THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.922 of 2017

JUDGMENT:

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, by the plaintiff, is directed against the order, dated 08.06.2017, of the learned XXIV Additional Chief Judge, City Civil Court, Hyderabad, passed in I.A.No.806 of 2016 in O.S.No.333 of 2016.

2. I have heard the submissions of Sri J.Sridhar, learned counsel for the appellant/plaintiff ('plaintiff', for brevity), and of Sri Bankatlal Mandhani, learned counsel on caveat for the 3rd respondent/3rd defendant ('3rd defendant', for brevity). I have perused the material record.

3. To begin with, it is to be noted that in a suit for specific performance of agreement of sale, dated 13.05.2009, and recovery of possession of the agreement schedule property/suit schedule property, the plaintiff filed the afore-stated interlocutory application requesting to grant perpetual injunction restraining the defendants 2 to 4 from interfering with the constructions over the suit schedule property or altering the structure thereon or making any changes to the nature of the suit schedule property, pending final disposal of the suit. The said application was resisted by the contesting defendants, including the 3rd defendant. By the orders impugned in this Civil Miscellaneous Appeal, the trial Court dismissed the petition of the plaintiff. Therefore, the plaintiff is before this Court.

4. Before proceeding further, it is necessary to refer to the pleadings of the parties.

4.1 The case of the plaintiff, in brief, is this: - 'The 1st defendant, who is the owner and possessor of an old dilapidated house bearing municipal number 4-7-282 admeasuring 170 square metres situated at Esamia Bazar, Hyderabad, more fully described in the schedule annexed to the plaint, offered to sell the same to the plaintiff. The plaintiff agreed to purchase the said plaint schedule property. After negotiations with the husband of the plaintiff, the 1st defendant agreed to sell the plaint schedule property to the plaintiff for a total sale consideration of Rs.16,00,000/- on the condition that the entire sale consideration should be paid immediately. The plaintiff, accordingly, paid Rs.15,95,000/- to the 1st defendant, on 13.05.2009, and the 1st defendant executed a registered agreement of sale-cum-general power of attorney, dated 13.05.2009, vide document No.1137/2009, duly registered in the office of the Joint Sub Registrar-I, R.O., Hyderabad. The physical possession of the plaint schedule property was delivered to the plaintiff on the same day. The plaintiff paid the remaining amount of Rs.5,000/- to the 1st defendant on the following day. Thus, the entire sale consideration was paid and acknowledged. The title deeds and the link documents pertaining to the plaint schedule property were in the custody of the plaintiff. Since the plaint schedule property is an old dilapidated house and is uninhabitable, the plaintiff locked it and kept it in her custody. Because of the spurt in the prices of the properties and steep hike in the rates of the lands at Esamia Bazar and in the city, in general, the 1st defendant, with a *mala fide* intention, colluded with the 2nd defendant and his gang who are land grabbers and got filed one false and speculative suit in O.S.No.735 of 2013 on the file of the Court of the learned X Additional Chief Judge, City Civil Court, Hyderabad, for cancellation of the registered agreement of sale-cum-general power of attorney, dated 13.05.2009, in favour of the plaintiff by mischeviously taking out notices on the address where the plaintiff never resided at any time; and, a