

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Miscellaneous Appeal No.939 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, ('the Code') by the 2<sup>nd</sup> respondent/ 2<sup>nd</sup> defendant is filed assailing the *ex parte* order of injunction dated 01.11.2016 passed in I.A.No.1916 of 2016 in O.S.No.214 of 2016 on the file of the Court of the learned V Additional District Judge, Rajamahendravaram, East Godavari District.

2. I have heard the submissions of *Sri Ch.Dhanamjaya*, learned counsel for the appellant, and *Sri C.Subba Rao*, learned counsel for the 1<sup>st</sup> respondent/ plaintiff. I have perused the material record. The other respondents are stated to be the co-defendants of the appellant/ 2<sup>nd</sup> defendant.

3. The learned counsel for the appellant/ 2<sup>nd</sup> defendant would contend as follows:

Even in the plaint averments, it is admitted that late Ramalingeswara Rao executed a sale deed dated 16.08.2012 in favour of the 2<sup>nd</sup> defendant concern. He executed the said sale deed with the knowledge and contents of the document. The said sale deed is true, valid and binding on the legal heirs of Ramalingeswara Rao. The plaintiff, the wife of late Ramalingeswara Rao, *inter alia* contended in the suit that the respondents 1 and 2 colluded together and obtained the sale deed by exercising undue influence, coercion and by misrepresentation. However, without seeking cancellation of the said document, the suit for partition was filed as the relief of cancellation of sale deed is barred by time. Further, in the decision of the Supreme Court in *Ramti Devi v. Union of India*<sup>1</sup>, it was held that a sale deed executed for a valuable consideration to discharge the pre-existing debts and which is registered is

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<sup>1</sup> 1995 (1) SCC 198

valid until it is set aside. Therefore, the suit for partition is not maintainable and hence, the trial Court ought not to have granted an order of injunction much less an *ex parte* order of injunction.

4. In the well considered view of this Court, in this Civil Revision Petition, which is filed challenging an *ex parte* order of injunction, this Court is not obligated to examine the merits of the issues involved in the interlocutory application. Admittedly, the 2<sup>nd</sup> defendant entered appearance and filed counter before the trial Court. Instead of approaching this Court and assailing an *ex parte* order, the 2<sup>nd</sup> defendant ought to have approached the trial Court for appropriate relief and ought to have made a request for vacating the order of temporary injunction. However, the 2<sup>nd</sup> defendant did not adopt the said course. Be that as it may. A plain perusal of the order impugned in this revision would show that the trial Court while briefly stating the reasons and also making a mention that sufficient case is made out for dispensing with the urgent notice and that a *prima facie* case is made out for granting an *ex parte* order, granted the *ex parte* order. The trial Court while further directing the 1<sup>st</sup> respondent/plaintiff to supply copies of pleadings and documents as provided under Order 39 Rule 3 (a) of the Code to the defendants 1 to 3, also directed notice simultaneously to the defendants and posted the matter to 10.11.2016.

5. A plain consideration of the order of the Court below would show that it is a reasoned and sustainable order and therefore, the CMA assailing the reasoned *ex parte* order is not maintainable, more particularly, in the absence of special circumstances to entertain an appeal. Viewed thus, this Court finds that the appeal is misconceived and is liable to be dismissed.

6. Accordingly, the Civil Miscellaneous Appeal is dismissed. However, the appellant/ 2<sup>nd</sup> defendant is directed to approach the trial Court and make a request for hearing and disposal of the subject application filed seeking

temporary injunction and also the application, if any, filed for vacating the said injunction order. It is needless to state that the trial Court shall dispose of I.A.No.1916 of 2016 and any other Interlocutory Application filed for vacation of the injunction order, pending if any, as expeditiously as possible and preferably within 31.01.2017, however, in strict accordance with the procedure established by law.

Pending miscellaneous petitions, if any, in this revision shall stand closed. No costs.

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M. SEETHARAMA MURTI, J

16<sup>th</sup> December 2016  
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