

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

C.M.A.NOS.388, 389, 741 AND 747 OF 2016

COMMON JUDGMENT

O.S.No.51 of 2015 was filed before the learned Additional District Judge, Hindupur, for partition and separate possession of the 2/5th share of the plaintiffs (1/5th share each) in the suit schedule property and for costs. I.A.No.362 of 2015 was filed therein by them for a temporary injunction restraining the defendants 6 and 7 from alienating the suit schedule property pending disposal of the suit. I.A.No.363 of 2015 was filed by them seeking a temporary injunction restraining defendants 6 and 7 from changing the physical features of the suit schedule property.

By order dated 29.04.2016 passed in I.A.No.362 of 2015, the trial Court granted a temporary injunction restraining defendants 6 and 7 from alienating the suit schedule properties but made the same subject to the result of I.A.No.76 of 2016, filed by defendants 6 and 7 under Order 18 Rule 18 CPC for inspection of the suit property. The trial Court observed that the temporary injunction granted was liable to be modified/alterd/continued as per the said inspection. Aggrieved by this order, defendants 6 and 7 filed C.M.A.No.388 of 2016 before this Court.

By a separate order dated 29.04.2016 passed in I.A.No.363 of 2015, the trial Court also granted a temporary injunction restraining defendants 6 and 7 from changing the physical features of the suit schedule property. However, as in the other I.A., this temporary injunction was made subject to the result of I.A.No.76 of 2016 filed by defendants 6 and 7 under Order 18 Rule 18 CPC.

Aggrieved by this order, defendants 6 and 7 preferred C.M.A.No.389 of 2016.

By order dated 12.05.2016 passed in C.M.P.No.761 of 2016 in C.M.A.No.389 of 2016, this Court permitted defendants 6 and 7 to proceed with the construction and suspended the order under appeal to that extent for a period of six weeks.

As no stay was granted by this Court in relation to the suit proceedings, it appears that the trial Court personally carried out an inspection of the suit schedule property on 30.05.2016 and found that construction of 95% of the apartment building had been completed by defendants 6 and 7 thereon. Opining that this proved that defendants 6 and 7 were in possession of the property, the trial Court dismissed I.A.No.362 of 2015 by order dated 29.07.2016. By a separate order of the same date, the trial Court reiterated its finding as to possession and dismissed I.A.No.363 of 2015 also. The plaintiffs preferred C.M.A.No.741 of 2016 against the dismissal of I.A.No.362 of 2015 and C.M.A.No.747 of 2016 in relation to the dismissal of I.A.No.363 of 2015.

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

Sri VLNGK Murthy, learned senior counsel representing Smt.N.Sasikala, learned counsel for the plaintiffs, would contend that the trial Court erred in vacating the injunction orders granted on 29.04.2016 in both the I.As. without understanding the core issue. Learned senior counsel would point out that the suit was filed for partition and this crucial aspect of the matter was completely lost sight of by the trial Court. Sri M.Surender Rao, learned senior counsel representing Sri Madiraju Srinivasa Rao, learned counsel for defendants 6 and 7, on the other hand, would

contend that sufficient documentary evidence was placed before the trial Court by defendants 6 and 7 to clinchingly establish that the plaintiffs were not entitled to interim relief.

Perusal of the orders under appeal reflects that no documentary evidence was marked in the appendices of any of the orders. The trial Court did not even record in the body of the orders that any documentary evidence was placed before it. Owing to this factual dispute, the original record in O.S.No.51 of 2015 was called for. Perusal of the said record demonstrates that several documents were made part of the record. However, there is no clear indication as to how these documents were received and by whom they were filed. Notwithstanding the same, the very fact that voluminous documents are found in the original suit record supports the contention urged before this Court that documents were placed before the trial Court at the interlocutory stage.

When a party to the *lis* seeks to place reliance on documentary evidence at the interlocutory stage, a duty is cast upon the trial Court to mark such documents for disposal of the interlocutory petition and duly consider the same. Perusal of the orders under appeal reflects that the trial Court did not even advert to any of the documents. This error on the part of the trial Court in dealing with the documentary evidence produced before it leaves this Court with no option but to set aside the orders under appeal passed in both the I.As., and remit the same to the trial Court for fresh consideration, duly taking into account the documentary evidence adduced by the parties.

Sri M.Surender Rao, learned senior counsel, would state that by virtue of the interim order granted by this Court in

C.M.A.No.389 of 2016, the construction of the apartment building is completed, except for finishing works inside the building. He would however give an undertaking to the effect that defendants 6 and 7 would not make any further constructions of the superstructure or alienate the apartments constructed in the suit schedule property till the disposal of the I.As. by the trial Court afresh. Learned senior counsel would further pray that a time frame may be fixed for disposal of the I.As.

Sri VLNGK Murthy, learned senior counsel, would fairly state that he is satisfied with the undertaking given by Sri M. Surender Rao, learned senior counsel, and pray that the trial Court may be directed to dispose of the I.As., on their own merits and in accordance with law expeditiously.

All the Civil Miscellaneous Appeals are accordingly allowed setting aside the orders under appeal and remitting both the I.As., for consideration afresh by the trial Court on the basis of the documentary evidence filed and in accordance with law. The trial Court shall dispose of the I.As., after giving due opportunity of hearing to both parties, within two months from the date of receipt of a copy of this order. Pending miscellaneous applications shall stand closed in the light of the final order. No costs.

SANJAY KUMAR, J

U.DURGA PRASAD RAO, J

4th JANUARY, 2017

PGS