fraudulent *ex parte* decree was obtained behind the back of the plaintiff. The suit summonses and notices in the said suit could not be personally served on the plaintiff and the notices are served by substituted service, that is, by publication in the newspaper. On coming to know of the said *ex parte* decree in the said suit, the plaintiff filed an application to set aside the *ex parte* decree and the *ex parte* decree was set aside and the said suit is now pending. The defendants 1 and 2 herein, who are the plaintiffs' in the said suit, are dragging on the said suit. The 1st defendant committed serious breach of the obligations in the registered agreement of sale-cum-general power of attorney, dated 13.05.2009, executed in favour of the plaintiff. Such breach was committed by the 1st defendant in collusion with the 2nd defendant and the 1st defendant executed the sale deed in favour of the 2nd defendant with ulterior motive and for oblique reasons and to gain monetarily. The 1st defendant has no right or authority to execute the sale deed in favour of the 2nd defendant, when he has already agreed to sell the property to the plaintiff by executing the registered agreement of sale-cum-general power of attorney, dated 13.05.2009. The said transaction between the defendants 1 and 2 is unlawful and such transfer is nominal, sham, invalid and void. Taking advantage of the fact that the plaintiff kept the property, which is in dilapidated condition, under lock and key, the 2nd defendant and his gang trespassed into the plaint schedule property during July, 2015, and took possession of the same by breaking open the lock and are in unlawful possession of the same. The 2nd defendant is a land grabber and has patronage of political bigwigs and also enjoys influence with the local police. He also forces the innocent people to enter into shady deals with him without payment of sale consideration and grabs the valuable properties of innocent and helpless people. The defendants 1 and 2 approached the husband of the plaintiff and sought for settlement and demanded huge amount of money. The husband of the plaintiff, on behalf of the plaintiff, refused to yield to their demands. The 2nd defendant, having knowledge that the *ex parte* decree in O.S.No.735 of 2013 is set aside, on 13.07.2015, by the learned X Additional Chief Judge, City Civil Court, Hyderabad, has hastily entered into a paper sale and executed the sale deed, dated 27.07.2015, vide document number 2378/2015, in favour of the defendants 3 and 4 and the same is a subsequent transaction with the knowledge of earlier agreement of sale-cum-general power of attorney, dated 13.05.2009, in favour of the plaintiff. Therefore, the sale by the 2nd defendant in favour of the defendants 3 and 4 is void sale and it is not a *bona fide* sale. Hence, the plaintiff filed the suit for specific performance of the registered agreement of sale–cum-general power of attorney, dated 13.05.2009, and for recovery of possession of the plaint schedule property. While so, on 08.05.2016, the defendants 2 to 4 dug a bore in the suit schedule property and in collusion with each other, made arrangements for making illegal constructions with a *mala fide* intention. Hence, the present application is filed for temporary injunction to restrain the defendants 2 to 4 from making any constructions or altering the structures and the nature of the suit schedule property in any manner, pending disposal of the suit. The plaintiff has got *prima facie* case and the balance of convenience is in her favour and if injunction is not granted, she will suffer irreparable loss.'

