

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.392 of 2016

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C.M.A No.403 of 2016

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Date:07.06.2016

C.M.A No.392 of 2016:

Between:

M/s. Theme Ambience Constructions (P)
Ltd., a company incorporated under the
Companies Act 1956, Having its
Registered office at 8-2-293/8/2/L-B, Plot
No.1 B, Road No.12, MLA Colony,
Banjara Hills, Hyderabad-34, Rep by its
Director anish Kedia.

... Appellant.

AND

Dr. Tirumala R.C. Row and others.

... Respondents.

C.M.A No.403 of 2016:

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Konda Venkataramana and others.

... Appellants.

AND

Dr. Tirumala R.C. Row and others.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.392 of 2016

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COMMON JUDGMENT:

These two appeals are preferred questioning order dated 13-04-2016 in I.A.No.2854/2015 in O.S.No.964/2015 on the file of III Additional Chief Judge, City Civil Court, Hyderabad.

2. CMA No.403/2016 is preferred by D1, D6, D13, D14, D26 & D35, D38 and CMA No.392/2016 is preferred by D4.

The first respondent herein filed O.S.No.964/2015 for the relief of permanent injunction in respect of Acs.09-17 guntas of land in Survey No.102/4/2, Road No.12, Banjara Hills, Hyderabad. The claim of the plaintiff is that suit schedule property was purchased through an agreement of sale dated 18-12-1993 through GPA holder of legal heirs of Jatin Raj Jain and since then, he has been in possession and enjoyment of the property as the property was delivered on the date of agreement of sale i.e., 18-12-1993. According to plaintiff, appellants herein and others started interfering with his possession and enjoyment and therefore, he constrained to file the suit for permanent injunction and pending disposal of the suit, he sought for temporary injunction. The appellants herein resisted the claim of the plaintiff on the ground that first respondent in the injunction petition purchased the very same property from the GPA holder of legal heirs and legal heirs of late Jatin Raj Jain through a registered agreement of sale dated 18-04-2006 and that it is in possession and enjoyment of the suit schedule property. On these contentions, the trial Court conducted enquiry and granted injunction in favour of plaintiff. Questioning the same, present two appeals are filed.

3. Heard arguments of both advocate for appellants and Advocate for first respondent-plaintiff.

4. As seen from the impugned order though there is a serious dispute with regard to the agreement of sale in favour of plaintiff, but

the trial Court, without examining the correctness of it and without examining *prima facie* case in favour of plaintiff i.e., whether he was in possession of the property as on the date of filing of the suit, only examined the correctness of the plea of the defendants and their documents and by disbelieving those documents, granted relief of injunction in favour of plaintiff.

As rightly pointed out by learned Senior Counsel Sri Vedula Venkata Ramana in a case of temporary injunction, it is for the plaintiff to establish the three ingredients namely; *prima facie* case, balance of convenience and irreparable loss and it is not for opposite party to disprove them. As seen from the material, the Presiding Officer completely ignored these principles and only examined the correctness of the case of opposite party instead of examining the plaintiff's case. For these reasons, I do not want to go into the other aspects of the matter as I feel it is a fit case to set aside the impugned order dated

13-04-2016 and send back the case to the trial Court for fresh consideration giving opportunity to all the parties. Another irregularity noticed is in an interlocutory application, the Courts are expected to examine the documents relied on by both parties so also third party affidavit if any filed. In this case, it appears third party affidavit of GPA holder is filed, but the Court below has not given any findings as to the correctness of the said third party affidavit and failed to give marking to the documents relied on by both parties.

5. Learned Senior Counsel represented that instead of sending the matter to same Court as the same Presiding Officer is there, it may be sent to any other Court of competent jurisdiction.

6. Considering the request of the learned Senior Counsel, the matter is remitted to Chief Judge, City Civil Court, Hyderabad for disposal in accordance with law. Third Additional Chief Judge, City Civil Court shall send the entire record in O.S.No.964/2015 to Chief

Judge, City Civil Court and on receipt of record, the Chief Judge, City Civil Court shall give opportunity to both parties to address their case and mark the admissible documents relied on by both parties and dispose of the application within one month from the date of receipt of record, without being influenced by any of the observations made by this Court.

7. Both the appeals are allowed accordingly. No costs.

8. As a sequel, miscellaneous petitions, if any, pending in these appeals, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:07.06.2016

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