

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

C.M.A.No.103 of 2016

Date:13.10.2016

Between:

Poosa Narender,
S/o Venkataiah

..... Appellant

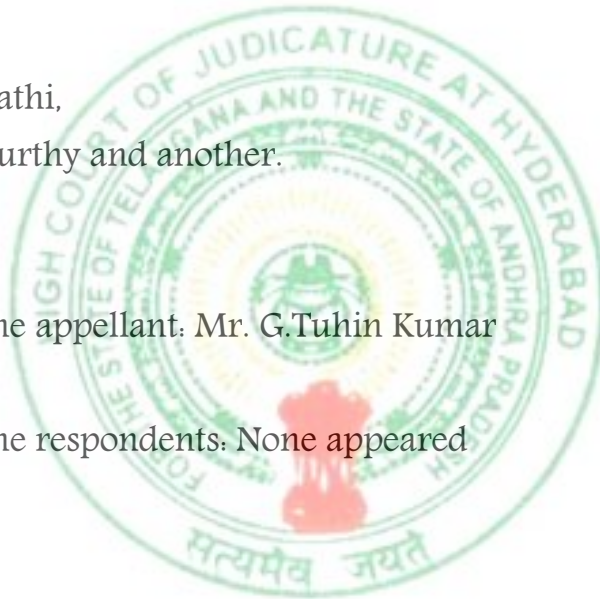
And:

Bajinni Tirupathi,
S/o Krishnamurthy and another.

....Respondents

Counsel for the appellant: Mr. G.Tuhin Kumar

Counsel for the respondents: None appeared



The Court made the following:

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

Feeling aggrieved by rejection of the prayer for grant of interim injunction restraining the respondents from alienating the suit schedule properties to third parties, the plaintiff in O.S.No.134 of 2015 on the file of the learned VII Additional District Judge, Khammam, filed for specific performance of agreement of sale, filed this Civil Miscellaneous Appeal.

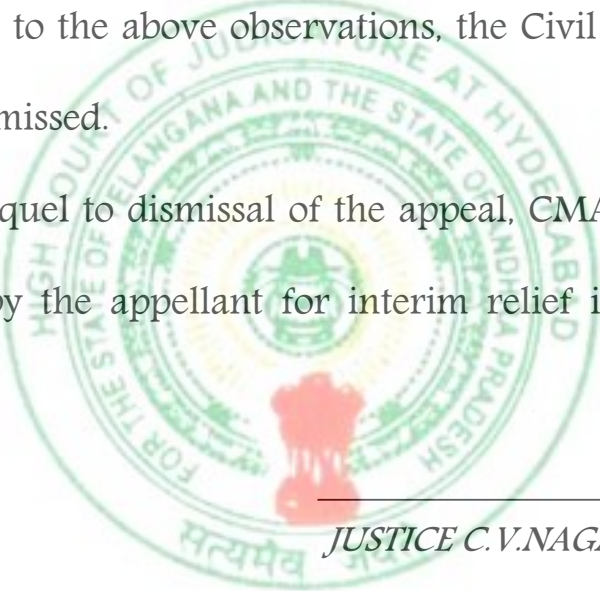
From the facts on record, it is not in dispute that respondent No.2, who is the original owner of the property, has not executed agreement of sale in favour of the appellant. On the appellant's own showing, respondent No.2 has executed an agreement of sale in favour of respondent No.1, who, in turn, allegedly executed an agreement of sale in favour of the appellant.

The lower Court has expressed a doubt, and in our view rightly, as to the maintainability of the suit against respondent No.2, who has no privity of contract with the appellant. However, Mr. G.Tuhin Kumar, learned counsel for the appellant, has submitted that respondent No.1 has entered into an agreement of sale with his client on the assurance given by respondent No.2 that he will execute a sale deed in favour of the appellant. However, these aspects need to be adjudicated in the suit based on the evidence that may be adduced by the respective parties.

On the afore-mentioned facts of the case, the lower Court has not felt inclined to restrain the respondents from alienating the suit schedule property in favour of third parties. On a deep consideration of the facts of the case, we are unable to find any error in the approach of the lower Court. More over, Section-52 of the Transfer of Property Act, 1882, will protect the interests of the appellant as, any *pendente lite* transfer shall not affect his rights if he succeeds in the suit.

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

As a sequel to dismissal of the appeal, CMAMP.No.233 of 2016 filed by the appellant for interim relief is dismissed as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

13th October 2016

DR