

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.1343 OF 2017

JUDGMENT:

Heard both sides. Perused the grounds of the Appeal *vis-à-vis* the impugned order of the lower court.

The lower Court dismissed the Injunction Application on the ground that the suit is posted for trial, issues already framed, and the agreement is of the year 2009 covered by Ex.A.1, and the suit filed in 2016, thereby no grounds to grant injunction.

That could not be the conclusion of the lower Court but for to consider the existence of *prima-facie* case, balance of convenience, and irreparable injury, which are the three prerequisites for grant or refusal of injunction within the judicial discretion to exercise.

Undisputedly, the suit is pending for specific performance of the contract for sale *supra* dated 16.09.2009. Leave about the subsequent Ex.A-2 supplemental agreement dated 08.04.2015 by one of the executants revalidating if at all in sale, same is also in dispute, when it is not even a case of any plaint rejection application filed, much less under Order VII Rule 11(d) C.P.C. At best if at all that is the issue, the lower Court has to formulate a preliminary issue and decide the same as to suit claim is barred by time or not. However, in the meantime, pending the suit for specific performance of the said contract for sale, if the defendant is allowed to alienate, third parties interest may creep in and many future complications may arise. Suffice it to say there is a *prima-facie* case for not a case of suit claim is out rightly barred by law but for if at all a mixed question of fact and law as one of the issues to decide.

Having regard to the above, from there exists *prima-facie* case, balance of convenience, and irreparable injury otherwise the plaintiff would suffer. The dismissal of the application by the lower Court is unsustainable thereby the dismissal order is set-aside by allowing the Appeal and by allowing the I.A. No.3 of 2016, granting temporary injunction, restraining the defendants from alienating the plaint schedule property, pending disposal of the suit, with a direction to the trial Court to consider for any preferential disposal of the suit as already trial commenced.

As a sequel, miscellaneous petitions, if any, pending in this Civil Miscellaneous Appeal shall stand closed. No order as to costs.

Date: 27.12.2017.
Dsh

Dr. B. SIVA SANKARA RAO, J



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