

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL Nos.493 & 512 of 2015

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COMMON JUDGMENT:-

These two Civil Miscellaneous Appeals are filed by the unsuccessful defendants 1 and 2/the appellants assailing an order dated 16.06.2015 of the learned V Additional District Judge, Medak at Sangareddy passed in I.A.No.39 of 2015 in O.S.No.4 of 2015 filed under Order XXXIX Rules 1 and 2 read with Section 151 of Code Of Civil Procedure for temporary injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of Acs.10.35 guntas of land situated at Mator village within the Grampanchayat limits of Itkepally Village, Raikode Mandal of Medak District more fully described in the schedule annexed to the plaint and the petition.

2. I have heard the submissions of the learned counsel for the defendants 1 and 2, who are the appellants in the respective civil miscellaneous appeals. I have also heard the submissions of the learned counsel for the plaintiff/respondent in both these appeals. I have perused the material record.

3. The sole plaintiff had brought the suit against defendants 1 and 2 for specific performance of an agreement of sale dated 01.08.2014 said to have been executed by the first defendant and for a direction to the second defendant to join the first defendant in execution of the sale deed and for other reliefs. Both the defendants are resisting the suit. In the said suit, the plaintiff had filed the aforementioned interlocutory application. The said application was also resisted by defendants 1 and 2. However, by the order impugned, the trial Court had allowed the said interlocutory application. The aggrieved defendants 1 and 2 had, therefore, preferred these two appeals.

4. The case of the plaintiff is that the first defendant had sold the plaintiff schedule

property under exhibit P1-the agreement of sale dated 01.08.2014 for a valuable consideration mentioned therein having received Rs.12,00,000/- as part of sale consideration and advance; and, that the said property covered by the said agreement of sale was delivered to the plaintiff; and, that later, the property in an extent of Acs.3.13 guntas in survey No.13/AA, which is a part of the plaint schedule property, was sold by the first defendant to the second defendant under a regular sale deed dated 30.09.2014; and, that a copy of the same was exhibited as exhibit P3 and that in the circumstances stated in the plaint, the plaintiff is constrained to bring the suit.

5. On the other hand, the case of the 1st defendant is that he had never executed any agreement of sale in favour of the plaintiff and that it is a rank forgery and that he had sold the property covered under the original of exhibit P3 to the second defendant. The case of the 2nd defendant is that he had purchased the property under the regular registered sale deed dated 30.09.2014 from the 1st defendant for valuable consideration and that he is in possession of the said extent purchased by him under the said deed of sale.

6. As already noted, the plaintiff had filed the aforementioned Interlocutory Application along with the suit before the trial Court. The trial Court, while passing the impugned order having extracted the pleadings and the contentions of both the parties had only made the following observations in paragraph no.9 of the impugned order:-

“Considering the rival contentions of both sides and the documentary evidence adduced by both sides, I am of the opinion that real facts will come out only after commencement of trial and after examining the witnesses and documentary evidence adduced by both the parties. At this stage, if the interim injunction orders are vacated and if the suit schedule properties are alienated to any third-parties by the respondents/defendants, the very purpose of suit will be defeated and it would lead to multiplicity of proceedings. Therefore, the interim injunction orders granted by this Court, dt: 22.01.2015 against the respondents/defendants restraining them from interfering with his peaceful possession and enjoyment of the suit schedule property in favour of third parties in favour of third parties are made absolute till disposal of the suit. Accordingly, this petition is disposed off.”

7. A plain reading of the said paragraph of the impugned order would show that the approach of the trial Court is wholly unsatisfactory and, therefore, the order is unsustainable, both under facts and in law. Though the interlocutory application is filed seeking a temporary injunction in regard to possession, the trial Court had observed that if the interim injunction orders are vacated and if the suit schedule properties are alienated to any third-parties by the respondents/defendants, the very purpose of the suit will be defeated, and had ultimately granted injunction without adverting to the facts, the documents exhibited by both the sides and also without recording any reasoned findings as to whether or not the cardinal principles, which are required for granting a temporary injunction are satisfied.

8. Having regard to the submissions of the learned counsel and having perused the impugned order, this Court is satisfied that it is just and fair to allow both these appeals and set aside the impugned order and remit the interlocutory application to the trial Court for a fresh decision on merits in accordance with the procedure established by law.

9. Accordingly, both the appeals are allowed and the impugned order is set aside. The interim order granted by the trial Court on 22.01.2015 shall be in force till the trial Court disposes of the temporary injunction application afresh on merits. However, the trial Court is directed to decide afresh and on merits the aforementioned Interlocutory Application within one month from the date of the receipt of a copy of this judgment. It is needless to mention that this Court has not gone into the merits of the matter as it was unnecessary and hence, the trial Court shall dispose of the temporary injunction application on merits and uninfluenced by the observations, if any, made in this Judgment. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in both these appeals shall stand dismissed.

M. Seetharama Murthi, J

13th August, 2015

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Note:-

Furnish C.C. by 19.08.2015.

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