

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE MS JUSTICE J.UMA DEVI

CMA.No.455 of 2017

Date:15.6.2017

Between:

Gorgie Pentaiah,
S/o Late Bakkaiah

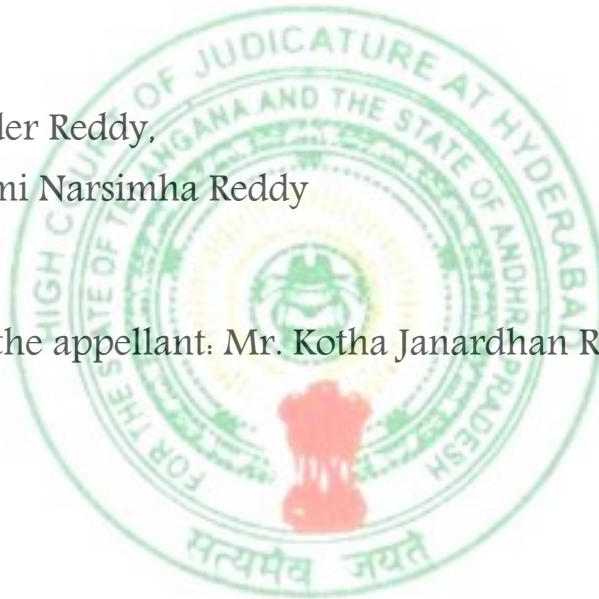
..... Appellant

And:

K.Raghavender Reddy,
S/o Late Laxmi Narsimha Reddy

.....Respondent

Counsel for the appellant: Mr. Kotha Janardhan Reddy



The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

At the interlocutory stage, the appeal is taken up for hearing and disposed of.

This Civil Miscellaneous Appeal arises out of order and decree, dated 24.3.2017, in I.A.No.81 of 2016 in O.S.No.48 of 2016 on the file of the learned V Additional District and Sessions Judge at Bhongir.

We have heard Mr.Kotha Janardhan Reddy, learned counsel for the appellant and perused the record.

The respondent has filed the above-mentioned suit for specific performance of agreement of sale in respect of an extent of Ac.7.02 cents of land situated at Wangapally Village, Yadagirigutta Mandal, Nalgonda District. It is the pleaded case of the respondent that he has paid a sum of Rs.40 lakhs to the appellant towards advance sale consideration out of the total consideration of Rs.1,09,27,500/- and that, though he was ready and willing to pay the balance sale consideration and get the sale deed executed, the appellant has not come forward to execute the same. Along with the suit, the respondent has filed I.A.No.81 of 2016 for interim injunction restraining the appellant from alienating the suit schedule property to third parties. The Court below, on hearing both sides, granted interim injunction restraining the appellant from alienating the suit schedule property to third parties, pending the suit.

Mr. Kotha Janardhan Reddy, the learned counsel for the appellant, submitted that the documentary evidence produced by both parties would *prima facie* show that the respondent was not ready and willing to perform his part of the contract by paying the balance sale consideration; that six months after his client has issued a notice cancelling the agreement of sale, the respondent has sent a reply expressing his readiness and willingness to pay the balance sale consideration; and that therefore, the respondent failed to establish the *prima facie* case and balance of convenience in his favour.

The facts referred to above would show that the respondent has parted with a substantial part of sale consideration *i.e.*, out of Rs.1,09,25,900/- a sum of Rs.40 lakhs was paid.

The appellant has not only admitted execution of agreement of sale but also the receipt of advance sale consideration from the respondent. The main ground raised by the appellant is that the agreement has stipulated 'time' as the essence of the contract and that, as the respondent failed to adhere to the time stipulation, he has forfeited the latter's right for specific performance.

The law is well settled that ordinarily, time is not essence of contract in case of sale of immovable property. However, this principle is hedged in by certain exceptions. The issue as to

whether the instant case falls under such exceptions or not is to be examined in the suit. If during the pendency of the suit, the appellant alienates the suit schedule property, it would create third party interests which would be detrimental to the interests of the respondent. Having weighed the elements of *prima facie* case and balance of convenience, the Court below exercised its discretion in favour of the respondent for granting interim injunction.

In the facts and circumstances of the case, we are of the opinion that the Court below has not committed any illegality or jurisdictional error in granting interim injunction in favour of the respondent.

For the afore-mentioned reasons, the Civil Miscellaneous Appeal is dismissed.

As a sequel to dismissal of the appeal, CMAMP.No.763 of 2017 filed by the appellant for interim relief is dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE J.UMA DEVI

15th June 2017

DR