

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.556 of 2015

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JUDGMENT:

This Civil Miscellaneous Appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the unsuccessful defendant/respondent is directed against the order and decretal order dated 19.06.2015 of the learned III Additional Chief Judge, City Civil Court of Hyderabad passed in I.A.No.1357 of 2015 in O.S.No.309 of 2015 filed by the plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 of the Code requesting to grant pending final disposal of the suit; a temporary injunction restraining the defendant, his men, servants, agents, henchmen and any person/persons representing on his behalf from causing any sort of influence and interference or obstacles in the process of construction of multi-storied complex over and above the first floor in the petition schedule property.

2. I have heard the submissions of the learned counsel for the appellant/defendant ('the defendant', for brevity) and the learned counsel for the respondents/plaintiffs ('the plaintiffs', for brevity). I have perused the material record. I have gone through the synopsis filed by the learned counsel for the plaintiffs and the learned counsel for the defendant.

3. To begin with, it is apt to refer to the pleadings of the parties and the facts that lead to the filing of this appeal by the defendant.

3.1 The case of the plaintiffs, which is relevant for consideration, in brief, is as follows:

The plaintiffs 2, 3 and 4 are the owners and the possessors of the premises bearing

Nos.3-2-826 and 3-2-836/1 admeasuring 1210 square yards situated at Kachiguda, Hyderabad. The 1st Plaintiff is the developer. The 2nd plaintiff had entered into a development agreement dated 24.03.1993 with the 1st plaintiff. The plaintiffs 3 and 4 had also entered into two separate development agreements both dated 07.10.1993. They had entrusted the above said property to the 1st plaintiff to develop and construct a multi-storied commercial complex by demolishing the existing old structure. Accordingly, the 1st plaintiff had demolished the old structure and had started making construction consisting of two cellars, ground floor, mezzanine and three upper floors. The two cellars, the ground floor and the mezzanine floor were laid by putting up slabs and the construction for laying the upper floors is in process. While so, on account of the differences between 1st plaintiff on the one hand and the plaintiffs 2 to 4 on the other, the 1st plaintiff was compelled to file a suit in O.S.No.175 of 2000 on the file of the learned III Additional Chief Judge, City Civil Court of Hyderabad for various reliefs. In fact, the plaintiffs 2 to 4 had intended to cancel the three development agreements. The defendant herein was representing the 3rd plaintiff as the General Power of Attorney holder ('GPA holder', for brevity) and was misguiding the 3rd plaintiff at that point of time. After prolonged discussions, negotiations, deliberations and advices from the well-wishers, the disputes were resolved and the cancellation of the development agreements was revoked and the matter was amicably settled, and the plaintiffs 2 to 4 had agreed to sell entire interest, title and all their rights in the property in 'as is where is condition' in continuation of the three development agreements. The compromise dated 31.01.2011 was reduced into writing and a compromise decree was passed on 31.01.2011 by the learned III Additional Chief Judge, City Civil Court of Hyderabad. As per the terms of the compromise decree, the 1st plaintiff was allowed to proceed with the construction over the suit schedule property and was also allowed to take up the development activities. It was agreed between the plaintiffs *inter se* that the entire interest of the plaintiffs 2 to 4 in the property shall devolve on the 1st plaintiff for consideration as per the terms of the compromise that was entered into between the 1st plaintiff on the one hand and the plaintiffs 2 and 3 on the other. Rupees eight lakhs were paid to the plaintiffs 2 to 4 as part-payment of the agreed sale consideration. Thus, the 1st plaintiff became entitled to the whole of the said property and to proceed with the construction and take up all other development works in the