4.2 The case of the 3rd defendant, as stated in the counter affidavit of the defendants 3 and 4, in brief, is as follows:-

'The material allegations in the affidavit filed in support of the petition are false and the same are denied. The defendants 3 and 4 are the absolute owners and possessors of the plaint schedule property bearing door number 4-7-282 admeasuirng 170 square yards of house site (since old ground and first floors in dilapidated condition, have been removed). The property purchased by the defendants 3 and 4 is within the following boundaries: East: Road; West: House number 4-7-274 possessed by Krishna Murthy, Advocate; North: House number 4-7-281 possessed by Satyam; and South: House number 4-7-283. The 1st defendant is the owner and possessor of the property bearing door number 4-7-482 situated at Esamia Bazar, Hyderabad, is not correct. The 1st defendant had already alienated the said property in favour of the 2nd defendant under registered sale deed. The said fact is also admitted by the plaintiff. As on the date of filing of the case, the 1st defendant is not the owner and is not in possession of the property. The contention of the plaintiff is that she entered into agreement of sale with the 1st defendant for a total sale consideration of Rs.16,00,000/- is not correct. On account of her own laches, she could not obtain the registered sale deed. She entered into another agreement under the name and style of Memorandum of understanding, dated 27.08.2011, by novating the earlier registered agreement of sale and agreed to pay a total consideration of Rs.38,00,000/- within one month from the date of memorandum of settlement, which was executed in the presence of witnesses, including the husband of the plaintiff, who signed as 4th witness in the said memorandum of understanding. Since the plaintiff failed to pay the consideration which was agreed to be paid, the 1st defendant cancelled the said agreement and also filed the suit. The contention that wrong address was furnished in the suit in O.S.No.735 of 2013 is absolutely false and baseless. The address mentioned by the plaintiff in the present case filed by her and the address mentioned in O.S.No.735 of 2013 show that the addresses mentioned in the two proceedings are one and the same. The plaintiff approached the Court with false and baseless allegations. She paid the total consideration of Rs.16,00,000/- is not correct. In view of the novation of the earlier agreement of sale, the contention that the total sale consideration is Rs.16,00,000/- is not correct. The 2nd defendant purchased the property from the 1st defendant during the subsistence of the alleged agreement of sale-cum-general power of attorney, dated 13.05.2009, is not correct. The 2nd defendant purchased the property from the 1st defendant pursuant to the decree, dated 05.06.2014, passed in O.S.No.735 of 2013, which became final as on that day. The 4th defendant, before purchasing the property, got published a general notice in the Hindi Milap newspaper, on 30.11.2014, calling for objections, if any, for the purchase transaction with the 2nd defendant. The plaintiff gave a reply, dated 07.12.2014; and by way of the said reply notice, she claimed herself to be the absolute owner of the plaint schedule property and that she purchased the plaint schedule property under agreement of sale. The defendants 3 and 4 got issued notice, dated 13.12.2014, through their advocate. The plaintiff is aware of the purchase of the property by the 2nd defendant, on 07.07.2014. In spite of their notice, dated 30.11.2014, and the plaintiff's notice, dated 07.12.2014, the plaintiff has not instituted the suit for specific performance and kept quiet and acquiesced her rights, if any. Hence, as there is no lawful claim, under *bona fide* belief, the defendants 3 and 4 purchased the plaint schedule property within the boundaries mentioned by them in their pleadings and have taken possession, vide registered sale deed, dated 27.07.2015. They have removed the house, which is in dilapidated condition, immediately after getting possession in the year 2015 itself and applied for municipal permission from GHMC for reconstruction of the building. GHMC granted approval for construction in February, 2016, vide permit No.48223/OC/C2/Cir/8/2016, after verification of the title deeds and site plan as well as their actual possession. The said document is filed into the Court. The allegation that when the property was under lock and key, the 2nd defendant trespassed into the property along with his gang by breaking open the locks put by the plaintiff is false. The allegations that the 2nd defendant is a land grabber and is having patronage of the political bigwigs and enjoys the influence with the local police are all false and invented.

Relief of specific performance is a discretionary relief and the plaintiff, who is seeking specific performance of contract, must plead and prove her readiness and willingness to perform her part of contract under the agreement of sale. The plaintiff approached the Court with delay. Having entered into agreement of sale-cum-general power of attorney in May, 2009, she kept quiet till May, 2016, for taking steps for obtaining the registered sale deed. The balance of convenience is not in favour of the plaintiff, but it is in the favour of the defendants 3 and 4. Hence, the petition is liable to be dismissed.'

5. At the hearing, the learned counsel for both the parties advanced arguments in line with the pleadings of their respective parties.

6. The learned counsel for the plaintiff while reiterating the pleaded case of the plaintiff, further submitted as follows:-

'There are several triable issues in the suit. The findings recorded by the trial Court are perverse. The trial Court failed to properly appreciate the facts and the legal position obtaining. The injunction was sought only for the limited purpose of maintaining status quo and to restrain the defendants from making any constructions or altering the nature of the property during the pendency of the suit. After agreement of sale-cum-general power of attorney, dated 13.05.2009, the plaintiff, having obtained possession of the plaint schedule property, kept it under lock and key. The property is in dilapidated condition. By filing a collusive suit, the defendants 1 and 2 obtained *ex parte* decree without serving notices on the plaintiff and grabbed the property by breaking open the locks. Afterwards, the *ex parte* decree in the said suit was set aside. Having knowledge of the prior agreement of sale-cum-general power of attorney, dated 13.05.2009, in favour of the plaintiff, the defendants 3 and 4 purchased the plaint schedule property from the 2nd defendant by virtue of the registered sale deed, dated 27.07.2014. Therefore, the sale deed in favour of the defendants 3 and 4 is sham and nominal and the said sale transaction is not a *bona fide* transaction. In view of the fact that the trial Court initially granted status quo order, it ought to have granted injunction instead of dismissing the petition. The order impugned is unsustainable and is liable to be set aside.'

