

HON'BLE SRI JUSTICE R. SUBHASH REDDY

And

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.660 of 2015

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JUDGMENT : (Per Justice R.Subhash Reddy)

Though the matter is at interlocutory stage, at the request of learned counsel for the parties, the appeal itself is heard and disposed of.

2. This miscellaneous appeal is filed under Order 43 Rule 1 of CPC, by the respondent/defendant in I.A.No.1496 of 2014 in O.S.No.217 of 2014 on the file of Principal District Judge, Guntur, aggrieved by the order, dated 30.05.2015, passed in the said I.A. By the aforesaid order, the trial Court has granted injunction restraining the defendant/appellant from alienating the plaint schedule property to third parties pending disposal of the suit.

3. O.S.No.217 of 2014 is filed for specific performance of agreement of sale. It is pleaded that the appellant is the owner of land admeasuring Ac.0-42 cents, situated at Etukuru within Guntur Municipal Corporation area and entered into agreement of sale with the respondent on 05.04.2013, agreeing to sell the plaint schedule property for a sum of Rs.84,00,000/- and received part sale consideration of Rs.40,00,000/- on the same day. It is stated that at the time of agreement, link documents were passed on to respondent-plaintiff and subsequently, a

further amount of Rs.35,00,000/- was paid. Though the appellant/defendant has agreed to execute the registered sale deed by receiving balance consideration of Rs.9,00,000/-, she failed to do so and is trying to enter into agreement with some third parties suppressing the contract with the plaintiff. In such circumstances, he filed suit for specific performance and pending suit, he filed I.A.No.1496 of 2014 for grant of injunction.

4. In the aforesaid application, counter affidavit is filed by the appellant. In the counter, while denying the various allegations made, it is stated by her that she has not agreed to sell the property to the respondent herein and pleaded that she kept some blank signed papers with her husband who has passed on the same to the respondent/plaintiff and created suit agreement of sale. She has also pleaded that the signatures on the agreement of sale are forged.

5. In the interlocutory application, on behalf of plaintiff, Exs.A-1 to A-10 were marked. On behalf of defendant, no evidence was let-in. Having considered the evidence on record and pleadings, the trial Court has passed the impugned order granting injunction by recording a finding that prima facie case is made out by the plaintiff and also balance of convenience lie in granting injunction.

6. In this appeal, it is contended by the learned counsel for appellant that the suit agreement of sale is a fabricated one and it was prepared by forging her

signatures. It is further pleaded that though there is a factory in the suit schedule property, the same is shown as vacant land in the agreement as well as in the suit. It is further pleaded that the allegation of paying advance amount of Rs.40,00,000/- at the time of agreement and another Rs.35,00,000/- subsequently, is false.

7. Per contra, it is contended by the learned counsel appearing for the respondent/plaintiff that the appellant, who is the owner of suit schedule property, has agreed to sell the same for Rs.84,00,000/- and received Rs.40,00,000/- at the time of agreement of sale and also received a further sum of Rs.35,00,000/- subsequently, and inspite of the same, she failed to execute the sale deed. It is pleaded that even according to the case of appellant, at the time of agreement of sale, she has passed on copies of title deeds to her husband, which itself shows her contention that her signatures were forged, is false and incorrect.

8. Having heard learned counsel for the parties, we have perused the material on record.

9. It is the specific case of respondent/plaintiff that the appellant/defendant has entered into agreement of sale, dated 05.04.2013, agreeing to sell the suit schedule property for Rs.84,00,000/- and she has received an amount of Rs.40,00,000/- at the time of agreement of sale and another sum of Rs.35,00,000/- subsequently. In the counter filed in I.A., the case of defendant is that her

husband has obtained her signatures on blank papers and never returned to her and only on receipt of legal notice, dated 12.04.2014, she came to know that the suit agreement contains her signature. On one hand, her plea is that the signed papers, which were passed on to her husband, were used for creating agreement of sale, but on the other hand, she also took the plea that her signatures were forged. Prima facie, we are of the view that the plea of appellant that the signed papers were used by her husband for creating agreement of sale cannot be accepted for the reason that the appellant has already given a copy of title deed at the time of agreement of sale and a copy of the agreement of sale is also produced in the documentary evidence produced on behalf of respondent. Further, the Court below has granted only injunction restraining the appellant from alienating the suit schedule property during pendency of suit. Having regard to the evidence on record and findings recorded by the Court below, we are of the view that it is a fit case to maintain the order of injunction till disposal of the suit. Findings on various contentions/pleas raised by the parties can be recorded during trial in the suit and such contentions cannot be gone into at this stage when the parties are yet to go for trial.

10. For the aforesaid reasons, we do not find any merit in this appeal and it is accordingly dismissed. The

learned trial Judge to dispose of the suit as expeditiously as possible. No costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

S. RAVI KUMAR, J

16th December 2015

ajr