manner he planned. The 1st Plaintiff is entitled to proceed with construction with absolute authority. The defendant has no manner of right to cause hurdles to the rights of the 1st plaintiff. The plaintiffs 2 and 3 had executed and registered sale deed dated 31.01.2011; and, under the said document 10% undivided share to the extent held by the plaintiffs 2 and 3 was conveyed. The defendant, who was the GPA holder of the 3rd plaintiff had ultimately mislead and ill-advised the plaintiff nos.2 to 4 and dragged on the litigation and made them to suffer financially on account of non-completion of the construction. In the circumstances, plaintiff no.3 cancelled the power of attorney that was executed in favour of the defendant and revoked all powers that were given to the defendant under power of attorney dated 20.12.1984. The cancellation deed dated 16.02.2011 was also executed and was registered on 08.03.2011 cancelling the general power of attorney dated 20.12.1984. The powers that were vested in the defendant under the power of attorney were thus revoked and cancelled. Hence, the defendant has no manner of right in the property or the construction so far made by plaintiff no.1. The Plaintiff no.3 used to run a clinic under the name and style of 'Kachiguda Nursing Home' being a doctor and joint owner of the property along with his brothers and mother, who are the plaintiff nos.2 and 4. The defendant, being a doctor, was allowed to assist plaintiff no.3 as his agent and was allowed to manage the clinic as the representative of plaintiff no.3 and also power of attorney holder. The plaintiff No.3 had also filed a separate suit for injunction to restrain the defendant from representing the 'Kachiguda Nursing Home' and not to associate in any manner whatsoever with the functioning and running of the said Nursing Home as the power granted to the defendant had already been revoked and cancelled under registered cancellation deed. The defendant, without proper legal authority and power and without any legal right, is unnecessarily trying to interfere with the day to day process of construction of further floors in the said premises and is also trying to cause hurdles for completion of the construction as per the development agreements and as per the terms of the compromise decree dated 31.01.2011 in O.S.No.175 of 2000. In the circumstances, the plaintiffs nos.2 to 4 had agreed to join the plaintiff no.1 in filing the suit and the present application for temporary injunction. When the plaintiff No.1 is trying to proceed with the construction, the defendant with the help of unsocial elements had tried to threaten the plaintiff no.1 and interfere with the process of construction without any manner of right. On 03.08.2011 when plaintiff no.1 was trying to proceed with mopping operations in the schedule property, the

defendant, along with some unsocial elements, had tried to obstruct and interfere with the process of construction. When the 1st plaintiff had resisted, the defendant had left the premises by saying that he would come with more force and demolish the existing structure so far constructed by the plaintiff no.1. Therefore, there is a serious danger and injury from the defendant to the plaintiffs and also the property. Hence, having no alternative, the plaintiffs had filed the suit and the present application for temporary injunction. The defendant had filed O.S.No.281 of 2011 for specific performance of an alleged non-existent claim that plaintiff nos.2 to 4 had agreed to sell the property to him though there is no document like agreement to sell or any other legal document, which is legally enforceable. There is no written scrap of paper to support the claim of specific performance of the defendant. The defendant is illegally and fraudulently trying to grab the property and cause loss. The defendant being a party to O.S.No.175 of 2000 is aware of the facts. The schedule property is, admittedly, owned by plaintiff nos.2 to 4 and the plaintiff no.1 is the developer, and, under the development agreements and by virtue of the compromise decree, the plaintiffs 2 to 4 had requested him to develop the property. The defendant had no manner of right. But, he is illegally obstructing the process of construction and, therefore, he is liable to be restrained by a temporary injunction.

3.2 The defence of the defendant, apart from denial of the plaintiffs' case, in brief, is this:

The suit and the application are filed to mislead the Court. Material facts were suppressed and certain state of things, as existed, were projected in the pleadings of the plaintiffs. In the pleadings of the plaintiffs, the address of this defendant is shown as premises bearing nos.3-2-836 and 3-2-836/1, Kachiguda, Hyderabad. This defendant is also carrying on his clinic in the said premises. This defendant is in actual and physical possession of the entire premises bearing Nos.3-2-836 and 3-2-836/1, Kachiguda, Hyderabad. The 1st Plaintiff wants to project himself as a developer. However, in so far as this defendant is concerned, plaintiff no.1 is supposed to be a builder and the plaintiffs 2 to 4 are the owners of the property. This defendant has been in possession of the suit premises for more than 30 years. The 1st Plaintiff is relying upon the development agreements that have been cancelled long ago. This defendant is carrying on the Nursing Home as well as Clinic in the

suit schedule property for the past more than 30 years. The 1st plaintiff constructed two cellars, ground floor and mezzanine floor is denied. The ground floor was reduced to a skeletal structure at a certain point of time. The same was constructed by the defendant and was made fit for occupation. This defendant is presently running a day care service i.e., consultancy chambers, pathology lab and outpatient beds etcetera. There are no constructed upper floors as claimed by the plaintiffs. The development agreements were actually cancelled by the plaintiffs 2 to 4. This defendant represented the 3rd plaintiff as the GPA holder is true. The allegations that this defendant gave wrong advices, mislead and misguided the 3rd plaintiff and ultimately all the plaintiffs 2 to 4 are denied. The GPA dated 20.12.1984 was executed by plaintiff no.3 and his wife in respect of not only the suit schedule property but, all their other properties, and though the same stood cancelled by way of cancellation deed dated 16.02.2011, the same was in existence for almost 27 years and there is not even an allegation that the said power was either misused or abused. The compromise memo will demonstrate that it was entered into behind the back of this defendant. The cancellation of the development agreements was revoked is denied. The compromise was an attempt to get rid of this defendant from actual physical possession as well as the legal possession over the schedule property. The plaintiffs 2 to 4 are aware that they had entered into an agreement of sale with this defendant; and, apparently upon a higher offer, the plaintiffs 2 to 4 might have succumbed to the avarice and might have decided to turn against this defendant and to side the 1st plaintiff, with whom they were litigating against. This defendant was safeguarding the rights of the plaintiffs 2 to 4 in the suit schedule property and had supported them in the litigation with the 1st plaintiff till the plaintiffs 2 to 4 had agreed to sell the property to this defendant. The documents being relied upon by the plaintiffs would show that this defendant is in partial occupation of the property and this defendant had agreed to deliver possession of the same. The plaintiffs have not approached this Court with clean hands. Hence, they are not entitled to the equitable relief. The 1st plaintiff is not at all in possession of the suit schedule property. Therefore, the question of allowing the 1st plaintiff to proceed with the construction does not arise. The property was 'derived' in favour of the 1st plaintiff, as alleged in the plaint, is denied. This defendant who is in actual physical and legal possession of the property is entitled to remain legally in possession as this defendant had entered into an agreement of sale in

