

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

CIVIL MISCELLANEOUS APPEAL No.41 of 2014

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

The plaintiff in O.S.No.126 of 2013 on the file of the learned Special Sessions Judge for Trial of Cases under SCs and STs (Prevention of Atrocities) Act, 1989-cum-Additional District Judge, Khammam, is before this Court aggrieved by the dismissal of its I.A.No.862 of 2013 filed in the said suit for a temporary injunction under Order 39 Rule 1 CPC restraining the respondent/defendant from alienating the petition schedule property by way of sale, gift or mortgage pending the disposal of the suit.

The suit, O.S.No.126 of 2013, was filed seeking specific performance of the unregistered agreement of sale dated 09.10.2011. It is an admitted fact that only a quarter of the sale consideration due and payable under the said agreement of sale has been paid as on date. The trial Court took note of the fact that several triable issues arise for consideration in the suit, including the issue of jurisdiction. However, the trial Court did not find the balance of convenience in favour of the appellant/plaintiff as the doctrine of *lis pendens* would safeguard its interests. The trial Court also observed that the respondent/defendant informed the appellant/plaintiff of the fact that the property had been sold in favour of one Narsaiah but, despite such intimation, the said third party was not impleaded to the suit proceedings. Holding so, the I.A. was dismissed.

Sri B. Vijaysen Reddy, learned counsel for the appellant/plaintiff, would contend that in the absence of an injunction restraining it from alienating the suit schedule property, the respondent/defendant may do

so leading to unnecessary multiplicity of proceedings and involvement of third party interests. Learned counsel would further contend that the transaction in favour of Narsaiah was only by way of an agreement of sale and that there was no conveyance of title.

However, given the fact that the appellant/plaintiff has to establish its case for specific performance of the suit agreement of sale, we are inclined to agree with the opinion expressed by the trial Court that the balance of convenience does not lie in its favour. As rightly pointed out in the order under appeal, the doctrine of *lis pendens* would come to the rescue of the appellant/plaintiff in the event the respondent/defendant opts to alienate the suit schedule property during the pendency of the suit proceedings. To avoid multiplicity of proceedings and the necessity of filing a separate suit, we make it clear that it would be open to the appellant/plaintiff to implead the alienees, if any, in relation to the suit schedule property in the present suit itself at the appropriate stage. Needless to state, it would be open to the appellant/plaintiff to implead Narsaiah at least at this stage. The respondent/defendant shall give intimation to the appellant/plaintiff in the event of any further alienations being effected in relation to the suit schedule property.

Subject to the above observations, the order under appeal is confirmed and the civil miscellaneous appeal is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR, J

ANI S, J

20th October, 2016
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