

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
and
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

CIVIL MISCELLANEOUS APPEAL No.965 of 2016

JUDGMENT: (per SK, J)

This Civil Miscellaneous Appeal under Order XLIII Rule 1 CPC arises out of the order dated 27.10.2016 passed by the learned I Additional District Judge, Mahabubnagar, in I.A.No.464 of 2016 in O.S.No.73 of 2016.

O.S.No.73 of 2016 was filed for specific performance of agreement of sale dated 21.03.2016 in relation to an extent of Acs.2.23 guntas in Survey No.745/E and 746/U of Kalwakurthy Village and Mandal, Mahabubnagar District. The sale consideration was Rs.69,00,000/- out of which part payment to the tune of Rs.34,00,000/- had been made. I.A.No.464 of 2016 was filed in the suit by the plaintiff seeking an interim injunction restraining the defendant from alienating the suit schedule property to third parties or creating any charge over the same pending disposal of the suit. By the order under appeal, the trial Court made absolute the interim injunction granted earlier. Aggrieved thereby, the defendant is before this Court.

Heard Sri J.U.M.V. Prasad, learned counsel for the appellant/defendant, and Sri K. Janardhan Reddy, learned counsel for the respondent/plaintiff.

Perusal of the order under appeal reflects that the trial Court meticulously examined the matter and came to the conclusion that the respondent/plaintiff made out a *prima facie* case, established that the balance of convenience was in his favour and that he would be put to irreparable loss if denied an injunction at this stage. The petitioner/defendant did not deny the agreement of sale or receipt of the part consideration to the tune of Rs.34,00,000/-. It was his case that at the time of paying a sum of Rs.3,00,000/- as part of the said part consideration on 21.06.2016, the respondent/plaintiff agreed to the petitioner/defendant executing a sale deed in favour of his father-in-law over an extent of Ac.1.15 guntas out of the suit schedule property for a consideration of Rs.36,84,450/-. However, no such endorsement was made on the agreement of sale. Significantly, time was extended for performance by way of an endorsement on the agreement of sale but the same procedure was not adopted in respect of this modification of the terms. The plea of the petitioner/defendant that the terms of the agreement of sale were modified was therefore not accepted. On a

consideration of the cogent and well-reasoned order passed by the trial Court, we find no ground to interfere therewith.

The Civil Miscellaneous Appeal is accordingly dismissed.

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

SANJAY KUMAR, J

20th DECEMBER, 2016.

U.DURGA PRASAD RAO, J

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