

* THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.M.A. Nos.1044 & 1045 of 2017

%01.02.2018

Between:

P.Narsing Rao & others

.. Appellants

And

K.Lalitha & others

.. Respondents

Counsel for the appellants : Sri Challa Dhanamjaya

Counsel for the respondents : Sri K.Laxmaiah
for Mohd. Asifuddin

< Gist :

> Head Note:

? CITATIONS:

1. AIR 2010 SC 296
2. (1995) 3 SCC 33
3. 2002 (2) Raj LW 900
4. 2014 (6) ALD 505 (DB)
5. 2010 (2) ALD 55 (SC)
6. (1998) 3 SCC 331
7. 1985 (1) APLJ 277
8. 2011 (5) ALD 317
9. 2017 (2) ALD 102
10. 2010 (2) SCJ 344

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. Nos.1044 & 1045 of 2017

COMMON JUDGMENT:

The appellants 1 to 5 in the present Civil Miscellaneous Appeals are the defendants in O.S.No.316 of 2014 pending on the file of the V Senior Civil Judge, City Civil Court, Hyderabad, whereas the respondents are the plaintiffs 1 to 3 in the said suit. These two appeals are arising out of the impugned common order in I.A.Nos.209 & 210 of 2014 in O.S.No.316 of 2014, dated 18.08.2017, passed by the learned V Senior Civil Judge supra, which applications are filed for the relief sought by the plaintiffs 1 to 3 against six defendants, of whom besides defendants 1 to 5-appellants herein supra defendant No.6 is the Star Homes Infratech India (P) Ltd., represented by its Managing Director S.Narender Reddy, added as per the orders in I.A.No.621 of 2015 & I.A.No.619 of 2015 respectively and as per the order dated 18.04.2016 in I.A.No.1619 of 2015 in the plaint. In fact, in the plaint originally three plaintiffs filed the suit vis-a-vis the two injunction applications in I.A.Nos.209 & 210 of 2014 supra. After filing of the suit the plaintiffs 4 and 5 viz., K.Y.Shalini @ Mukka Shalini and K.Pavani @ Borra pavani were impleaded as per the orders in I.A.No.957 of 2014. Undisputedly, but for in the suit they were not impleaded as co-petitioners or co-respondents to I.A.Nos.209 and 210 of 2014 covered by the

impugned common order of the lower Court. In the present appeals, the array impugning the common order of the learned V Senior Civil Judge supra was showing the five appellants-defendants and three respondents-plaintiffs. The plaintiffs 4 and 5 impleaded in the suit as per the orders in I.A.No.957 of 2014 being not parties to I.A.Nos.209 & 210 of 2014 covered by the impugned common order, rightly not impleaded in the two appeals. It is therefrom those plaintiffs 4 & 5 sought for impleadment in the two appeals by filing applications in C.M.A.M.P.No.1912 of 2017 and C.M.A.M.P.No.1880 of 2017 as to add them as respondents 5 and 6 in the present appeals. It is not even their case that they were impleaded in I.A.Nos.209 & 210 of 2014 and what they stated in the respective affidavits of one Sri K.Laxmaiah, Advocate, G.P.A. holder of two persons in claiming that they are his daughters and residents of U.S.A. and in their childhood he purchased the house under the registered Sale Deed, dated 14.08.1986, bearing municipal numbers 1-2-62, 1-2-62/ 1, 1-2-63 admeasuring 544 square yards consisting of 244 square yards constructed area with 300 square yards open appurtenant site to it from the defendants 1 to 5 and their deceased father late P.Pandit Rao and deceased brother P.Prabhunath and in possession and enjoyment and the same described as 'B' schedule property in the plaint and even they

were impleaded as plaintiffs 4 and 5, due to inadvertence they have not been impleaded in I.A.Nos.209 & 210 of 2014 and as the defendants 1 to 5 are disputing the area as 300 square yards sold to them under the registered Sale Deed, though never questioned the registered Sale Deed they are interested in the dispute raised in the appeals and thereby to be impleaded.

2. Once they were not parties to the injunction applications in I.A.Nos.209 & 210 of 2014 covered by the impugned order, the question of their impleadment in the present miscellaneous appeals against the injunction order does not arise as rightly contended by the appellants-defendants and thereby, these petitions are liable to be dismissed and dismissed accordingly.