respect of the plaint schedule property with the plaintiffs 2 to 4 and had paid substantial consideration and as certain terms or points of the said agreement were also written down in the very own handwriting of the 3rd plaintiff. The plaintiffs had suppressed the institution of the suit in O.S.No.281 of 2011, which was filed for specific performance of the agreement of sale in favour of this defendant and for perpetual injunction. The right, title and interest in the property vested in this defendant after divestment from plaintiffs 2 to 4. As this defendant is an agreement holder and is in physical as well as legal possession of the property, this defendant, as a matter of right, is entitled to restrain the 1st plaintiff or any other person from entering into or attempting to make any construction over and upon the suit schedule property. The so-called registered sale deed dated 31.01.2011 is a sham and cooked up document and was brought into existence to create legitimacy. The compromise was entered into behind the back of this defendant. This defendant had paid huge amount of 24 lakhs of rupees from out of the sale consideration of Rs.1,30,00,000/- and had instituted the suit for specific performance of the agreement of sale. The plaintiffs have not stated that this defendant is not in possession of the entire property or a part thereof but, in the counter affidavit filed in the application in O.S.No.281 of 2011, they have stated that this defendant is not in possession. The plaintiffs are, thus, moulding their pleadings according to the reliefs being claimed by them. This defendant has been taking care of the Nursing Home till he had entered into negotiations for purchase of the same and derived rights over and upon the suit schedule property under the agreement of sale. This defendant is managing the Clinic as representative and power of attorney holder of the 3rd plaintiff is denied. This defendant had no knowledge about the alleged suit for injunction in respect of Kachiguda Nursing Home. When the plaintiffs are not in possession, the question of the defendant attempting to interfere with the so-called construction process does not arise at all. There is no construction activity going on at the suit schedule property. Neither the 1st plaintiff nor the others are entitled to enter the property, leave alone carry on the construction activity. This defendant had never claimed rights by virtue of GPA. The cancellation of the same is of no consequence. This defendant, in fact, filed the suit for specific performance. The overt acts pleaded and attributed to this defendant in regard to interference with the alleged construction activity are false and denied. There is no threat or danger to either the 1st plaintiff or the other plaintiffs or to the property. The plaintiffs are

apparently interested in dividing the property floor-wise. They have cleverly used the words 'Up and above the first floor'. This defendant is obstructing the process of construction without any manner of right is denied. This defendant is deemed to be in partial occupation of the schedule property as per the terms of compromise and was supposed to vacate and handover the same within certain stipulated time. Even though this defendant was arrayed as defendant no.4, that suit was compromised behind the back of this defendant and the suit claim against the 3rd defendant appears to have been given up due to his non-availability though this defendant was the general power of attorney holder of the said defendant and was on record in the said suit. However, this defendant is not a party to the compromise and it was entered into behind his back. Since this defendant is not a party to the compromise, he is not liable to abide by the terms of the same. The term in the compromise that this defendant is in partial occupation is in direct contradiction to the earlier stand of the plaintiffs in the written statement in O.S.No.175 of 2000, wherein it was stated as follows:

"Dr.Dilip, who is residing and running a hospital for the last several years in the old building bearing Municipal No.3-2-836/1 adjoining chappal bazaar road, has taken over the possession of the incomplete structure existing in the area bearing No.3-2-836 on 28.04.1997 and is now in possession of the same."

Hence, this defendant has been in actual physical as well as legal possession of not only the suit schedule property, which very conveniently is mentioned as "up and above first floor" but also the entire premises itself. The documents show the long possession of this defendant over the entire property of which the present suit schedule property is part. The earlier suit was specifically given up against this defendant, who is arrayed as defendant no.4 therein. Hence, the petition may be dismissed.

