

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

CMA.No.584 of 2016

Date:03.8.2016

Between:

B.Sugunamma,
W/o Late B.Gopalakrishna Reddy

..... Appellant

And:

Shirdi Sai Seva Samithi Public Charitable
Trust Office, Saidabad, Hyderabad, repled by
its Chairman-V.Sambasiva Sastry

....Respondent

Counsel for the appellant: Mr. M.V.Suresh

Counsel for the respondent: None appeared

The Court made the following:

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

With the consent of the learned counsel for the appellant, we have heard the Civil Miscellaneous Appeal itself at the interlocutory stage.

The appellant executed a gift deed on 18.4.2012 in favour of the respondent-trust conveying the suit schedule property. Three years later, she has filed O.S.No.41 of 2015 in the Court of the Special Sessions Judge for trial of cases under SC/ST (POA) Act, 1989-cum-VII Additional District and Sessions Judge at L.B.Nagar, Ranga Reddy District for a decree of cancellation of the afore-mentioned gift deed and also for perpetual injunction restraining the respondent from interfering with the suit lands. Pending the suit, she has filed two applications, viz., I.A.No.101 of 2016 to restrain the respondent from alienating, transferring, leasing, changing the nature or creating third party interest in the suit schedule property pending the suit and I.A.No.102 of 2016 under Order-XXVI Rule-9 of the Code of Civil Procedure for appointment of an Advocate-Commissioner to note down the number of cows existing in the suit schedule property. The respondent opposed both these applications. By order, dated 06.4.2016, the lower Court has dismissed both these applications. Challenging the order passed in I.A.No.101 of 2016, the present appeal is filed.

Mr. M.V.Suresh, learned counsel for the appellant, has strenuously argued that the lower Court has committed a serious error in dismissing I.A.No.101 of 2016 on extraneous reasons. He has further submitted that since the very validity of the decree itself is subject matter of the suit, the elements of balance of convenience and irreparable injury lie in favour of the appellant for grant of injunction, lest, third party interests would come in pending the suit causing irreparable injury to interests of the appellant.

Upon carefully considering the above submissions of the learned counsel for the appellant, we do not find any merit therein.

It is not in dispute that the appellant has executed the afore-mentioned gift deed in favour of the respondent-trust. However, three years thereafter, she has filed the afore-mentioned suit for cancellation of the said gift deed on the ground that under the pressure of her son, who is a Shirdi Sai devotee, she executed the same. With the execution of the gift deed, title in the property passed to the respondent. Whether the gift deed was validity executed or not, needs to be adjudicated in the suit. Till the gift deed is declared as illegal or unenforceable, no fetters on the right of the respondent, who is a donee, could be placed on the enjoyment of the property gifted to it.

Even though the appellant claims to be in physical possession of the suit schedule property, the same has no relevancy in adjudicating the application filed by her before the lower Court as, the present application does not relate to injunction restraining the respondent from interfering with her alleged possession of the suit schedule property. Indeed, such an injunction earlier granted by the lower Court in favour of the appellant in I.A.No.216 of 2016 was suspended by this Court in CMA.No.201 of 2015.

Even if the respondent, who is presently the lawful owner of the suit schedule property, transfers the same to a third party, interests of the appellant are protected by the doctrine of *lis pendenc* adumbrated under Section-52 of the Transfer of Property Act, 1882.

On a careful consideration of the facts of the case, we do not find the elements of *prima facie* case, balance of convenience and irreparable injury in favour of the appellant for granting the relief claimed by her.

Subject to the above observations, the Civil Miscellaneous Appeal is dismissed.

As a sequel to dismissal of the appeal, CMAMP.No.1188 of 2016 filed by the appellant for interim relief is dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

03rd August 2016
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