

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

C.M.A. No.559 OF 2015

DATED:12-09-2016

Between:

K.M. Gourish
and another ... Appellants

And

K.M. Pratap ... Respondent

COUNSEL FOR THE APPELLANTS: Gaddam Srinivas

COUNSEL FOR THE RESPONDENT: Mr. Srinivasa Rao Bodduluri



THE COURT MADE THE FOLLOWING:

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

At the interlocutory stage, the C.M.A. is taken up for hearing with the consent of the learned counsel for both the parties.

The respondent filed O.S. No.1000 of 2014 on the file of the XVI Additional District & Sessions Judge, Ranga Reddy District, at Malkajgiri, for a declaration that the gift deeds executed by appellant No.1 in favour of appellant No.2, his son, are void, unenforceable and to cancel the same. Pending the suit, he has also filed I.A. No.574 of 2014 for a temporary injunction restraining the appellants from raising construction in the suit schedule property. The lower Court has allowed the said application. Feeling aggrieved by the said order, the appellants have filed this appeal.

In our opinion, so long as the gift deeds remain in force, the appellants are entitled to raise construction strictly in accordance with the plan sanctioned by the Greater Hyderabad Municipal Corporation. The learned counsel for the appellants submitted that his clients have even given an undertaking in writing that in the event the respondent succeeds in the suit, they will remove the building at their own cost. This submission is not disputed by Sri Srinivas Bodduluri, learned counsel for the respondent. Since the appellants have undertaken not to alienate the property even after completion of the construction and agreed to remove the construction at their own cost if the respondent succeeds in the suit, the elements of balance of convenience and irreparable injury lie in their favour.

The order under appeal is accordingly set aside with the direction that the appellants shall remove the construction, if any, made during the pendency of the suit, without claiming any equities, at their own cost, as

undertaken by them before the lower Court, if the respondent insists for such removal in the event of the latter's success in the suit.

The C.M.A. is accordingly allowed.

As a sequel to disposal of the C.M.A., C.M.A.M.P. No.1144 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

12-09-2016

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