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

CIVIL MISCELLANEOUS APPEAL No.993 of 2015

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

This appeal under Order 43 Rule 1 C.P.C. arises out of the order dated 04.12.2015 passed by the learned V Additional District Judge, Jangaon, in I.A.No.116 of 2015 in O.S.No.105 of 2015.

The aforestated I.A. was filed by the respondent herein, the plaintiff in the suit, under Order 39 Rules 1 and 2 C.P.C. seeking a temporary injunction restraining the appellants herein, the defendants in the suit, from alienating, transferring, exchanging or otherwise encumbering the suit schedule property to third parties pending disposal of the suit filed by him for specific performance of the alleged agreement of sale dated 06.05.2014. Appellant No.1/defendant No.1, who is stated to be the executant of the alleged agreement of sale, denied its very execution. The trial Court took note of this and observed that it could not give any finding as to the execution of the alleged agreement of sale without assistance of a handwriting expert about genuineness of the signature contained therein. However, observing that the suit schedule property had been conveyed by appellant No.1/defendant No.1 to his son, appellant No.6/defendant No.6, the trial Court opined that no prejudice would be caused to either of the parties in case an injunction was granted restraining alienation of the suit property pending disposal of the suit and accordingly granted the interim injunction. Aggrieved thereby, the defendants are in appeal.

Heard Sri P. Venu Gopal, learned Senior Counsel representing Dr. Venkat Reddy Donthi Reddy, learned counsel for the

appellants/defendants, and Sri K. Raghuveer Reddy, learned counsel for the respondent/plaintiff.

Sri P. Venu Gopal, learned Senior Counsel, would point out that the very execution of the alleged agreement of sale on the basis of which the suit claim is advanced by the respondent/plaintiff is denied and therefore no cause is made out to injunct the appellants/defendants from alienating the suit property.

Per contra, Sri K. Raghuveer Reddy, learned counsel, would contend that the only mistake pointed out in the alleged agreement of sale is the mention of document number under which appellant No.1/defendant No.1 claims title and that the gift settlement deed executed by appellant No.1/defendant No.1 in favour of appellant No.6/defendant No.6 also replicates the very same mistake. Learned counsel would further justify the grant of injunction by the trial Court on the ground that it would avoid multiplicity of proceedings and prevent third party interests being created pending the disposal of the suit.

Having considered the matter, we are of the opinion that when the very execution of the alleged agreement of sale is in dispute, the balance of convenience would not lie in favour of restraining the appellants/defendants from alienating the property. As the suit has already been instituted not only against the executant of the alleged agreement of sale but also his family members, one of whom (appellant No.6/defendant No.6) is presently the owner of the property under the gift settlement deed executed in his favour by appellant No.1/defendant No.1, the further alienations, if any, made in relation to the suit property would be hit by the doctrine of *lis pendens*. Insofar as the avoidance of multiplicity of proceedings and the necessity of filing an independent suit

is concerned, we are of the opinion that the respondent/plaintiff can as well implead the alienees, if any, of the suit property at the appropriate stage in the present suit itself. We therefore see no justification for continuing the injunction granted by the trial Court at this stage. We however make it clear that in the event any further alienations are made in relation to the suit property, the appellants/defendants shall give prior notice thereof to the respondent/plaintiff so as to enable him to take appropriate steps in the pending suit.

Subject to the observations made hereinabove, the civil miscellaneous appeal is allowed. The interim injunction order dated 04.12.2015 passed by the learned V Additional District Judge, Jangaon, in I.A.No.116 of 2015 in O.S.No.105 of 2015 is set aside.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

_____
SANJAY KUMAR, J

_____
ANIS, J

18th October, 2016
IBL