view of the *status quo* orders dated 21.10.2009 granted by this Court in W.P.M.P.No.29124 of 2009 in W.P.No.22423 of 2009, we are

of the view that if any alienation is permitted at this stage, it may lead to multiplicity of proceedings. Therefore, there is a prima-facie case for grant of temporary injunction restraining the respondents/defendants from alienating the subject property till disposal of the suit.

6. For the aforesaid reasons, this Civil Miscellaneous Appeal is allowed, setting aside the impugned order dated 05.11.2014 and consequently, I.A.No.159 of 2014 in O.S.No.3 of 2014 stands allowed. We direct the Court below to dispose of the suit O.S.No.3 of 2014 as expeditiously as possible, preferably within a period of eight months from today. However, it is made clear that the suit shall be disposed of by recording findings on the disputed questions, uninfluenced by any of the observations made in this judgment.

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

JUSTICE R. SUBHASH REDDY

JUSTICE A. SHANKAR NARAYANA

06.08.2015.

Msr

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