

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE MS. JUSTICE J. UMA DEVI

A.S.NO. 823 OF 2017

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 96 CPC arises out of the judgment and decree dated 20.3.2017 passed by the learned VI-Additional District Judge, Sompeta, in O.S.No. 5 of 2015. The appellants are defendants 1 to 3 in the said suit which was filed by the first respondent herein for specific performance of an oral agreement said to have been entered by and between the parties in the third week of March, 2014. An alternative prayer was also made by the first respondent/plaintiff seeking refund of the paid part-sale consideration amount of Rs.30.00 lakhs.

Perusal of the judgment under appeal reflects that the trial Court recorded that Sri C.S. Bhagavanulu, Advocate, appeared for defendants 1 to 3 in the suit, that is, the appellants. However, it is not disputed before us by the learned counsel for the parties that the said Advocate reported no instructions and did not advance arguments on the merits of the matter. A specific ground was also taken by the appellants in their memorandum of grounds that they were kept in the dark about the proceedings of the suit and that their counsel reported no instructions before the Court without intimation to them.

In that view of the matter and as the judgment and decree vitally affect the valuable rights of the appellants, we are of the opinion that the trial Court should at least now give an opportunity of hearing to the appellants herein so that a decree of specific performance affecting their

property rights is not passed behind their back. The judgment and decree under appeal are accordingly set aside and the matter is remitted to the trial Court for adjudication of the suit afresh. As the appellants never had an opportunity to cross-examine the plaintiff's witnesses, the trial Court shall resume the proceedings from that stage and permit the appellants to cross-examine the said witnesses and also D.W.1, the fourth defendant in the suit.

However, as the appellants are also guilty to some extent of carelessness in following up with their Advocate and could have prevented the passing of the judgment and decree under appeal, had they been diligent, they shall pay costs of Rs.5,000/- (Rupees Five Thousands only) to the first respondent/plaintiff within four weeks from the date of receipt of a copy of this order. Upon production of such proof of payment, the trial Court shall resume the suit proceedings as indicated supra and endeavour to dispose of the suit as expeditiously as possible keeping in view the fact that this is the second round of litigation.

Sri K. Manik Prabhu, learned counsel for the first respondent/plaintiff, states that pursuant to the judgment and decree, his client deposited Rs.49.00 lakhs to the credit of the suit. As the said judgment and decree has now been set aside, we are of the opinion that the first respondent/plaintiff should be permitted to withdraw the said amount without prejudice. The trial Court shall permit such withdrawal unconditionally.

The appeal is accordingly allowed to the extent indicated above.

Pending miscellaneous petitions shall stand closed in the light of the disposal of the main appeal. No order as to costs.

SANJAY KUMAR, J

Dt. 21.12.2017
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J. UMA DEVI, J

