

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL MISCELLANEOUS APPEAL No.901 OF 2015

JUDGMENT:

This appeal is filed against the order dated 10-09-2015 passed in I.A.No.92 of 2013 in O.S.No.94 of 2013 on the file of XVI Additional District And Sessions Judge, Nandigama, wherein the Court below has granted injunction in favour of the respondents 1 and 2, who are the plaintiffs before the Court below restraining the appellant and three others from interfering with the peaceful possession and enjoyment over the plaint schedule property.

The case of the respondents No.1 and 2, who are the plaintiffs in the suit, is that they are the absolute owners of the schedule property having purchased under two registered sale deeds vide document Nos.2717 and 2718 of 2007, dated 11-06-2007, which are marked as Exs.P.1 and P.2. In pursuance of the same, their names were mutated in the revenue records. They were also issued pattadar passbooks and title deeds and Ex.P.3 Adangals taken from Mee Seva for the fasali 1424 and they were also issued certificates issued by Tahsildar to prove their possession over the suit schedule property and they are marked as Exs.P.14 and P.15.

The case of the appellant, who is the defendant No.1 before the Court below is that he purchased the schedule property from D.Subba Reddy, D.Rama Devi and A.Venkateshwara Reddy by virtue of three separate agreement of sales dated 17-04-2004 and when the said vendors have failed to execute the sale deeds as per the agreement, he filed the suit in O.S.Nos. 40, 41 and 42 of 2008 for specific performance and the same were decreed. By

virtue of the judgments, the respondent No.1 filed the E.Ps and thereafter sale deeds were executed on 16-07-2012 and possession of the suit schedule property was also given to him on 25-04-2013 under Exs.R-7 to R-9. After delivery of the schedule property, the appellant is in possession and enjoyment of the suit schedule property.

The trial Court granted exparte injunction and the same was made absolute by way of impugned order observing that the 1st respondent has not filed any piece of paper showing his actual physical possession and on the other hand, the respondents filed showing their possession and enjoyment over the schedule property. Against the same, the present appeal is filed.

Learned counsel for the appellant-defendant No.1 submits that though several contentions were raised, one of which that the suit is not maintainable as the respondents 1 and 2/plaintiffs have to file petitions under Order XXI Rule 99 and 101 of C.P.C. as he has put into possession through Court process, the Court below disbelieved the same and granted injunction in favour of the respondents/plaintiffs basing on other documents. He also submits that the Court below has not referred to the written arguments raising the above pleas and simply made the injunction absolute.

On the other hand, the learned counsel for the respondents 1 and 2/plaintiffs submits that the suit schedule property was purchased by them by virtue of sale deed dated 11-06-2007. By virtue of sale deed, the title is transferred in favour of the respondents/plaintiffs. He also submits that once the vendor of the defendant No.1 is divested of his title and since rights in the suit schedule property is transferred in favour of the respondents 1 and 2/plaintiffs, again

sale deed cannot be executed on his behalf. He also submits that the sale deeds were executed in favour of the respondents 1 and 2/plaintiffs dated 11-06-2007, whereas the sale deeds were executed in favour of the appellant/defendant No.1 dated 16-07-2012 later in point of time. In view of the same, an agreement of sale does not confer title as per Section 54 of Transfer of Property Act.

The aspect of filing of written arguments by the parties is not in dispute. As per the judgment of **G.Jaya Rao v. State of A.P. Land Reforms, Srikakulam**^[1], the Court below has to consider the written arguments filed by the parties. In the present case, the impugned order does not show that whether the Court below considered the contentions raised in the written arguments.

Having regard to the above, without going into the merits of the case, the impugned order is set aside. Since a *ad interim* injunction order granted on 10-07-2013 was continued till passing of the impugned order in the Court below, I am of the opinion that the same shall continue till the trial Court considers the matter afresh by advertng to all the contentions raised by the parties in the written arguments.

Accordingly, the Appeal is disposed of. The trial Court shall dispose of the I.A. on merits in accordance with law without being influenced by any of the observations made by this Court in this order, within a period of four weeks from the date of receipt of copy of the order. Till disposal of I.A., the *ad-interim* injunction order granted on 10-07-2013 shall continue. Miscellaneous petitions pending, if any, in the Appeal shall stand closed.

A.RAJASHEKER REDDY,J

18-12-2015

Nvl

^[1] 2003(3) ALT 127