

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL MISCELLANEOUS APPEAL NO.900 OF 2016

J U D G M E N T
(Per Sri Justice Sanjay Kumar)

This Civil Miscellaneous Appeal under Order 43 Rule 1 CPC arises out of the order dated 21.09.2016 passed by the learned Judge, Family Court-cum-VIII Additional Sessions Judge, Mahabubnagar, in I.A.No.215 of 2016 in O.S.No.58 of 2016. The said I.A. was filed by the plaintiff in the suit under Order 39 Rules 1 and 2 CPC seeking an interim injunction restraining the respondent from creating third party rights or alienating the suit schedule property during the pendency of the suit. By the order under appeal, the trial Court dismissed the I.A. Aggrieved thereby, the plaintiff preferred this appeal.

O.S.No.58 of 2016 was filed for a direction to the defendant to re-convey the suit schedule lands in favour of the plaintiff, by way of specific performance of the agreement/Additional Memorandum of Understanding dated 25.01.2013, by executing a registered sale deed in favour of the plaintiff.

Heard Sri Mahadev Anyamrabhatla, learned counsel for the appellant/plaintiff, and Sri Satish Kumar Kuna, learned counsel for the respondent/defendant.

Parties shall hereinafter be referred as arrayed in the suit.

It is an admitted fact that the sale deeds in relation to the suit schedule property were executed in favour of the defendant as long back as in the years 2008 and 2009. The Additional Memorandum of Understanding dated 25.01.2013, under which

the plaintiff now claims re-conveyance, states to the effect that in the event the defendant failed to pay the sale consideration to the plaintiff in relation to the suit schedule lands, he undertook to re-convey the said lands within a period of six months from the date of execution of the said Additional Memorandum of Understanding. The plaintiff admittedly filed the suit only in 2016. Further, the plaint discloses that the plaintiff issued a notice to the defendant only in February, 2016. There is no indication of any action having been taken by the plaintiff till then.

Sri Satish Kumar Kuna, learned counsel for the defendant, would state that the documents on the basis of which the plaintiff is now asserting a claim are forged. This aspect of the matter would have to be gone into during the trial and does not warrant consideration by this Court at the present stage.

Perusal of the order under appeal reflects that the trial Court was of the opinion that the plaintiff failed to make out a *prima facie* case for grant of an injunction. We find no grounds to interfere with this conclusion of the trial Court. The issue of possession which was adverted to by the trial Court may not be of relevance, but the plaintiff failed to mention as to why he did not come forward for all these years if the defendant did not live up to his obligations under the agreements allegedly entered into by and between the parties. That apart, the fact also remains that the defendant is protected by registered sale deeds dating back to the years 2008 and 2009 and no cause is made out at present to interdict his rights in relation thereto.

We therefore find no merit in this appeal and it is accordingly dismissed. Pending miscellaneous petitions, if any,

shall also stand dismissed in the light of this final order. No order as to costs.

Needless to state, any alienations during the pendency of the suit would be covered by Section 52 of the Transfer of Property Act, 1882. We also make it clear that we have not ventured any opinion on the merits of the matter and the trial Court is at liberty to adjudicate the suit on merits and in accordance with law, uninfluenced by any observations made in this order.

SANJAY KUMAR, J.

M.S.K.JAISWAL, J

15th DECEMBER, 2016.

PGS

