

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

**C.M.A. NOS.1015 AND 1016 OF 2016
AND C.R.P.NO.6092 OF 2016**

C O M M O N J U D G M E N T
(Per Hon'ble Sri Justice Sanjay Kumar)

O.S.No.173 of 2015 on the file of the learned XXV Additional Chief Judge, City Civil Court, Hyderabad, was filed by P.Venkata Ravi Kishore and his wife, P.Usha Rani, :

- a. to declare them as the owners of the flats bearing Nos.102-A, 203-A, 104-A, 401-B, 302-C and 501-C and an extent of 1951 square feet in Flat Nos.404A and 204A;
- b. to direct the 1st defendant to deliver to them the possession of the six flats bearing Nos.102-A, 203-A, 104-A, 401-B, 302-C and 501-C and an extent of 1951 square feet in Flat Nos.404A and 204A, completed in all respects with parking areas;
- c. to declare the sale deed bearing Document No.2048 of 2015 executed by the 1st defendant in favour of the 7th defendant in respect of Flat No.302-C as null and void;
- d. to direct the 1st defendant to pay to the plaintiffs a sum of Rs.1,17,73,440/- towards compensation for loss of rents with effect from 20-11-2009 till the filing of the suit along with interest at the rate of 18% per annum;
- e. to grant a permanent injunction restraining the defendants from alienating, conveying and transferring the suit schedule flats to third parties; and
- f. to award costs.

The suit schedule comprised eight items, being Flat Nos. 102-A, 203-A, 104-A, 401-B, 302-C, 501-C, 404-A and 204-A. The plaintiffs filed I.A.Nos.675, 676 and 677 of 2015 in the suit seeking interim relief. I.A.No.675 of 2015 was filed by them for an interim injunction restraining the defendants from alienating, conveying

and transferring the suit schedule flats in favour of third parties pending disposal of the suit. I.A.No.676 of 2015 was filed for appointment of an Advocate Commissioner under Order 26 Rule 9 CPC to note down the physical features of the existing unfinished construction/structures in the suit schedule flats; to take photographs of the same; and to submit a report. Lastly, I.A.No.677 of 2015 was filed by them under Order 40 Rule 1 CPC seeking appointment of a Receiver to take possession of the suit schedule flats from the 1st defendant; to look after the management of the same with police assistance, if necessary; and to submit a report. By common order dated 02.11.2016, the trial Court allowed all the three I.As. Aggrieved thereby, the 1st and 7th defendants in the suit are before this Court.

C.M.A.No.1015 of 2016 was filed by them against the order passed in I.A.675 of 2015 in O.S.No.173 of 2015. C.M.A.No.1016 of 2016 was filed by the 1st defendant alone against the order passed in I.A.677 of 2015 in the suit, while C.R.P.No.6092 of 2016 was filed by the 1st and 7th defendants against the appointment of an Advocate Commissioner in I.A.No.676 of 2015 in the suit.

Heard Sri Resu Mahender Reddy, learned counsel for the 1st and 7th defendants, appellants in the C.M.As/petitioners in the C.R.P., and Sri Kishore Rai, learned counsel on caveat for the plaintiffs/respondents.

Parties shall hereinafter be referred to as arrayed in the suit.

We are informed that pursuant to his appointment, Sri J.K.Murthy, the Advocate Commissioner, executed the commission warrant and submitted his report dated 28.12.2016. The order passed by the trial Court in I.A.No.676 of 2015 in O.S.No.173 of

2015 has therefore worked itself out and C.R.P.No.6092 of 2016, filed against the said order, is rendered infructuous.

The plaintiffs entered into development agreements-cum-GPAs (Exs.P2 and P4) on 12.07.2007 along with the other parties to the suit, whereby the 1st defendant company and its Managing Director were authorized to develop the subject land by constructing residential apartments. Out of the total extent of 5,603.5 square yards which is the subject matter of the development agreements, the 1st plaintiff and the 2nd defendant own an extent of 2,380 square yards (Ex.P1 sale deed), while the 2nd plaintiff and the 3rd, 4th, 5th and 6th defendants are the joint owners of the remaining 3,223.50 square yards (Ex.P3 sale deed). In effect, the plaintiffs are the joint owners of 1901 square yards out of the total extent of 5,603.50 square yards. In terms of the development agreements, construction of the proposed residential complex was to be completed within 18 months from the date of approval being granted by the concerned authorities with a further grace period of three months. Pursuant to these development agreements, 50 flats were constructed in the subject land.