4. At the time of enquiry before the Trial Court, no oral evidence was adduced. Exhibits P1 to P25 and exhibits R1 to R22 were marked. On merits, the Trial Court had granted temporary injunction in favour of the plaintiffs as prayed for. Feeling aggrieved, the defendant had preferred the instant appeal.

5. The learned counsel for the defendant, while reiterating the pleaded defence of the defendant, had *inter alia* contended that the order of the Court below, which was passed without considering the pleadings and the contents of the documents exhibited, is unsustainable under facts and in law; that the impugned order is passed on surmises and conjectures; that the decision arrived at is erroneous; that the Court below had failed to consider the cardinal principles, which are required to be considered before granting or refusing to grant injunction; that the Court below had lost sight of the important aspect viz., physical possession of the property and the further fact that the defendant is in physical and legal possession of the property; that the Court below had wrongly cast the burden/onus on the defendant to show that the defendant is in possession while, in fact, it was for the plaintiffs to prove that they were in actual physical possession over the suit schedule property; that the Court below had failed to advert to the important contents of the crucial documents; that the Court below had failed to consider that exhibit P3-compromise decree is not binding on the defendant who is not a party to it; that exhibit P11-revocation deed does not pertain or correspond to exhibit P10, power of attorney, which was said to have been cancelled; that the Court below had failed to consider the admissions of the plaintiffs in the pleadings and also in the complaint under exhibit R17; that the trial Court had failed to take note of the settled principles of law that even a trespasser is entitled to protect his possession and cannot be evicted except in accordance with the procedure established by law; and that the order of the Court below, which was passed without considering the cardinal principles and also the necessary facts and the relevant propositions of law, is liable to be set aside.

6. On the other hand, the learned counsel for the plaintiffs, while supporting the impugned order, had contended as follows:

The Trial Court had properly appreciated the facts and the documentary evidence and had recorded findings supported by valid and cogent reasons before allowing the application and granting a temporary injunction in favour of the plaintiffs. The defendant has taken inconsistent stands from time to time. The plaintiffs 2 to 4 are, admittedly, the owners of the property. The defendant is only a general power of attorney holder of the 3rd plaintiff for certain time; and the said power of attorney was admittedly revoked and cancelled. The defendant has no manner of right over the property. The defendant had set up a false agreement of sale though there was

never any such agreement between the plaintiffs 2 to 4 on the one hand and the defendant on the other. The injunction as sought was granted to allow the plaintiffs to proceed with the construction over and above the first floor. If such injunction order is maintained, no prejudice or loss would be caused to the defendant. The Court below had observed, in its orders that any construction that would be made would be subject to the result of the suit. The plaintiffs naturally are not entitled to claim equities in the event of their failure to succeed in the *lis*. The defendant cannot prevent the owners i.e., the plaintiffs 2 to 4 from exercising their right of ownership. The owners are entitled to develop the property. The defendant, who has no manner of right, is not entitled to obstruct the process of construction. The claim of the defendant that he is in possession of the property as an agreement holder and that his possession is physical and legal is false. There are no grounds, much less, valid grounds calling for interference with the order of the Court below.

7. I have carefully gone through the pleadings and the contents of the documents. The details of the documents exhibited are as follows: Exhibit P1 is the copy of the plan, exhibit P2 is the Copy of document No.3587/1968, exhibit P3 is the certified Copy of Judgment in O.S.No.175/2000, exhibit P4 is a certified copy of agreement of development dated 24.03.1993, exhibit P5 is the original agreement of development dated 07.10.1993, exhibit P6 is the original GPA dated 29.07.2011, exhibit P7 is the copy of GPA in the name of Dr.Prakash P.Ghatage, exhibit P8 is the copy of GPA in the name of Dr.Prafull P.Ghatage, exhibit P9 is the copy of Sale deed dated 31.01.2011, exhibit P10 is the copy of GPA in the name of Dr.Prakash P.Ghatage, exhibit P11 is the deed of Revocation of Power of Attorney, exhibit P12 is the copy of property receipt in the name of K.P.Ghatge, exhibit P13 is the copy of rough sketch plan showing suit schedule property, exhibit P14 is the copy of Income Tax Assessment Year for 2005-2006, exhibit P15 is the copy of Income Tax Assessment Year for 2004-2005, exhibit P16 is the copy of Income Tax Assessment Year for 2003-2004, exhibit P17 is the copy of Income Tax Assessment Year for 2002-2003, exhibit P18 is the copy of Income Tax Assessment Year for 2001-2002, exhibit P19 is the copy of Income Tax Assessment Year for 2000-2001, exhibit P20 is the copy of Income Tax Assessment Year for 1999-2000, exhibit P21 is the acknowledgment titled as Return Form No.2 dated 30.10.1998, exhibit P22 is the copy of Income Tax Assessment Year for 1997-1998, exhibit P23 is the acknowledgment titled as Return Form No.2 dated 12.09.1996, exhibit P24 is the acknowledgment titled as Return Form No.2 dated

