

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

CIVIL MISCELLANEOUS APPEAL No.737 of 2016

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

This appeal under Order 43 Rule 1 C.P.C. arises out of the order dated 08.07.2016 passed by the learned VII Additional District Judge, Gudur, in I.A.No.226 of 2014 in O.S.No.50 of 2014. The said I.A. was filed by the appellant, the plaintiff in the suit, for a temporary injunction restraining the defendants in the suit from removing, shifting, dealing or otherwise affecting the iron and laterite ore on the petition schedule property and in any manner affecting the exclusive right of the plaintiff to market the same pending disposal of the suit.

By the order under appeal, the trial Court dismissed the I.A. holding that the appellant/plaintiff failed to make out a *prima facie* case and balance of convenience in its favour. Further, the trial Court also observed that it failed to show that it would suffer irreparable loss in the event a temporary injunction was not granted. Though Sri Karri Murali Krishna, learned counsel for the appellant/plaintiff, would seek to rely upon the tripartite agreements allegedly entered into by and between the parties, it appears from the order under appeal that the originals of such documents were not even produced.

That apart, Sri V.L.N.G.K. Murthy, learned Senior Counsel representing Sri T.V. Jaggi Reddy, learned counsel on caveat for the first respondent/first defendant, would draw our attention to a crucial factual aspect. Learned Senior Counsel pointed out that in terms of the plaint prayer itself, the declaration sought was with regard to the alleged right of

the appellant/plaintiff in terms of the tripartite agreements for the period from 11.07.2011 to 30.06.2014.

In that view of the matter, the question of granting a temporary injunction in favour of the appellant/plaintiff could not arise as only the third plaint prayer with regard to damages would survive for adjudication even in the suit.

The appeal is therefore liable to be dismissed on this short ground and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

Date:17.11.2016

GJ



SANJAY KUMAR, J

ANI S, J