

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE MS. JUSTICE J.UMA DEVI

CIVIL MISCELLANEOUS APPEAL No.229 of 2016

15.06.2017

Between:

Sreedhara Ranga Rao

..Appellant

and

Yerasi Rammohan Yadav

..Respondent

Counsel for the appellant: Mr.Mohammed Gayasuddin
for Mr.Kowthuru Pavan Kumar

Counsel for the respondent: Mr.Venkateswarlu Chakkilam

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

At the interlocutory stage, the civil miscellaneous appeal itself is heard and being disposed of with the consent of the learned counsel for both the parties.

2. The respondent filed O.S.No.12 of 2016 for cancellation of agreement of sale and refund of the advance sale consideration of Rs.31,00,000/- along with interest. Along with the suit, the respondent filed I.A.No.68 of 2016 under Order XXXVII Rules 1 to 5 C.P.C. for granting an order of attachment before judgment. It is the pleaded case of the respondent that the appellant agreed to sell the suit schedule property at the rate of Rs.5,00,000/- per acre, entered into the suit agreement of sale with him and received a sum of Rs.31,00,000/- towards earnest money deposit from him on the date of execution of the suit agreement of sale; that as per the recitals of the suit agreement, the appellant will receive the balance sale consideration by 30.09.2013 and register the sale deed by handing over the original parent deed, pattadar passbook and title deed etc., to the respondent; that if the respondent fails to pay the balance sale consideration by the aforementioned date, the suit agreement will be cancelled and the advance sale consideration will be forfeited. The respondent further pleaded that in the month of May, 2013, himself, his father and the appellant went to Gudurupadu village with a private Surveyor to get the lands measured, the survey was done on the southern side and when the Surveyor was planning to measure the lands towards southern side of the road, some villagers came there, raised objection and demanded the appellant to leave the land to the village as water is being stored over that land for the need of the

villagers; that the appellant informed the respondent that he will convince the villagers and get the land measured within three months, but failed to do so and that in the last week of September, 2015, the respondent approached the appellant and finally demanded him to get the land surveyed, receive the balance sale consideration and execute the sale deed, but the appellant failed to do so due to the dispute over the property. The respondent, therefore, filed the aforementioned suit.

3. The appellant filed a counter-affidavit in the I.A. denying the averments of the respondent. He averred that while he was always ready and willing to perform his part of the contract, the respondent failed to pay the balance sale consideration and get the sale deed registered. The appellant pleaded that as the time was the essence of the contract and as per the recitals in the suit agreement, the respondent forfeited the earnest money deposit.

4. The Court below relied upon the documentary evidence produced by the respondent which includes Ex.A-3 – the office copy of the legal notice got issued by him and also Ex.A-7 - reply given by the appellant to the respondent, wherein he admitted execution of the suit agreement of sale and also receipt of Rs.31,00,000/- towards earnest money deposit. The Court below referred to the plea of the appellant about the forfeiture of earnest money deposit and observed that the same is a matter to be considered in the suit and that as the appellant admittedly received the sum of Rs.31,00,000/-, the balance of convenience lies in favour of the respondent to secure due repayment of the said money in the event of his success in the suit by way of attachment. Accordingly, attachment order was passed.

5. Upon hearing the learned counsel for both the parties and considering the reasoning of the Court below, we are of the opinion that the order under appeal does not suffer from any illegality warranting interference with the same. Admittedly, the appellant has received a substantial sum of Rs.31,00,000/- towards advance sale consideration and in the event of the respondent succeeding in the suit, he shall have sufficient security for execution of the decree. Though the property has been attached, the effect of attachment of the property is only to prevent the appellant from creating third party interests over the same and that notwithstanding such an order, the appellant is entitled to enjoy the property pending the suit. Therefore, we find the elements of balance of convenience in favour of the respondent and the Court below rightly granted the order of attachment.

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

7. As a sequel to dismissal of the appeal, C.M.A.M.P.No.462 of 2016 filed by the appellant for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

J.UMA DEVI, J

15th June, 2017
GHN