It is not in dispute that municipal sanction was granted for undertaking construction of the residential building on 20.02.2008. The period reserved under the development agreements for completing the construction therefore expired on 20.11.2009. The Occupancy Certificate issued by the Greater Hyderabad Municipal Corporation, certifying completion of the construction of the residential apartment building with cellar, stilt for parking plus five upper floors, is dated 03.12.2010. The plaintiffs, in the meanwhile, unilaterally cancelled Exs.P2 and P4

development agreements on 25.11.2009. Aggrieved by this cancellation, the 1st to 6th defendants in the suit filed O.S.No.719 of 2009 on the file of the learned III Additional Chief Judge, City Civil Court, Hyderabad, against the plaintiffs herein for a declaration that the cancellation of the development agreements was not enforceable in law and to declare the said cancellation deeds as null and void.

It is an admitted fact that when the registration authorities continued to entertain the sale documents presented by the 1st defendant, W.P.No.31476 of 2010 was filed by the plaintiffs against the State, its registration authorities, the defendants herein and some of the purchasers seeking a declaration that the action of the Sub-Registrar, Serilingampally, Ranga Reddy District, the 4th respondent therein, in entertaining the sale deeds presented by the 1st defendant, in spite of cancellation of the development agreements, was illegal and without jurisdiction.

By interim order dated 15.12.2010 passed in this writ petition, this Court restrained the registration authorities from entertaining the sale deeds presented for registration by the 1st defendant on the strength of the development agreements-cum-GPAs dated 12.07.2007 pending further orders. On 28.04.2011, this Court modified the said order taking note of the submission made on behalf of the 1st defendant that it would keep the eight flats, which the plaintiffs had claimed as having fallen to their share, and that the same would not be alienated at all. The learned senior counsel appearing for the 1st defendant furnished the numbers of the eight flats as follows: 102-A, 203-A, 104-A, 401-B, 501-C, 302-C, 404-A and 204-A. Taking note of the

submission of the learned senior counsel and subject to the condition that the 1st defendant would not deal with the eight flats in any manner, be it by creating third party interests therein or encumbering them otherwise, the earlier interim order dated 15.12.2010 was modified to the extent of allowing the respondents in the writ petition to carry on sale of the otherwise completed flats in favour of third parties.

The writ petition itself was disposed of thereafter *vide* order dated 12.08.2014. The learned senior counsel appearing for the 1st defendant reiterated that the flats set apart for the benefit of the plaintiffs herein remained intact and it was for them to work out their remedies in a properly instituted suit. The 1st defendant also filed an additional affidavit dated 30.07.2014, reiterating the undertaking given by it which was taken note of by this Court in its interim order dated 28.04.2011. This Court opined that the dispute between the parties was a civil dispute and the proper forum for the petitioners therein, the plaintiffs, was to approach the civil Court as they would necessarily have to pursue the remedies available in law for comprehensive relief. The observations thereafter are crucial and read as under:

‘Subject to interim order dated 28-04-2011, and also the undertaking placed on record through affidavit dated 30-07-2014, the Writ Petition is disposed of by giving liberty to petitioners to work out comprehensive remedies in a properly instituted suit/proceeding. This Court is not expressing any view on the contentions raised by the petitioners or the seventh respondent. No order as to costs.’

It is interesting to note that two undertaking affidavits, in relation to the above order, have been marked in the present suit

proceedings. Ex.P24 undertaking affidavit of the 1st defendant dated 30.07.2014 states that pending adjudication of the rights of the respective parties, the 1st defendant undertook not to alienate the floor area equivalent to 17,603 square feet in the structure built in the subject land. However, Ex.R13 undertaking affidavit of the 1st defendant also dated 30.07.2014 reads that the 1st defendant undertook not to alienate the floor area equivalent to 17,603 square feet in the structure built and comprised in Apartment Nos.102A, 203A, 104A, 401B, 501C, 404A and 204A.