7. Per contra, the learned counsel for the 4th defendant, while supporting the order of the Court below, contended as follows:-

'The plaintiff came to the Court by suppressing the material facts, particularly the fact that after the alleged agreement of sale-cum-general power of attorney, dated 13.05.2009, there was novation of the contract and that there was a memorandum of understanding, dated 27.08.2011, and that under that document, which was attested by the husband of the plaintiff, the plaintiff agreed to pay Rs.38,00,000/-, but failed to perform her part of contract. Therefore, the agreement between the plaintiff and the 1st defendant was cancelled. Later, a suit in O.S.No.735 of 2013 was filed by the 1st defendant against the plaintiff for cancellation of the registered agreement of sale-cum-general power of attorney, dated 13.05.2009. The said suit was decreed *ex parte* and later, the *ex parte* decree was set aside. During the currency of the *ex parte* decree, the 1st defendant sold the property under the registered sale deed to the 2nd defendant. Subsequently, the *ex parte* decree was set aside. Before purchasing the property, the defendants 3 and 4 followed the procedure by issuing a paper publication. And, even after the exchange of notices in the year 2014, the plaintiff kept quiet without instituting a suit promptly for specific performance. As there was no lawful claim existing, under a bona fide belief, the defendants 3 and 4 purchased the property from the 2nd defendant under regular sale deed and obtained physical possession of the property and got approved the municipal permission for construction and are now proceeding with the constructions, being in lawful possession. Constructions reached an advanced stage and the second floor is now under construction. The plaintiff, who has come to the Court with unclean hands, is not entitled to the discretionary and equitable relief of injunction. Hence, the trial Court is justified in dismissing the petition of the plaintiff.'

8. I have given earnest consideration to the facts and submissions.

9. Now I shall deal with various relevant aspects of the matter and the rival contentions in seriatim for answering the following points, which arise for determination:

1. Whether the plaintiff made out valid and sufficient grounds and satisfied the cardinal principles for granting temporary injunction as prayed for?
2. Whether the order and decretal order of the trial Court are unsustainable under facts and in law as being contended by the plaintiff? And, if so,

whether the order and decretal order of the trial Court are liable to be set aside?

3. To what relief?

10. <u>POINTS:</u>

10.1 Ordinarily, the following three main principles govern the grant or refusal of injunction: a) prima facie case; b) balance of convenience; and, c) irreparable injury. In grant and refusal of injunction, pleadings and documents play vital role. In the broad category of *prima facie* case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must adjudge the existence or otherwise of a *prima facie* case. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the plaintiffs, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. Only on weighing competing possibilities or probabilities of likelihood of injury, an injunction would be issued. In addition to the three basic principles, a Court while granting injunction must also take into consideration the conduct of the parties. A person who had kept quiet for a long time and allowed others to deal with the property exclusively would not be entitled to an order of injunction. The Court should not interfere only because the property is a very valuable one. (See: Mandali Ranganna and Ors. v. T. Ramachandra [AIR 2008 SC 2291]). Grant or refusal of injunction would have serious consequences depending upon the nature thereof. In dealing with such matters the Court must make all endeavours to protect the interest of the parties by balancing the conveniences and inconveniences. In addition to the basic principles, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands. (See: Seema Arshad Zaheer and Ors. v. Municipal Corporation of Greater Mumbai and Ors. [(2006)5 SCC 282]). Now I shall revert to the facts of the case.