21.08.1995, exhibit P25 is the copy of Affidavit in I.A.No.726 of 2000 in O.S.No.175 of 2000. Exhibit R1 is the copy of plaint in O.S.No.281 of 2011, exhibit R2 is the copy of counter affidavit in I.A.No.1344 of 2011 in O.S.No.281 of 2011, exhibit R3 is the copy of agreement with Dr.Dilip, exhibit R4 is the English Translated Copy of agreement with Dr.Dilip to R3, exhibit R5 is the copy of Notice in I.A.No.1451 of 1999 in O.S.No.244 of 1999, exhibit R6 is the copy of affidavit in I.A.No.39 of 2011 in O.S.No.175 of 2011, exhibit R7 is the copy of decree in dt.31.01.2011 in O.S.No.175 of 2000, exhibit R8 is the copy of memorandum of compromise in O.S.No.175 of 2000, exhibit R9 is the copy of Vakalat in O.S.No.175 of 2000, exhibit R10 is the copy of Written Statement in O.S.No.175 of 2000, exhibit R11 is the copy of Document No. 1542 of 1984. exhibit R12 is the copy of Telephone Bill in the name of Dr.Dilip P.Bhanushali, exhibit R13 is the copy of Writ Petition No.7566 of 2014, exhibit R14 is the copy of Report dated 22.01.2014 to the Police Commissioner of PS Basheerbagh, Hyderabad, exhibit R15 is the complaint dt.11.08.2011 to the SHO, Kachiguda, Hyderabad, exhibit R16 is the complaint dt.11.08.2011 to the SHO, Kachiguda, Hyderabad, exhibit R17 is the complaint dt.07.05.2011 to the SHO, Kachiguda, Hyderabad, exhibit R18 is the complaint dt.14.05.2011 to the SHO, Kachiguda, Hyderabad, exhibit R19 is the complaint dated 26.05.2011 to the SHO, BasheerBagh, Hyderabad, exhibit R20 is the copy of Judgment in O.S.No.175 of 2000, exhibit R21 is the copy of Decree in O.S.No.175 of 2000, and exhibit R22 is the copy of Injunction Order in I.A.No.747 of 2012 in O.S.No.1357 of 2012.

8. The points that fall for determination are as follows:

(i) Whether the plaintiffs had made out valid and sufficient grounds and had satisfied the cardinal principles for granting the temporary injunction in their favour and against the defendant restraining the defendant, his men, servants, agents, henchmen and any person/persons representing on his behalf from causing any sort of influence, interference or obstacles in the process of construction of multi-storied complex over and above the first floor in the petition schedule property comprising over an area of 1210 sq. yards?

(ii) Whether the order impugned is unsustainable under facts and in law as contended by the defendant?

(iii) To what relief?

9. Points:

9.1 At the outset, let it be made plain that it is not necessary in this appeal to make any observations, which will have bearing on the merits of the instant suit and also the other suit which is filed by the defendant for specific performance and perpetual injunction. The crucial question is as to whether the plaintiffs are entitled to an injunction as prayed for to facilitate the process of construction of multi-storied complex over and above the first floor of the schedule property. The plaintiffs contend that the defendant is not in possession of the property and that his possession, if any, at any point of time is only in the capacity of GPA holder and the manager of Nursing Home by name 'Kachiguda Nursing Home' being a doctor and that the said power of attorney executed by the 3rd plaintiff in favour of the defendant was already revoked and cancelled and that the defendant, who has no manner of right, whatsoever, is not entitled to obstruct and/or interfere with the process of construction, much less when he is not in possession of the subject property. On the other hand, the case of the defendant is that he is not claiming any rights by virtue of the GPA and that the cancellation of the same is not going to make any difference and that he is an agreement holder and that he, having paid substantial part of sale consideration and being presently in actual physical and legal possession of the property, has got every right to restrain the plaintiff no.1 or any persons from entering into the property and making any construction in the subject property.

