

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.Nos.35, 36 and 81 of 2018

Date:31.10.2018

C.M.A.No.35 of 2018

Between:

R.Parijatham,
W/o Late R.Chandrakanth
and another.

.....Appellants

And:

M.Kameshwari,
W/o Sudheer Babu and
eight others.

.....Respondents

Counsel for the appellants: Mr. Vedula Srinivas

Counsel for respondent No.1: Mr. V.Ravinder Rao

Senior counsel

For Mr. M.Jayaram Reddy

AND

C.M.A.No.36 of 2018

Between:

M/s Orange Avenue, Hyderabad,
reptd by its Partner-K.Satyanarayana
Reddy

.....Appellant

And:

M.Kameshwari,
W/o Sudheer Babu and
ten others.

.....Respondents

Counsel for the appellants: Mr. Vedula Srinivas

Counsel for respondent No.1: Mr. V.Ravinder Rao

Senior counsel

For Mr. M.Jayaram Reddy

AND

C.M.A.No.81 of 2018

Between:

M.Kameshwari,
W/o Sudheer Babu

.....Appellant

And:

R.Parijatham,
W/o Late R.Chandrakanth
and nine others.

.....Respondents

Counsel for the appellant: Mr. V.Ravinder Rao

Senior counsel

For Mr. M.Jayaram Reddy

Counsel for respondents: Mr. Vedula Srinivas

The Court made the following:

COMMON JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

As the parties and the suit in which the orders under appeals are passed are common, they are heard and being disposed of together.

For convenience, the parties are referred to as they are arrayed in the suit.

One Smt. M.Kameshwari, the daughter of defendant No.1, filed O.S.No.101 of 2016 (re-numbered as O.S.No.301 of 2016) in the Court of the III Additional Chief Judge, City Civil Court, Hyderabad, *inter alia* for preliminary decree in her favour for partition of plaint A to D schedule properties into seven equal shares and to allot one such share each to herself and defendant Nos.1 to 6. Along with the said suit, she filed I.A.No.801 of 2016 under Order-XXXIX Rules-1 and 2 CPC for temporary injunction restraining defendant Nos.1, 2 and 8 and persons claiming through them from alienating either by way of sale, gift or exchange or encumbering or developing or raising any constructions over plaint 'A' and 'B' schedule properties. She has also filed I.A.No.957 of 2016 for temporary injunction against defendant No.11 and persons claiming through him from alienating or encumbering in any manner or developing or raising any constructions over the suit schedule properties. Defendant Nos.1 and 2, who are the mother and son, respectively, of the plaintiff and defendant No.11, who is the developer, contested both the applications. On considering the respective pleadings and the

documentary evidence produced by the parties, the lower Court partly allowed I.A.No.801 of 2016 to the extent of plaint 'B' schedule property and dismissed the said I.A. *qua* plaint 'A' schedule property. The Court below allowed I.A.No.957 of 2016 by making the *status quo* order absolute. Feeling aggrieved by the order granting injunction in respect of 'A' schedule property, defendant Nos.1 and 2 filed CMA.No.35 of 2018 and defendant No.11 filed CMA.No.36 of 2018. The plaintiff filed CMA.No.81 of 2018 against the order dismissing I.A.No.801 of 2016 in respect of plaint 'A' schedule property.

During the hearing, Mr. Vedula Srinivas, learned counsel for defendant Nos.1, 2 and 11-the appellants in CMA.Nos.35 and 36 of 2018, on instructions from his clients, submitted that out of 4,512 square yards of property which constitutes plaint B schedule property, an extent of 2,715 square yards alone was given for development and that, his clients will not alienate or create third party interests over the balance extent of 1,797 square yards apart from not selling 60% of the developed property which would fall to their shares under the development agreement.

On 24.10.2018, at the request of the learned senior counsel appearing for the plaintiff-appellant in CMA.No.81 of 2018, the case was adjourned to enable him to get instructions from his client.

Today, at the hearing, Mr. V.Ravinder Rao, learned senior counsel representing Mr. M.Jayaram Reddy, learned counsel for the plaintiff, submitted that while in principle, his client has no objection

for accepting the offer made on behalf of defendant Nos.1 and 2, he, however, stated that the purported development agreement is nothing but an unregistered Memorandum of Understanding (MoU), which cannot be enforced in a Court of law, and that therefore, defendant Nos.1, 2 and 11 may be directed to register the said MoU. Learned senior counsel further submitted that as per Clause-2 of the said MoU, defendant Nos.1 and 2 are given the option to choose their shares of 60% of the developed area on each floor and that the constructed area being commercial in nature, defendant Nos.1 and 2 may be directed to choose the constructed area which faces Vijayawada Highway on one side and Nagarjunasagar Highway on another side.

Mr. Vedula Srinivas, learned counsel for defendant Nos.1 and 2, agreed for these proposals on instructions from defendant No2, who is present in the Court. He submitted that the MoU will be will be registered within two weeks.

Both the learned counsel submitted that the injunction was granted by the lower Court in respect of the vacant site marked as 'B' in the sketch prepared by the Surveyor and filed by the Advocate-Commissioner along with his report in I.A.No.1150 of 2016 and that further, the injunction will be restricted to 60% of the constructed area in the property marked as 'A' in the said sketch and allotable to defendant Nos.1 and 2.

As regards C.M.A.No.81 of 2018, Mr. Vedula Srinivas, learned counsel for defendant Nos.1 and 2, fairly submitted that his clients

would not alienate or create any further encumbrances over A schedule property, which is under mortgage to Vijaya Bank, Malakpet Branch, Hyderabad, pending the suit.

In the light of the understanding reached between the parties as referred to above, all the Civil Miscellaneous Appeals are disposed of in the following terms:

- (1) The injunction granted by the lower Court in respect of plaint B schedule property is confined to 'B' marked portion in the sketch prepared by the Surveyor and filed along with the Advocate-Commissioner's report in I.A.No.1150 of 2016.
- (2) The injunction is also confined to 60% of the constructed area to be allotted to defendant Nos.1 and 2 over 'A' marked portion of plaint B schedule property.
- (3) Within two weeks, defendant Nos.1, 2 and 11 shall register the Memorandum of Understanding, dated 10.02.2014.
- (4) Defendant Nos.1 and 2 shall select 60% of the constructed area falling to their shares facing Vijayawada and Nagarjunasagar Highways.
- (5) Defendant Nos.1 and 2 shall not alienate or further encumber the A schedule property which is already under mortgage to Vijaya Bank, Malakpet Branch, Hyderabad, pending the suit.

As a sequel to disposal of the Civil Miscellaneous Appeals,
I.A.Nos.1 and 2 of 2018 in CMA.Nos.35, 36 and 81 of 2018 filed for
interim relief are disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

31st October, 2018

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