Relying upon Ex.R13 undertaking affidavit already given by the 1st defendant, Sri Resu Mahender Reddy, learned counsel, would contend that there was no cause for the plaintiffs to again seek an injunction restraining alienation of the flats.

Per contra, Sri Kishore Rai, learned counsel, would contend that the undertaking affidavit mentioning the flat numbers was never furnished to his clients at the time of disposal of the writ petition and what was given to them was Ex.P24 undertaking affidavit which merely indicated the floor area without flat numbers. Learned counsel would further state that the order dated 28.04.2011 clearly recorded the condition that the 1st defendant herein would not deal with the eight flats mentioned by the 1st defendant itself through its senior counsel, namely, 102-A, 203-A, 104-A, 401-B, 501-C, 302-C, 404-A and 204-A. Learned counsel would contend that despite this clear order which was reiterated in the final order passed in the writ petition, the 1st defendant executed registered sale deed bearing Document No.2048/2015 in favour of the 7th defendant in relation to Flat No.302-C. He would therefore assert that in the light of this clear

transgression of the undertaking given by the 1st defendant to this Court, the plaintiffs were justified in seeking an injunction against the 1st defendant and the 7th defendant from alienating the suit schedule flats.

It is also relevant to note that in O.S.No.719 of 2009 filed against the unilateral cancellation of the development agreements, the 1st defendant and others, who were the plaintiffs therein, filed I.A.No.4553 of 2009 seeking a temporary injunction restraining the defendants in the said suit, the present plaintiffs, from interfering with their possession and enjoyment over the suit schedule flats. By order dated 21.12.2009, the trial Court directed both parties not to alienate the suit property. Aggrieved thereby, the 1st defendant filed C.R.P.No.6297 of 2009 before this Court. By order dated 31.12.2009 passed therein, this Court set aside the order passed by the trial Court as no reasons had been assigned by it and remanded the matter for consideration afresh. It is however stated before this Court that the trial Court did not pass any fresh orders in the said I.A. thereafter and the suit is still pending.

It may be noted that consideration of the merits of the matter by this Court at the present stage is for the limited purpose of disposing of these cases. It would therefore be wholly premature for us to venture any opinion on the contentious aspects addressed by both the learned counsel as it is for the trial Court to adjudicate upon these issues after a full-fledged trial.

Though Sri Resu Mahender Reddy, learned counsel, would contend that in terms of the development agreements, the plaintiffs would be only entitled to a 40% share in the total sale consideration and would therefore have no right to seek allotment

of particular flats, this Court finds that there is no clarity on this aspect in so far as the terms and conditions of the development agreements are concerned. The irrefutable fact also remains that the 1st defendant itself gave an undertaking to this Court in W.P.No.31476 of 2010 that it would not alienate the flats mentioned therein. That apart, the interim order dated 28.04.2011 passed in the said writ petition specifically mentioning particular flats, which was reiterated in the final order passed in the writ petition, clearly binds the 1st defendant. It is therefore for the trial Court to resolve this issue after detailed examination of the oral and documentary evidence.

As regards the dispute as to whether construction of the residential building was completed within time, this Court again finds no reason or material to venture a finding. The occupancy certificate was issued by the municipal authorities in December, 2010, but admittedly the stipulated completion period in terms of the development agreements expired in November, 2009. That apart, Sri Kishore Rai, learned counsel, would state that the 2nd defendant, being the Managing Director of the 1st defendant, filed a counter on 07.06.2012 in the contempt case filed in relation to W.P.No.31476 of 2010, wherein he stated that it was not possible to complete the construction. There is thus no clarity as to when the construction of the building was actually completed.

