

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No.734 of 2016

26.09.2016

Between:

Mazhar-Ul-Ajaib Mirza

..Appellant

And

Nade Ali Mirza and others

..Respondents

Counsel for the appellant: Mr.N.Vasudeva Reddy

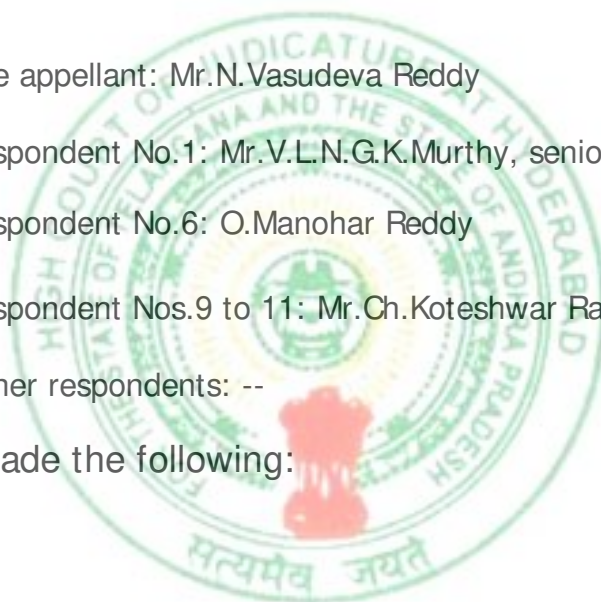
Counsel for respondent No.1: Mr.V.L.N.G.K.Murthy, senior counsel

Counsel for respondent No.6: O.Manohar Reddy

Counsel for respondent Nos.9 to 11: Mr.Ch.Koteswar Rao

Counsel for other respondents: --

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

At the interlocutory stage, the appeal itself is taken up for hearing and disposal, with the consent of the learned counsel for both the parties.

2. We have heard Mr.N.Vasudeva Reddy, learned counsel for the appellant, Mr.V.L.N.G.K.Murthy, learned senior counsel appearing for respondent No.1 and Mr.O.Manohar Reddy, learned counsel for respondent No.6.

3. The appellant and respondent No.1 are the natural brothers. The appellant, who claims to have 1/4th share in the suit schedule property, filed O.S.No.174 of 2016 for cancellation of the agreement of sale-cum-General Power Attorney (G.P.A.) executed by respondent No.1 in favour of respondent No.6 and the registered sale deeds executed by respondent No.6 in favour of respondent Nos.7 to 16. He also filed I.A.No.1440 of 2016 for interim injunction restraining respondent Nos. 1 and 6 to 16 from alienating or otherwise encumbering the suit schedule property, pending the suit. After considering the respective pleadings of the parties and the submissions made by the learned counsel representing them, the lower Court, by a detailed order, dismissed the I.A. for injunction, while vacating the *ex parte ad interim* injunction granted in favour of the appellant.

4. The learned counsel for the appellant has argued that while respondent No.1 is no other than the brother of the appellant, without the latter's consent, he has executed the G.P.A. in favour of respondent No.6 and that the same is wholly illegal. He has further argued that the sale deeds executed by respondent No.6 in favour of respondent Nos.7 to 16 based on such an illegal G.P.A. are also void and unenforceable.

5. The learned counsel for respondent No.6 has submitted that respondent No.1 executed the G.P.A. in favour of respondent No.6 as far back as 19.04.2010. However, for six long years, the appellant has not questioned the said G.P.A. He has further submitted that there is an active collusion between the appellant and his brother – respondent No.1 and they brought out the aforementioned suit to defraud respondent No.6, who has parted with substantial money representing the value of the property in favour of respondent No.1 and that respondent Nos. 7 to 16, in turn, have purchased the properties for valuable consideration from respondent No.1.

6. A perusal of the order of the lower Court would show that it has taken into consideration the relevant facts, based on which it has held that the appellant is not entitled to an order of injunction.

7. Upon considering the facts of the case as discussed above, we are of the opinion that the issue as to whether the agreement of sale-cum-G.P.A. executed by respondent No.1 in favour of respondent No.6 was legal or not and whether the same binds the appellant and the further issue as to whether there was any collusion between respondent No.1 and respondent No.6 as alleged by the appellant or between the appellant and respondent No.6 need to be adjudicated after a full dressed trial. Since the property has exchanged successive hands, first from respondent No.1 to respondent No.6 and then from the latter to respondent Nos.7 to 16, who claimed to be the *bona fide* purchasers for valuable consideration, grant of injunction pending the suit is likely to cause irreparable injury to the interests of respondent Nos.7 to 16. Under Section 52 of the Transfer of Properties Act, 1882 (for short 'the Act'), if

any transfer is made during the pendency of the suit, which affects the interests of the plaintiff, such transfer does not bind him in the event of his success. As this provision protects the interests of the appellant, we are of the opinion that the balance of convenience does not lie in his favour to restrain respondent Nos.7 to 16 from dealing with the subject property as they wish.

8. In the light of Section 52 of the Act, we hold that in the event, respondent Nos.7 to 16 transfer the subject property to third parties, the same shall be at the own risk of the purchasers, and neither the said respondents nor their purchasers shall claim any equities in the event of the success of the appellant in the suit.

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

10. As a sequel to dismissal of the appeal, C.M.A.M.P.No.1498 of 2016 filed by the appellant for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

26th September, 2016
GHN