

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.1136 OF 2017

JUDGMENT:

Notice served on the respondent No.1 plaintiff of O.S.No.52 of 2016 and petitioner in I.A.No.574 of 2016 on the file of X Additional District Judge, Narsapur. The 2nd respondent is the 2nd defendant to the CMA endorsed as not necessary party to the suit. The appellant is the first defendant in the said suit vis-à-vis the application for the temporary injunction. The trial court in I.A.No.574 of 2016 pending disposal of the main suit for the relief of declaration of title over the plaint schedule property of the plaintiff by virtue of the so called sale in his favour executed by the 2nd defendant and with a consequential relief of declaring the decree dated 01.10.2012 in O.S.No.92 of 2012 on the file of the Senior Civil Judge, Narsapur, is a collusive and void and not binding. It is pending disposal of the suit from the sale deed possession claimed taken by the plaintiff from the 2nd defendant, the trial court granted the temporary injunction restraining the 1st defendant from executing the decree in E.P.No.19 of 2013 filed under Order XXI Rule 34 of CPC for execution of the sale deed pursuant to it.

2. The contentions in the grounds of the appeal are that trial court went wrong in granting the injunction though it is the execution of the decree duly granted and it is pursuant to

the prior agreement of sale and that will prevail over the so-called collusive subsequent sale deed between the 2nd defendant and plaintiff to defeat the rights of the 1st defendant herein, who is the decree holder in O.S.No.92 of 2012 and thereby the temporary injunction granted by the trial court is liable to be set aside.

3. Heard counsel for petitioner and perused the material on record.

4. A perusal of the decree in O.S.No.92 of 2012 is outcome of the *ex parte* decree and judgment with no context by the sole defendant. In fact, as can be seen from the very reasoned order of the lower court in granting the temporary injunction against execution of the decree in O.S.No.92 of 2012 in E.P.No.19 of 2013, there are reasons justifying for grant of the same pending disposal of the said suit O.S.No.52 of 2016.

5. Having regard to the above, there is nothing to interfere but for to say none of the observations in granting the injunction will not influence the mind of the trial court in disposal of the suit O.S.No.52 of 2016 on merits and to direct the trial court for early disposal of the suit after formulating the issues from the written statement stated already filed by the 1st defendant, preferably within six months from the date of receipt of the order.

6. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

16.11.2017
SS

