

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL No.535 of 2017

JUDGMENT:

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 (r) of Code of Civil Procedure, 1908 (for short, 'C.P.C'), is filed challenging the order, dated 14.03.2017, passed in Interlocutory Application No.1719 of 2016 in Original Suit No.16 of 2016, by the Judge, Family Court-cum-III Additional District Judge, Vizianagaram, whereby, the petition filed under Order XXXIX Rule 1 CPC to grant temporary injunction, was dismissed.

2. The respondents herein/plaintiffs filed the suit in O.S.No.16 of 2016 for specific performance of Agreement of sale, dated 14.05.2015. During pendency of the said suit, the appellants/defendants filed the aforesaid Interlocutory Application for grant of temporary injunction on the ground that the third parties, who are intending purchasers under Agreement of Sale, are making attempts to infringe or invade the appellants' right in the plaint schedule property. The trial Court while making certain observations that the agreement holder can interfere with the possession, though the appellants, being owners, are entitled to protect their property, declined to grant injunction. But, this observation is against law, as agreements are not possessory agreements and the agreements holders are not entitled to interfere with the possession of the appellants and the same is hereby set aside, while permitting the appellants to prosecute the necessary proceedings in different proceedings or in the present suit by making necessary claim in the written statement.

3. In the result, the Civil Miscellaneous Appeal is disposed of setting aside the observation and leaving it open to the agreement holders to claim in appropriate proceedings, while observing that the appellants, being owners, are entitled to protect their possession.

Miscellaneous petitions, if any, pending this appeal shall stand closed. There shall be no order as to costs.

M. SATYANARAYANA MURTHY, J

JUNE 23, 2017

Note:

Issue C.C. within three (03) days.

(B/o)

YVL



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Date: 23.06.2017

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