9.2 It is apt to note that the temporary injunction is being sought by the plaintiffs to proceed with the construction of multi storied complex over and above the 1st floor in the petition schedule property comprising over an area of 1210 square yards pending disposal of the suit. The plaintiffs 2 to 4 are owners of the property is undisputed. They claim that the 1st plaintiff is the developer of the property and that as per the development agreements and the compromise decree under exhibit P3 between the plaintiffs 2 to 4 on the one hand and the 1st plaintiff on the other, the 1st plaintiff had been entrusted with the property to develop and construct a multi storied commercial complex consisting of two cellars, ground floor, mezzanine and three upper floors by demolishing the existing old structure and that accordingly, the 1st plaintiff had demolished the old structure and started making constructions and that the 1st plaintiff in the light of the registered sale deed 31.01.2011 and the

circumstances stated in the pleadings of the plaintiffs had become entitled to the whole property and to proceed with the construction and take up all other development works in the manner he planned and as approved by the competent authority and that on account of the obstruction, without any manner of right, by the defendant to proceed with the construction, the 1st plaintiff was unable to proceed with the construction and complete the construction over and above the 1st floor and that the plaintiffs are being put to financial loss. The defendant while *inter alia* contending that the compromise decree is not binding upon him, places reliance on the said compromise decree, to contend that the said document on a perusal would make it manifest that he is in possession of a part of the property and that there is no subsequent document to show that he had vacated and delivered that part of the property, which is in his possession, as is evident from the said compromise decree. The crux of the defence is that the defendant is in physical and legal possession of the entire property and that he is also an agreement holder and that he had already filed a suit for specific performance and that being an agreement holder in possession he has got every right to prevent the plaintiffs from entering into the property and that the plaintiffs are not entitled to enter into the property and that the development agreements are not in force having been cancelled and that the compromise decree, which was entered into behind his back is not binding upon him as he was not a party to the said compromise though he was the power of attorney holder of the 3rd plaintiff herein and the 4th defendant in that suit and that as a matter of right, he is entitled to restrain the 1st plaintiff or any other person from entering into the property and from making any constructions and that the so called registered sale deed 31.01.2011 is a sham and cooked up document and that the same was brought into existence to create some legitimacy.

9.3 The old structure was demolished is not in dispute. Even the defendant in his pleadings had stated that the ground floor was reduced to a skeletal structure at certain point of time and the same was reconstructed/constructed by the defendant and was made fit for his occupation and that he is presently running a day care service/consultancy chambers, pathology lab and out-patient beds etcetera. Nonetheless, the plaintiffs contend that the 1st plaintiff had constructed the two cellars, the ground floor and the mezzanine floor. The learned counsel for the plaintiffs had drew the attention of the Court to the contents of the written statement

in O.S. no. 309 of 2015, wherein the defendant herein had stated that there is only a ground floor and no upper floors. He had also drawn the attention of the court to the contents of the affidavit filed in an interlocutory application in O.S.no.175 of 2000 wherein this defendant had stated that the plaintiffs 2 to 4 herein had taken over the possession of the incomplete structure and that they had spent huge amounts in completing the works in the ground floor and that they had commenced hospital therein. Having pointed out the said admissions in the said pleadings in the former litigations, he had further contended that all the above admissions made by the defendant herein in the earlier pleadings would show that there is a ground floor and that the plaintiffs 2 to 4 herein had spent the amounts and had completed the works in the ground floor and had commenced the hospital therein, but not the defendant herein and that therefore, the defendant now cannot prevaricate and take inconsistent pleas. *Per contra*, the learned counsel for the defendant had similarly pointed out to the following aspects in the pleadings of the parties in support of the contentions that the defendant is in legal possession of the entire property and physical possession of the ground floor. He would first point out to the terms of the memorandum of compromise, wherein it is stated to the effect that the plaintiffs 2 to 4 herein had assured that the defendant herein, who is the GPA holder and who is in partial occupation of the schedule property shall vacate the premises within three months and that in the event of his not vacating the property the terms agreed to in the compromise shall be extended in case of delay for a maximum period of six months. He would next point out that in the written statement in O.S.no.175 of 2000, it is admitted that the defendant herein is residing and running a hospital for the last several years in the old building bearing municipal No. 2-3-836/1 adjoining Chappal Bazar Road and that he had taken over the possession of the incomplete structure and is now in possession of the same. He had further drawn the attention of the Court to the affidavit in W.P.No.7566 of 2014 of Arun P.Gala (1st plaintiff herein) wherein it was stated that the 6th respondent therein (the defendant herein) is still continuing in the portion of the ground floor after removing the name of 'Kachiguda Nursing Home' without any authority. He had also drawn the attention of this Court to the contents of exhibit R16, R17 and R18-complaints dated 11.08.2011, 07.05.2011 and 14.05.2011 submitted against the defendant herein to the Station House Officer, Kachiguda Police Station. He had particularly pointed out to the contents in exhibit R16, wherein it was stated that the defendant herein had inducted one Dr. Bhole and his wife, who is also a Doctor, and that they are practicing in a

