

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE SMT JUSTICE ANIS

C.M.A NO.1074 OF 2014

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ORDER: (*Per Hon'ble Justice Nooty Ramamohana Rao*)

This miscellaneous appeal has been preferred by the first defendant/first respondent in the Civil Suit No.137 of 2012 and the Interlocutory Application No.163 of 2012 moved therein by the first respondent/plaintiff herein. I.A.No.163 of 2012 is an application taken out under Order 39 Rule 1 and 2 for grant of an interim injunction to restrain the two defendants/respondents from alienating Villa No.B-4 in the gated community proposed to be developed.

The first respondent herein is the plaintiff in the suit. It is his case that the first defendant in the suit, the present appellant, owns land of an extent of Ac.6.07 guntas situated in Surangal Village. The first defendant/appellant entered into an agreement of sale cum general power of attorney with the second defendant/second respondent herein on 23.05.2008 for purposes of developing the land and for laying out gated community by constructing villas, club houses thereon. That agreement dated 23.05.2008 is marked as Ex.A-1. In furtherance of the said agreement (Ex.A-1), the second defendant entered into an agreement of sale with the plaintiff/first respondent herein on 22.10.2008 (which is marked as Ex.A-2), undertaking to sell and transfer Villa No.B-4 in favour of the plaintiff/first respondent. A sum of Rs.50.00 lakhs is stated to have been received representing part of the sale consideration amount. Ex.A-2 agreement also spelt out that in case of breach thereof, the amount of Rs.50.00 lakhs received thereunder would be refunded together with interest at 18% and liquidated damages of Rs.10.00 lakhs would also be paid. Alleging breach of the terms contained in Ex.a-2 agreement, the civil suit is filed

for recovery of the money and the interlocutory application seeking injunction insofar as B-4 Villa is concerned is also taken up.

The first respondent/appellant herein has contested the matter by pointing out that after Ex.A-1 is entered, a further supplemental agreement is entered into by him with the second defendant/second respondent herein on 07.07.2009 and finding that the second defendant/second respondent herein has played fraud upon the first defendant/appellant herein, Ex.A-1 was cancelled on 27.01.2010. It is the specific case of the first defendant/appellant herein that he is not in the know of the factum of execution of Ex.A-2 agreement and also the receipt of part sale consideration amount of Rs.50.00 lakhs thereunder. He resisted the injunction application on the ground that after the cancellation of Ex.A-1 on 27.01.2010, he started independently developing the project and hence the liabilities of the second defendant/second respondent herein vis-a-vis the plaintiff/first respondent herein, is a matter to be sorted out amongst themselves and he has nothing to do with it. It is also urged that if the entire agreements are read in a proper perspective, particularly, keeping in view the terms contained in Clauses 27 & 28 of Ex.A-1, it becomes crystal clear that the first defendant/appellant herein is no way responsible for the *lis* between the plaintiff/first defendant and the second defendant/second respondent herein. It was further contended that no part of sale consideration for the sale of Villa B-4 is received by the appellant, grant of injunction causes any amount of hardship and difficulty to the appellant and the Court below has failed to appreciate the same properly. Hence, it is urged that the injunction granted by the Court below should be dissolved.

Alternatively, Sri B. Vijayasen Reddy, learned counsel for the appellant would urge that two plots of land marked in the lay out as F-3 & F-4 may be treated as attached instead of granting an injunction as against Villa B-4. This suggestion has been made as the appellant

had after canceling agreement Ex.A-1 on 27.01.2010 has secured investment on his own and started developing the lay out and so far 16 or 17 of the Villas out of 27 have been got completed and necessary alienations thereof are also intended to be made. Therefore, the grant of injunction may adversely impact the appellant herein.

Most crucially the second defendant/second respondent herein has remained exparte before the Court below. He is not contesting the matter. In the above backdrop, as on the date of execution of agreement Ex.A-2 on 22.10.2008, Ex.A-1 agreement of sale cum general power of attorney was subsisting. It was subsequently modified on 07.07.2009 and ultimately cancelled on 27.01.2010. Therefore, as on the date of execution of Ex.A-2 if certain obligations have sprung up, all due to undertaking of such obligations in accordance with the terms of grant of general power of attorney by the appellant herein in favour of the second defendant/second respondent herein, by constituting him as his agent, the same may have to be worked out and given effect to, notwithstanding the cancellation of Ex.A-1 on 27.01.2010. We do not wish to elaborate any further thereon as the civil suit is still pending. The fact remains that Ex.A-2 has evidenced payment of part sale consideration running to Rs.50.00 lakhs by the plaintiff. His interests vis-à-vis the gated community project are required to be protected. At the same time, the appellant herein has alleged that he has been duped by the second defendant/second respondent herein and his remedy vis-à-vis second defendant/second respondent may also have to be worked out. However, we would appreciate the hardship liable to be encountered by the appellant herein, if Villa bearing No.B-4 in the lay out is developed entirely by the appellant as asserted and claimed by him, and unsuspectingly if he has also entered into an agreement of sale in respect thereof with some other third parties, grant of injunction may amount to a hardship for him. Therefore, the suggestion of Sri B.

Vijaysen Reddy to modify the injunction by restraining the appellant herein not to alienate Plot Nos.F-3 & F-4 in favour of any third parties, without specifically obtaining the leave of the Court and also by not showing them as open plots, which are liable to be compulsorily provided for community purposes in a lay out, the ends of justice would get adequately served. Therefore, while dismissing this C.M.A., we modify the grant of injunction by the Court below with regard to Villa B-4, by refraining the appellant before us from alienating or disposing of or encumbering in any manner Plot Nos.F-3 & F-4 or reserving them as open plots for community purposes in the lay out.

In terms of the above order, this C.M.A. stands dismissed, but however without costs.

Consequently, miscellaneous applications pending if any shall stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

03.08.2015
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