

HONOURABLE SRI JUSTICE S.RAVI
KUMAR

C.M.A.No.889 OF 2015

Dated 1-6-2016

Between:

Mohd. Fatroo.

..Appellant.

And:

Sakina Khanam and another.

..Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.889 OF 2015

JUDGMENT:

This appeal is preferred is preferred questioning the order dated 26th October, 2015 in I.A.No.39 of 2015 in O.S.No.4 of 2015 on the file of V Additional District Judge, Medak at Sanga Reddy.

Appellant herein filed O.S.No.4 of 2015 for specific performance of agreement of sale dated 1-8-2014 and in that suit, he filed I.A.No.39 of 2015 seeking temporary injunction restraining respondents/defendants from interfering with the peaceful possession and enjoyment of suit schedule property pending disposal of the suit.

Trial court granted exparte temporary injunction on 22-1-2015 and after respondents filed their counter heard the application and decided it on merits. Trial court on a consideration of material on record vacated injunction order granted on 22-1-2015 and dismissed the application. Now aggrieved by the same, present appeal is preferred.

Heard both sides.

Advocate for appellant submitted that the court below failed to see that plaintiff purchased the property under an agreement of sale dated 1-8-2014 and as per clause 12 of the said agreement, possession was delivered to the plaintiff on the date of agreement and pattadar pass books and title

deeds were also handed over but in spite of producing those documents, trial court without considering the material, dismissed the application. He further submitted that when third party affidavits are filed supporting the version of the plaintiff, trial court discarded those affidavits on the ground that they are not the public documents. He further submitted that as per the provisions of C.P.C., interlocutory applications have to be decided on the basis of affidavits but the trial judge contrary to the said provision discarded the third party affidavits without any valid reasons. He further submitted that there is absolutely no discussion of any of the aspects contended by plaintiff including the documents and the order of the trial court is liable to be set aside.

On the other hand, advocate for respondents submitted that the agreement of sale relied on by plaintiff is not admissible for want of registration. He further submitted that though trial court was not right in using the terminology of public documents and private documents with reference to the affidavits but it rightly refused to grant any injunction. It is further submitted that the very same property was sold to D.2 through a registered sale deed but without seeking any cancellation of said document, the suit itself is not maintainable. It is further submitted that trial court rightly dismissed the application and that there are no grounds to interfere.

Now the point that would arise for my consideration in this appeal is whether the order of court below is legal, correct and proper?

POINT:

It is the specific case of plaintiff that suit schedule property was purchased under an agreement of sale and as the executant is not coming forward to register sale deed, he filed the suit for specific performance to direct both defendants to execute sale deed in favour of plaintiff. Here D.2 is impleaded since a registered sale deed was executed in favour of D.2 on 30-9-2014.

Now the objection of respondents is that sale

agreement relied on by plaintiff is not admissible in evidence for want of registration. This court in C.R.P.No.1658 of 2015 observed that this agreement can be received for collateral purpose namely proving possession but the grievance of appellant is that this document was not at all considered in deciding possession over the suit schedule property.

As seen from the impugned order, trial court completely ignored recitals in the sale agreement in respect of possession, so also, third party affidavits filed supporting the plea of possession. As rightly pointed out by advocate for appellant, Interlocutory Applications have to be decided on the basis of third party affidavits, and discarding them on the ground that they are not public documents, is highly objectionable. Trial court committed grave mistake in treating the third party affidavits as private documents. Affidavits are statements on oath and the courts have to examine them on the basis of material on record and decide as to the correctness of those statements, but they cannot be discarded on the ground that they are private documents. In fact, they are not documents, they have to be treated as statements on oath.

As seen from the material, this court while ordering notice to the respondents in this appeal granted status quo order.

Now as the suit itself is ripe for trial, I feel, by continuing that status quo order, the court below can be directed to dispose of the suit within a stipulated time so that the controversy with regard to admissibility of the document and other aspects can be decided on merits in stead of deciding them interlocutory stage.

For these reasons, trial court is directed to dispose of the suit as expeditiously as possible preferably within a period of eight months from the date of receipt of a copy of this order and till the disposal of the suit, status quo order granted by this court on 1-12-2015 shall be in force. It is made clear that the above order is passed without prejudice to the rights of both parties and that trial court shall dispose

of the suit independently without being influenced by any of the observations made in this order.

Appeal is accordingly disposed of. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 1-6-2016.

Dvs.

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