

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Civil Miscellaneous Appeal No.676 of 2018

Date: 19.09.2018

Between:

Potta Seetharama Guptha (PSR.Gupta)

..Appellant

and

Nadikoppula Nagarathnam and 4 others

..Respondents

Counsel for the Appellant: Mr.K.S.Gopala Krishnan

Counsel for the respondents: Mr.Y.Sudhakar

The Court made the following:



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

This Civil Miscellaneous Appeal (CMA) arises out of Order and Decree, dated 15-11-2017, in IA.No.82 of 2016 in OS.No.27 of 2016 on the file of the Special Judge for trial of cases under SCs and STs (POA) Act –cum- IV Additional District Judge, Srikakulam.

We have heard Mr.K.S.Gopala Krishnan, learned Counsel for the appellant, and Mr.Y.Sudhakar, learned Counsel for the respondents.

The respondents filed the aforementioned suit for specific performance of agreement of sale, dated 12-07-1988. Along with the suit, they have filed IA.No.82 of 2016 for temporary injunction restraining the respondents from alienating or creating any third party interests over the suit schedule property. Though the petitioner has resisted the said application, the lower Court has allowed the same by granting injunction in favour of the respondents. Feeling aggrieved by the said Order, the appellants have filed the present appeal.

Admittedly, the agreement of sale was of the year 1988. The limitation for filing a suit for specific performance of an

agreement of sale is only three years. The only ground on which the respondents have not filed the suit within the period of limitation was that the suit filed by a third party against the appellant for declaration of his title over the suit schedule property was pending till the year 2016 and that after its dismissal, they have filed the present suit. In our *prima facie* opinion, the suit for declaration of title filed by a third party in respect of the subject property would not extend the period of limitation for the respondents to file the suit for specific performance of agreement of sale executed in respect thereof. *Ex facie*, the Court below ought not to have granted injunction in the face of the fact that the suit is filed by the respondents more than 25 years after the alleged agreement of sale was executed. In any event, the alienations, if any made by the respondents during the pendency of the suit, will be protected by the Doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882.

For the aforementioned reasons, the CMA is allowed and Order, dated 15-11-2017, in IA.No.82 of 2016 in OS.No.27 of 2016 on the file of the Special Judge for trial of cases under SCs and STs (POA) Act –cum- IV Additional District Judge, Srikakulam, is set aside. However, it is made clear that the

alienation of the subject property, if any, made by the respondents, pending the suit, shall be subject to its result and the third parties shall not claim any equities. It is further made clear that the observations made by us in this order shall not influence the lower Court while disposing of the suit.

As a sequel, IA.No.1 of 2018, filed by the appellant for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 19th September, 2018
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