

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS

C.M.A.No.28 OF 2016

JUDGMENT: *(Per Hon'ble Sri Justice Sanjay Kumar)*

This Civil Miscellaneous Appeal arises out of the order dated 26.10.2015 passed by the learned III Additional District Judge, Karimnagar, in I.A.No.619 of 2015 in O.S.No.102 of 2015.

The appellant is the sole defendant in the said suit. The subject I.A was filed by the respondent/plaintiff under Order XXXIX Rules 1 and 2 C.P.C for an injunction restraining the appellant/defendant from alienating or creating a charge over the suit schedule property pending disposal of the suit. By the order under appeal, the trial Court made absolute the ad-interim injunction granted earlier restraining the appellant/defendant from alienating the suit schedule property till disposal of the suit.

Perusal of the order under appeal reflects that the respondent/plaintiff filed the subject suit for specific performance of the alleged agreement of sale dated 16.02.2015. According to him, the entire sale consideration due and payable under the said agreement was already paid but despite the same, the appellant/defendant did not register the property in his name. The appellant/defendant denied the alleged sale agreement and asserted that it was a forgery. He further stated that he also gave a complaint to the police in this regard which resulted in registration of Crime No.298 of 2015 on the file of Vemulawada Police Station. Faced with these rival claims, the trial Court surprisingly did not even record as to whether it found a *prima facie* case, balance of convenience in favour of the respondent/plaintiff and the irreparable

injustice that he would suffer in the event an injunction was not granted. On the other hand, the trial Court merely stated that if the appellant/defendant was not restrained from alienating the suit schedule property it would cause multiplicity of litigation, which would prejudice the respondent/plaintiff.

We are of the opinion that the order under appeal cannot be sustained as the trial Court lost sight of the essentials to be adjudicated upon at the stage of granting an interim injunction. In the absence of such an exercise by the trial Court, the order under appeal cannot be sustained. Insofar as multiplicity of litigation is concerned, the same can be avoided by directing the appellant/defendant to put the respondent/plaintiff on notice of the details of the alienee, in the event it resorts to alienation pending the suit proceedings, so as to enable the respondent/plaintiff to implead the said alienee in the present suit itself. This would avoid the necessity of the respondent/plaintiff filing a fresh suit in relation to the said alienation, if any. Further, the doctrine of *lis pendens* would be squarely applicable to any such alienation and the respondent/plaintiff would stand protected, in any event.

Subject to the above observations, the order under appeal is set aside and the appeal is allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date: 27.10.2016

ANIS, J

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