This being the situation, it is clear that the plaintiffs categorically demonstrated that the 1st defendant, having given an undertaking to this Court and despite being bound by the interim order dated 28.04.2011 passed in W.P.No.31476 of 2010, which was reiterated in the final order passed therein, sold Flat No.302-C

to the 7th defendant under a registered sale deed in February, 2015. In that view of the matter, we see no reason to interfere with the injunction granted by the trial Court restraining the 1st and 7th defendants from alienating or otherwise encumbering the flats mentioned in the suit schedule.

Finally, as regards the appointment of a Receiver under Order 40 Rule 1 CPC in I.A.No.677 of 2015, the affidavit filed by the plaintiffs in support thereof reflects that they alleged that the 1st defendant was in illegal possession of their valuable property and would certainly act in a manner which was dangerous to the property by causing wastage and hence, the possession of the suit schedule flats in the hands of the 1st defendant during the pendency of the suit would be detrimental. The plaintiffs further claimed that the suit schedule flats were required to be preserved in the hands of a Receiver under the custody of the Court, failing which they would be put to irreparable loss and injury.

It is therefore clear that no specific overt act was attributed to the 1st defendant in relation to the alleged damage and wastage being caused to the suit schedule flats. The trial Court also did not record any finding as to why it found it desirable that a Receiver should take possession of the suit schedule flats to manage the same and to submit a report to the Court from time to time. Both the learned counsel agree that the suit schedule flats have not been finished and are in different stages of completion.

Order 40 Rule 1 CPC empowers the Court, where it appears to be just and convenient, to appoint a Receiver in respect of any property and to confer upon such Receiver various powers, be it for management, protection, preservation etc., of the said property.

However, recourse to exercise of this power should not be taken lightly. Unless the petitioning party establishes to the satisfaction of the Court that appointment of a Receiver is necessary on facts, the Court should not resort to such a procedure as a matter of course.

In the present case, except for the fact that the 1st defendant violated its own undertaking furnished to this Court in W.P.No.31476 of 2010 and also acted contrary to the orders passed therein by alienating Flat No.302-C to the 7th defendant, no other manifest act(s) of damage or wastage have been attributed to the 1st defendant in the affidavit filed in support of the I.A. In the absence of such essential pleadings, the trial Court was not justified in appointing a Receiver casually. It is not even clear as to how this Receiver is expected to manage the suit schedule flats by taking police assistance also, if necessary. The flats are presumably vacant as they are not even finished. The flats are therefore not in a position to be let out by the Receiver so that he can thereafter render accounts of the collected rents to the Court. Except for securing the flats under lock and key, there is no other possible act of maintenance that a Receiver can discharge at this point of time.

This Court also finds merit in the submission of Sri Resu Mahender Reddy, learned counsel, that when the plaintiffs are seeking recovery of possession of the flats as part of the main relief, they cannot ask for the same relief indirectly, through a Receiver, at the interlocutory stage. That apart, a similar attempt by the plaintiffs for obtaining the delivery of the flats which were set apart in terms of the order dated 28.04.2011 was rejected by

this Court in the final order passed in W.P.No.31476 of 2010, accepting the submission of the learned senior counsel for the 1st defendant that though a few flats had been set apart, there were disputes between the parties and till the same were decided, no relief could be granted to the plaintiffs.

This Court therefore finds no logic or basis to sustain the appointment of a Receiver by the trial Court in the present case. No material is placed even before this Court to support the bald plea of the plaintiffs that the 1st defendant would cause wastage to the suit schedule flats or that he would act in a manner which is dangerous to the said flats. The order in I.A.No.677 of 2015 is accordingly set aside.

In the result, C.M.A.No.1015 of 2016 is dismissed confirming the interim injunction granted in I.A.No.675 of 2015 in O.S.No.173 of 2015. C.M.A.No.1016 of 2016 is allowed setting aside the order of appointment of a Receiver passed in I.A.No.677 of 2015 in O.S.No.173 of 2015. C.R.P.No.6092 of 2016, arising out of the order passed in I.A.No.676 of 2015 in O.S.No.173 of 2015, is dismissed as infructuous. No order as to costs.

SANJAY KUMAR, J

U.DURGA PRASAD RAO, J

4th JANUARY, 2017

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