portion of the premises without the knowledge of the plaintiffs herein. He had also particularly pointed out to the contents of exhibit R17, wherein it is stated that the defendant in the capacity of GPA Holder is pocketing all the rents from three shops situated in front of the premises for the past 20 years by depositing a meager amount into the account of the landlady and that even now, he is grabbing the entire rent from the tenants. He had also laid stress on the contents of exhibit R18, wherein it is stated that Dr.Dilip (the defendant) had trespassed and is enjoying the property of Arun Gala (the 1st plaintiff herein) for the past eleven years and that the police are sleeping on the issue. Be that as it may. Who among the parties had constructed the existing structure in the ground floor etcetera and the possession of the said portion of the property is not germane for consideration as the relief in the present application is in regard to the intended construction of multi-storied complex over and above the first floor in the petition schedule property. Thus, there is some construction in the ground floor is admitted by both the parties. The question as to who had constructed the same apart, there are no constructed upper floors is also not in dispute in view of the specific defence of the defendant that there are no constructed upper floors. The plaintiffs are now seeking the temporary injunction to enable the 1st plaintiff to proceed with the constructions above the 1st floor. The defendant had also stated in his pleadings in the instant proceeding that the 1st plaintiff wants to project himself as a developer, however, insofar as this defendant is concerned, the 1st plaintiff is supposed to be a builder and the plaintiffs 2 to 4 are the owners of the property. Thus, the ownership of the plaintiffs 2 to 4 is admitted by the defendant. The defendant had also admitted that the plaintiff was a builder though not a developer. Nevertheless, the defendant pleads entitlement to prevent the entry of the plaintiffs into the property and obstruct the construction activity as of right on the ground that he is in possession of the ground floor and legal possession of the property and that he is also an agreement holder. As already observed, this Court is not going to now determine any aspects which are not relevant and necessary for consideration and this Court has also observed that it is not necessary in this Civil Miscellaneous Appeal to determine the truth, validity and binding nature of the agreement being relied upon by the defendant. The said aspect has to be determined in the suit for specific performance filed by the defendant. The learned counsel for the defendant forcefully contended that since the pleadings and the contents of the exhibits amply establish the possession of the defendant, in any view

of the matter, in respect of a portion of the schedule property, the defendant is entitled to restrain the plaintiffs from entering into the property and making constructions and that the plaintiffs are not entitled to evict the defendant illegally except by following the due process of law. He had also placed reliance on the decision in **Ashwinkumar K. Patel v. Upendra J. Patel and others** in support of the contention that when the defendant is in possession of the property, the plaintiffs who are not in possession could not interfere with the defendant's possession under the guise of a request to make constructions above the 1st floor. In this cited decision, on facts, the Court found that irrespective of title, the plaintiff, had, at any rate, 'permissive possession' and the defendants 15 to 19 and 28 were not in possession and that therefore, the latter could not interfere with the plaintiff's possession. Placing reliance on this decision, it is contended that even if the possession of the defendant is permissive in nature, the plaintiffs are not entitled to the temporary injunction prayed for. However, in the light of the facts, circumstances, contentions of the plaintiffs and the rival contentions of the defendant, it is manifest that the issue is now as to whether the plaintiffs could proceed with the construction activity over and above the 1st floor as prayed for in the interlocutory application without any interference from the defendant.

9.4 It is not in dispute that at one point of time, admittedly, the defendant is a GPA Holder of the 3rd plaintiff, who is also a Doctor, and that after the agreements to develop the property were entered into between the plaintiffs 2 to 4 on the one hand and the 1st plaintiff on the other, disputes *inter se* had arisen between the plaintiffs 2 to 4 on the one hand and the defendant on the other and that at that time, the defendant herein had lent support to the plaintiffs 2 to 4 in the then pending litigations and had fully supported them in safeguarding their rights. According to the plaintiffs, there was a compromise between the plaintiffs 2 to 4 on the one hand and the 1st plaintiff on the other and that as per the settlement and compromise, the development agreements were revived and that a registered document dated 30.01.2011 is also executed and that therefore, the plaintiffs 2 to 4 are entitled to continue with the construction activity through the 1st plaintiff as per the approved plan. Though the defendant herein is not a party to the compromise, the defence of