3. Now, coming to the two appeals in question, the prayer in I.A.No.210 of 2014 sought by the three plaintiffs was to grant ad-interim injunction restraining the defendants and their men from interfering with peaceful possession and enjoyment of plaintiff No.1-Lalitha and her husband Laxmaiah on behalf of their daughters in respect of the 'A & B' schedule property described therein pending disposal of the suit. I.A.No.209 of 2014 was also with the prayer to grant ad-interim injunction restraining the defendants and their men

from interfering with peaceful possession and enjoyment of plaintiff No.1-Lalitha and her husband Laxmaiah on behalf of their daughters in respect of the schedule property described therein pending disposal of the suit. The other plaintiffs 2 and 3 in the suit are K.Harinarayan and K.Murali. The defendants 1 to 5-appellants are by name P.Narsing Rao, P.Amarnath, P.Vaidyanath, P.Satyam and P.Sarala, the sons and daughter of late P.Pandit Rao.

4. As referred supra the prayer in I.A.Nos.209 & 210 of 2014 is self-same against the self-same parties filed by self-same persons-plaintiffs 1 to 3. The prayer in the suit filed for the relief of permanent injunction and for direction to the defendants to execute the registered Sale deed in favour of the plaintiffs or their nominees is as follows:

- (i) Grant perpetual injunction, restraining the Defendants and their henchmen, agents, servants or any other person or persons claiming through them, from interfering with the peaceful possession and enjoyment of the 1st plaintiff and her husband on behalf of their daughters in respect of the suit "B" schedule property bearing municipal No.1-2-62, 1-2-62/1, 1-2-63 admeasuring 544 square yards (ground area constructed on 244 sq.yds. and open area dilapidated structure 300 sq. yds) situated at Domalguda, Hyderabad.
- (ii) Direct the defendants to execute the registered sale deed in favour of the plaintiffs or their nominees or assignees in respect of the "A" schedule property i.e. H.No.1-2-64, 1-2-65, 1-2-65/1, 1-2-65/2 admeasuring 302 sq.yds. situated at Northern side of the "B" schedule property situated at Domalguda, Hyderabad, and deliver peaceful possession of the same and in the event of the defendants failure to register and deliver the same in respect of said "A" schedule property in favour of the plaintiffs, this Hon'ble Court may be pleased to register the same and on behalf of the

defendants and deliver the possession by passing the Judgment and decree in favour of the plaintiff.

(iii) Award costs of the suit.

(iv) Grant such other relief or reliefs to which the plaintiff is entitled to.

5. The averments in the two injunction applications in I.A.Nos.209 & 210 of 2014 covered by the impugned common order of the learned V Senior Civil Judge, City Civil Court, Hyderabad, dated 18.08.2017, between three plaintiffs and six defendants including the impleaded defendant No.6-Star Homes Infratech India (P) Ltd., are in describing the plaint 'A' schedule property as 302 square yards situated at Domalguda, Hyderabad with H.Nos.1-2-64, 1-2-65, 1-2-65/ 1 and 1-2-65/ 2 respectively within the boundaries of East-House of Narsimha Reddy & Postal and Telegraph Hostel (now apartments), West – 30' wide road, North – Road and South – H.Nos.1-2-62, 1-2-62/ 1, 1-2-63 of 'B' schedule property, whereas the plaint 'B' schedule property described as house bearing Nos.1-2-62, 1-2-62/ 1 and 1-2-63 admeasuring 544 square yards (ground area constructed on 244 square yards and open area dilapidated structure 300 square yards) situated at Domalguda, Hyderabad, bounded by East-House of Narsimha Reddy & Postal and Telegraph Hostel (Now apartments), West – 30' wide road, North – 'A' schedule property supra and South – Nala and House of Ranganath.

