THE HON'BLE SRI JUSTICE SANJAY KUMAR
and
THE HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.918 of 2016

JUDGMENT: **(per SK, J)**

Appellants are the plaintiffs in O.S.No.608 of 2015 on the file of the learned XII Additional District Judge, Visakhapatnam. The said suit was filed by them seeking the relief of specific performance of an agreement of sale dated 28.07.2014 executed by defendants 1 and 2 in relation to the suit schedule property. In the alternative, they sought refund of the earnest purchase money paid by them at the time of execution of the said agreement. The plaintiffs filed I.A.No.1077 of 2015 in the said suit seeking an interim injunction restraining the defendants from alienating the suit schedule property to any third party pending disposal of the suit. By the order under appeal, the trial Court dismissed the I.A. Aggrieved thereby, the plaintiffs are before this Court.

Heard Sri P. Rama Sharana Sharma, learned counsel for the appellants/plaintiffs and Sri A. Prabhakar Rao, learned counsel on caveat for respondents 1 and 2/defendants 1 and 2.

Perusal of the order under appeal reflects that respondents 1 and 2/defendants 1 and 2 denied the execution of the agreement of sale though they admitted their signatures therein. According to them, the plaintiffs obtained their signatures on blank stamp papers at the time of lending some amount to them. The trial Court however found that the documentary evidence placed on record by the plaintiffs was sufficient to support their contention with regard to the alleged agreement of sale. However, taking note of the fact that the Andhra Pradesh State Financial Corporation, the third defendant in the suit, had initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the trial Court opined that no injunction could be granted in relation to the petition schedule property.

We find no error or illegality in the order passed by the trial Court. The agreement of sale, which forms the basis of the suit claim, is denied. It would therefore be for the plaintiffs to establish their case before the trial Court. That apart, in the light of the intervening SARFAESI proceedings, the statutory rights of the third defendant cannot be interdicted at this stage.

However, keeping the rival claims of the parties in mind, this Court is of the opinion that the interest of justice would be sufficiently served by requiring respondents 1 and 2/defendants 1 and 2 to keep the appellants/plaintiffs informed of any alienation of the petition schedule property, be it by themselves or in the course of the SARFAESI proceedings. In any event, any sale of the petition schedule property effected by respondents 1 and 2/defendants 1 and 2 independently would be covered by the doctrine of *lis pendens*. Further, to avoid multiplicity of litigation, the appellants/plaintiffs are given liberty to implead any such alienee in the present suit itself so as to obviate the necessity of filing a fresh suit in relation to such alienation. Respondents 1 and 2/defendants 1 and 2 shall also keep the appellants/plaintiffs informed of any development in the SARFAESI proceedings resulting in the execution of a sale certificate in favour of a third party.

The Civil Miscellaneous Appeal is dismissed subject to the above observations.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

24th NOVEMBER, 2016.

ANIS, J

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