the defendant extracted supra would bring to the fore the fact that he is admitting the ownership of plaintiffs 2 to 4 and that the 1st plaintiff is a builder while inter alia opposing the request in the present interlocutory application of the plaintiffs on the ground that he is an agreement holder in regard to the property and that he had already filed a suit for specific performance. In that suit for specific performance, though an interlocutory application is filed, no order was yet granted by the court concerned in favour of the defendant herein. It is necessary to restate that in the written statement in O.S. no. 309 of 2015, the defendant herein had stated that there is only a ground floor and no upper floors; further in the affidavit filed in an interlocutory application in O.S.no.175 of 2000 the defendant herein had stated that the plaintiffs 2 to 4 herein had taken over the possession of the incomplete structure and that they had spent huge amounts in completing the works in the ground floor and that they had commenced the hospital therein. In this regard, it is also necessary to reiterate that the defendant relies upon the compromise decree and exhibits R16 to R18, the copies of police complaints and other pleadings, which are referred to supra to contend that he is in possession of the property. A harmonious consideration of the facts and circumstances of the case would show that the upper floors are not constructed and that the possession of the ground floor of either of the parties, either khas/ constructive or permissive, is not the determinative factor. It is also not necessary to express any opinion on the issue as to whether the Nursing Home or Clinic or day care centre, if any, is being run in the ground floor either by the plaintiffs 2 to 4 or the defendant as the issue involved relates to the construction activity which the plaintiffs intend to take up over and above the 1st floor through the 1st plaintiff. When there are no upper floors constructed as on today over and above the 1st floor, the defendant having possession of the same does not arise for consideration. The plaintiffs are having an approved plan to proceed with the construction activity over and above the 1st floor. It is pertinent to note that in the factual backdrop stated supra, the trial Court in it's order, which is impugned had held in favour of the plaintiffs and granted a temporary injunction as prayed for to enable the plaintiffs to proceed with the construction activity over and above the 1st floor while inter alia observing that the plaintiffs can proceed with the construction activity at their risk and that whatever constructions that may be made will be subject to the result of the instant suit and also O.S. no.281 of 2011.

9.5 Nevertheless, the learned counsel for the defendant contended that the plaintiffs who had suppressed the facts and had pleaded contrary to their stand in the pleadings in the former litigation and in the police complaints etcetera are not entitled to the equitable relief of temporary injunction. He would first point out that the plaintiffs are now contending that the possession, if any, of the defendant of the ground floor or the property below the 1st floor is permissive in nature and that the said possession is on behalf of the owners and that therefore, the defendant cannot set up independent rights. Having so pointed out, he would then urge that the said contention now raised by the plaintiffs is not the case pleaded and that on the other hand, the plaintiffs had claimed that they are in possession and that in view of the fact that the plaintiffs had failed to plead that the possession, if any, of the defendant of the ground floor etcetera is permissive in nature, the plaintiffs are not entitled to the equitable relief claimed. Having regard to the pleadings of the parties in the present *lis* and the earlier litigations and also the contentions and the reply contentions, it can be said that the plaintiffs and the defendant had both taken stands on certain issues which are not consistent with the statements in the pleadings in the former litigations. Insofar as the subject relief, which is in regard to intended construction over and above the 1st floor, the plaintiffs' case is not *prima facie* inconsistent with their earlier statements and that on the other hand, the defendant also admits that there are no constructed upper floors. When there are no constructed upper floors, the plaintiffs admitting the defendant's possession of the same does not arise for consideration. Hence, this Court finds no reason to deny the relief to the plaintiffs on the ground of suppression of any material facts.

9.6 In the light of the discussion coupled with reasons, this Court finds that the plaintiffs had made out valid and sufficient grounds and had satisfied the cardinal principles. In view of the fact that the defendant is contending that the plaintiffs are not entitled to enter into the property and make constructions over and above the 1st floor, it follows that the defendant is not allowing the plaintiffs and preventing them from making the constructions over and above the 1st floor and hence, the plaintiffs' contentions that they would suffer serious and irreparable loss if no injunction is granted, merits acceptance, more particularly, when the Court has come to the conclusion that the plaintiffs are having a *prima facie* case. On weighing competing possibilities or probabilities of likelihood of injury, i.e., the amount of substantial

mischief or injury, which is likely to be caused if injunction is refused and comparing it with that which is likely to be caused to the other side, if the injunction is granted, this Court is satisfied that the balance of convenience is not in favour of the defendant/appellant. Viewed thus, this Court is satisfied that the court below is justified in granting the temporary injunction in favour of the plaintiffs and against the defendant. The points are accordingly answered against the appellant/defendant. Accordingly, this Court holds that the order impugned does not brook interference.

10. In the result, the Civil Miscellaneous Appeal is dismissed, however, in the facts and circumstances of the case, without costs. It is needless to state that the constructions shall be made strictly in accordance with the approved plan and the building rules and regulations, which govern the proposed construction. The constructions, if any, made shall be subject to the result of the instant suit and the suit O.S. 281 of 2011 on the file of the Court of the learned III Additional Chief Judge, City Civil Court, Hyderabad; and, in case of the plaintiffs' failure to succeed in the suits, they shall not be entitled to claim any equities.

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

M.SEETHARAMA MURTI, J

23rd November, 2015

Usd