

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.842 of 2014

JUDGMENT:

This appeal is preferred questioning order dated 08.08.2014 in I.A.No.589 of 2013 in O.S.No.190 of 2013 on the file of V Additional District Judge, Karimnagar. Appellants herein are respondent Nos.2 to 4/defendant Nos.2 to 4 before the Court below.

2. Parties are hereinafter referred to as plaintiffs and defendants as arrayed in the suit for convenience sake.

3. Plaintiff filed O.S.No.190 of 2013 for the relief of permanent injunction contending that he is lessee of the suit schedule property and defendants are interfering with his enjoyment of the suit schedule property and in that suit, he filed I.A.No.589 of 2013 seeking temporary injunction. The Court below on a consideration of the documents, which are marked as Exs.P.1 to P.19, confirmed interim injunction granted earlier and aggrieved by that defendant Nos.2 to 4 preferred the present appeal.

4. Heard arguments.

5. The main objection raised on behalf of defendants is that when the defendants specifically contended that tenant/plaintiff is not paying rents and there are arrears of about Rs.15,00,000/-, the Court below without considering that aspect granted temporary injunction solely on the ground that plaintiff is in possession of the property and

such possession has to be protected and the remedy of defendants is to file a separate suit for recovery of arrears. It is submitted though two Division Bench decisions of this Court are cited before the Court below for the principle that a person, who is in default of rents, is not entitled for the equitable relief of injunction, the Court below has not properly considered those two decisions and granted interim injunction against defendants.

6. Advocate for plaintiff submitted that there are disputes between the owners and tenant is paying rent to 2nd respondent under proper receipts and that there are no arrears and the allegation of arrears is not at all correct. She further submitted that Court below has rightly granted temporary injunction as there is a threat of dispossession from defendants and as the injunction is only prayed to restrain defendants till plaintiff is evicted under due process of law.

7. Now the point that would arise for my consideration in this appeal is

Whether the order dated 08.08.2014 in I.A.No.589 of 2013 in O.S.No.190 of 2013 on the file of V Additional District Judge, Karimnagar, is legal, proper and correct?

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POINT :

8. I have perused the material papers including the impugned order dated 08.08.2014.

9. In the counter affidavit filed on behalf of respondent

Nos.2 to 4 in reply to the affidavit filed in support of injunction application, it is specifically averred that plaintiff has not paid rents since the date of commencement of lease and there is a due of Rs.15,20,000/- towards rent for 19 months and plaintiff has been evading to pay the same on one pretext or the other. When such an allegation is made on oath and contended that plaintiff is not entitled for the equitable relief of injunction on account of arrears of rent tuning to a sum of Rs.15,20,000/-, no reply affidavit is filed disputing the same by plaintiff. But, the Court below without looking into these aspects simply carried away with the fact that plaintiff is in possession of the property and possession has to be protected. For granting temporary injunction Court has to bear in mind three cardinal principles viz., prima facie, balance of convenience and irreparable loss and these aspects are not at all dealt by the Court below. On a scrutiny of the material, instead of going into merits and demerits of the case, I feel that it is a fit case where the impugned order dated 08.08.2014 is liable to be set aside and the matter has to be remitted back to the Court below for fresh consideration after giving opportunity to both parties to file additional affidavits, if any, and that the Court below shall decide the same afresh on merits, by considering the correctness of the arrears pleaded.

10. For these reasons, this appeal is allowed and impugned order dated 08.08.2014 is set aside, matter is

remitted back to the Court below and Court below shall restore I.A.No.589 of 2013 afresh consider the same after giving opportunity to both parties to file any additional affidavits and dispose of application within three months from the date of this order.

11. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

25th February 2016.

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