10.2 The agreement of sale-cum-general power of attorney in respect of the plaint schedule property executed by the 1st defendant in favour of the plaintiff is dated 13.05.2009. According to the defence of the defendants, there was novation of the said contract of sale between the 1st defendant and the plaintiff and that subsequently, a memorandum of understanding, dated 27.08.2011, was entered into between the 1st defendant and the plaintiff and the same was attested by the husband of the plaintiff and that under the said document, the plaintiff agreed to pay Rs.38,00,000/- and that for breach of the terms of the contract of sale and for non payment of the said consideration the agreement of sale stood cancelled and that a suit in O.S.No.735 of 2013 was also instituted by the 1st defendant for cancellation of the plaintiff's agreement of sale-cum -general power of attorney, dated 13.05.2009, and that after the *ex parte* decree in the said suit was set aside at the instance of the plaintiff herein, the suit is still pending. Be it noted that after the said suit of the 1st defendant against the plaintiff was decreed *ex parte* and when the said *ex* *parte* decree was in force and before it was set aside, the 1st defendant sold the property to the 2nd defendant, by virtue of the registered sale deed, dated 07.07.2014. And, later, when the 2nd defendant offered to sell the property to the defendants 3 and 4, the defendants 3 and 4 got published a general notice on 30.11.2014, in the Hindi Milap daily newspaper calling for objections, if any. Then the plaintiff gave a reply, dated 07.12.2014, to the said general notice. To that reply, the defendants 3 and 4 issued a further reply notice, dated 13.12.2014. According to the defence, the plaintiff kept quiet thereafter, and hence, the defendants 3 and 4 purchased the property under registered sale deed, dated 27.07.2015. According to the plaintiff, the plaintiff kept the property, which is in a dilapidated condition, under lock and key and that the 2nd defendant and his gang trespassed into the property in July, 2011, and took possession of the same by breaking open the locks and came into unlawful possession of the property. However, the plaintiff failed to take any prompt action either for specific performance by instituting a suit or for any other releif. Even before the defendants 3 and 4 purchased the property under the registered sale deed, dated 27.07.2015, as already noted, they gave a paper publication calling for objections, if any, and there was also exchange of notices in December, 2014. Therefore, the plaintiff is aware that the 2nd defendant purchased the property from the 1st defendant under the registered sale deed, dated 07.07.2014. But the plaintiff kept quiet without approaching a Court and failed to institute a suit for specific performance promptly, according to the submissions of the learned counsel for the 4th defendant. Later, the defendants 3 and 4 purchased the property from the 2nd defendant by virtue of a registered sale deed, dated 27.07.2015. According to them, they are bona fide purchasers and that they obtained lawful possession of the property from the 2nd defendant and that they further obtained permission for construction and are proceeding with the construction in the property. Therefore, the contention of the plaintiff that the possession of the defendants was unlawful and that the 2nd defendant and his gang trespassed into the property by breaking open the locks, *prima facie*, need not be countenanced at this stage, as the plaintiff failed to pursue any legal remedies much less promptly or within a reasonable time. It is pointed out by the learned counsel for the respondent/4th defendant that despite the fact that various transactions are taking place to the knowledge of the plaintiff and though the plaintiff is aware of all the facts at least even by the year 2015, the plaintiff had kept quiet for reasons best known to her and belatedly instituted the subject suit in May, 2016, that is, for nearly one year after the defendants 3 and 4 obtained the sale deed in their favour from the 2nd defendant, who had obtained his sale deed from the 1st defendant on 07.07.2014. It is also urged that no explanation is forthcoming for the delay in seeking specific performance. In that view of the matter, the Court below held that the plaintiff has no *prima facie* case.

10.3 On a careful examination of the facts & submissions and on the above analysis, this Court finds itself in agreement with the finding of the trial Court that the plaintiff failed to establish a *prima* *facie* case and also the other requirements for granting a temporary injunction order sought for in the application of the plaintiff. When the first factor, namely, *prima facie* case, which is *sine qua non*, is not satisfied, it follows that the plaintiff is not entitled to the equitable relief of temporary injunction, more particularly, as there are laches *prima facie* on the part of the plaintiff and as the constructions are now at an advanced stage. Further, if the constructions are now stopped at this stage till the disposal of the suit, irreparable loss would ensue to the defendants 3 and 4, is the contention of the defendants and the said contention merits consideration in the facts and circumstances of the case.

10.4 Viewed thus, this Court finds that this Civil Miscellaneous Appeal is devoid of merit and is liable to be dismissed. Points are accordingly answered against the plaintiff/appellant.

11. In the result, this Civil Miscellaneous Appeal is dismissed confirming the order passed by the trial Court, however, subject to the observation that the constructions, if any, made by the defendants 3 and 4 on the plaint schedule property, shall be subject to the final result of the suit and that they shall not be entitled to claim any equities in event of the ultimate success of the plaintiff in the subject suit. It is made clear that this Court has not expressed any opinion on the merits of the issues/questions that fall for determination in the suit. Hence, the trial Court shall dispose of the suit uninfluenced by the tentative observations, if any, made in this order for the limited purpose of disposal of this civil miscellaneous appeal.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

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M.Seetharama Murti, J

6th October, 2017
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