6. Coming to the averments, defendants 1 to 5 and their father late P.Pandit Rao and brother late P.Prabhunath offered to sell the plaint 'A' and 'B' schedule properties and the plaintiffs 1 to 3 agreed to purchase the same and consequently the said vendors have executed the Sale Agreement, dated 16.12.1983, agreeing to sell the plaint 'A' and 'B' schedule properties to the three plaintiffs. When the three plaintiffs paid Rs.3.00 lakhs as advance, the possession delivered to the plaintiffs by them except H.No.1-2-65, in which the defendants 1 to 5 are residing. Late P.Pandit Rao only signed the Sale Agreement on his behalf and also on behalf of his sons Prabhunath and Satyam and daughter Sarala as their guardian as they were minors by then. As per the terms of the Sale Agreement, the vendors have to take necessary permissions to alienate the property of minors by the guardian and also the clearance under the Urban Land (Ceiling and Regulation) Act and the clearance under the Income Tax Act for execution of the registered Sale Deed by showing readiness in writing to the plaintiffs and within one month thereafter the plaintiffs have to pay the balance sale consideration to obtain the registered Sale Deed. In the meanwhile, the plaintiffs are permitted to repair the 'A' and 'B' schedule properties delivered to them and the plaintiffs repaired the same except H.No.1-2-65, which is in occupation

of the defendants 1 to 5 supra. It is further averred that late P.Pandi Rao filed O.P.No.136 of 1984 before the Chief Judge, City Civil Court, Hyderabad seeking permission to alienate the minors' property and he issued a notice on 10.12.1984 asking the plaintiffs to handover the original Agreement of Sale, dated 16.12.1983, for filing of the same in O.P.No.136 of 1984 supra and the plaintiffs accordingly, handed over the original Sale Agreement to P.Pandit Rao. Thereafter the defendants 1 to 5 were postponing the execution of Sale Deed on one or other pretext, despite the plaintiffs expressing their readiness by telegraphic and written letters. On repeated demands, the defendants 1 to 5 agreed to register the 'B' schedule property, owned by the defendants 1 and 2 and Prabhunath, and they accordingly registered the said property vide registered Sale Deed, dated 14.08.1986, in the names of the daughters of plaintiff No.1 (plaintiffs 4 and 5 added in the suit) by receiving Rs.5.00 lakhs as consideration, but mentioning the same as if Rs.2.00 lakhs only in the Sale Deed and the daughters of plaintiff No.1 thereby become the owners of the 'B' schedule property and plaintiff No.1 is in possession and enjoyment on their behalf. The plaintiffs are ready and willing to perform their part of contract in respect of the plaint 'A' schedule property, but the defendants did not obtain necessary permissions and did not come forward to

execute the Sale Deed. On the other hand, the defendants entered into two Sale Agreements one with P.Jamuna and G.Lavanya and another with K.Damodar and K.Pajamani in respect of the 'A' schedule property by obtaining loans from them fraudulently and as they did not repay the said amounts, the said vendees filed two suits in O.S.No.1138 of 1991 and O.S.No.1139 of 1991 before II Senior Civil Judge, City Civil Court, Hyderabad, for specific performance and the matter went up to the Supreme Court. The plaintiffs finally issued a legal notice on 12.01.2014 demanding the defendants 1 to 5 to execute Sale Deed in respect of the plaint 'A' schedule property by receiving the balance consideration and instead of complying with the same the defendants 1 to 5 issued a reply notice on 31.01.2014 stating the ~~lis~~ in O.S.Nos.1138 & 1139 of 1991 was ended in the Supreme Court holding that the agreements in the said suits are outcome of a money transaction and therefore, they need not execute any registered Sale Deed. The Sale Agreement, dated 16.12.1983, executed by the defendants 1 to 5 and their father late P.Pandit Rao and their brother late P.Prabhunath is in existence and the defendants are liable to execute the Sale Deed in respect of the suit 'A' schedule property either in favour of the plaintiffs or their nominees, however, they are trying to interfere with the possession and enjoyment of

plaintiff No.1 and her husband, on behalf of their daughters, over the suit 'B' schedule property and also trying to alienate the suit 'A' schedule property to third parties to defeat the rights and interests of the plaintiffs over the said property and thereby, they are to be restrained by temporary injunction.

7. The averments in the counter-affidavit, filed by defendant No.2 in opposing both the applications, in nutshell are that the plaintiffs failed to fulfill their part of contract by producing the original Agreement of Sale for seeking permission of the Court to alienate the minors' share in the property and the defendants 1 to 5 have already cancelled the Agreement of Sale, dated 16.12.1983, in respect of the suit 'A' schedule property in the year 1984 itself and therefore, the question of enforcing the said Agreement of Sale does not arise. The plaintiffs filed the suit as well as the petitions after thirty years from the date of Sale Agreement, dated 16.12.1983, and hence, the claims are barred by time. The defendants 1 and 2 and their brother late Prabhunath have executed the registered Sale Deed, dated 14.08.1986, in favour of the daughters of plaintiff No.1 for 300 square yards only, but not for 544 square yards and plaintiff No.1 and her husband are at best thereunder in possession of 300 square yards only. After canceling the Agreement of Sale, dated 16.12.1983, the defendants 1 to 5 and their father P.Pandit

Rao have entered into three agreements viz., (i) Agreement dated 04.01.1986 with plaintiff No.1 in respect of H.Nos.1-2-62, 1-2-63 and part of 1-2-62/ 1 admeasuring 300 square yards ('B' schedule property) (ii) Agreement dated 04.01.1986 with P.Jamuna and G.Lavanya in respect of H.No.1-2-64, part of 1-2-62/ 1 and part of 1-2-65/ 1 admeasuring 300 squards and (iii) Agreement dated 20.03.1989 with K.Damodar and K.Rajamani in respect of H.Nos.1-2-65, part of 1-2-65/ 1 and 1-2-65/ 2 admeasuring 302 square yards. Defendants 1 to 5 and their father late Pandit Rao did not pay the amounts as agreed under the second and third agreements. P.Jamuna and G.Lavanya, in whose favour the second agreement entered, have filed O.S.No.1139 of 1991, and K.Damodar and K.Rajamani, in whose favour the third agreement entered, have filed O.S.No.1138 of 1991 for specific performance of their respective agreements. The said suits were decreed on 17.09.2001 by the learned II Senior Civil Judge, City Civil Court, Hyderabad. Against which, the defendants 1 to 5 and their father Pandit Rao and their brother Prabhunath preferred appeals in C.C.C.A.No.224 of 2001 and C.C.C.A.No.223 of 2001 respectively before the High Court and the High Court allowed the said appeals on 08.07.2005 by setting aside the trial Court's decrees and judgments. Aggrieved of the same, P.Jamuna and G.Lavanya filed Civil

Appeal No.3125 of 2007 before the Supreme Court, and K.Damodar and K.Rajamani filed Civil Appeal No.3127 of 2007 before the Supreme Court, and the Supreme Court, by judgment dated 25.08.2011, dismissed the said appeals confirming the judgments of the High Court. Later, P.Jamuna and G.Lavanya (plaintiffs in O.S.No.1139 of 1991) have settled the matter before the Legal Services Authority in P.L.C.No.180 of 2013 and delivered the possession of property admeasuring 300 square yards covered by the Sale Agreement to defendants 1 to 5 on 30.11.2013. So far as the Sale Agreement, dated 04.01.1986, executed by the defendants 1 to 5 and their father Pandit Rao with Prabhunath to plaintiff No.1 for 300 square yards ('B' schedule property) is concerned, a regular Sale Deed was executed on 14.08.1986 by defendants 1 and 2 and Prabhunath in favour of the daughters of plaintiff No.1. It is the averment that the present plaintiffs in O.S.No.316 of 2014 are guilty of the suppression of material facts. Defendant No.2 from the said counter contest sought for dismissal of the injunction petitions. Defendants 1, 3, 4 and 5 adopted the said counter of defendant No.2 supra. Defendant No.6, who came on record for claim to the Development Agreement-cum-G.P.A., dated 10.01.2014, entered into with defendants 1 to 4 in respect of 610 square yards out of the suit schedule property

also adopted the counter filed by defendant No.2 supra. It is therefrom the lower Court in passing the common order in I.A.Nos.209 & 210 of 2014 marked for reference exhibits P1 to P32 on behalf of the plaintiffs and exhibits R1 to R7 on behalf of the defendants. After hearing both sides, by the common order the lower Court observed that Ex.P7 is the certified copy of the registered Sale Deed bearing document No.299/ 1987 dated 14.08.1986 executed by the defendants 1 and 2 and Prabhunath in favour of the daughters of plaintiff No.1. According to the plaintiffs, the property sold under Ex.P7-Sale Deed is for H.Nos.1-2-62, 1-2-62/ 1 and 1-2-63 totaling 544 square yards, of which 244 square yards is the built-up area and 300 square yards appurtenant land to it; whereas according to the counter of defendant No.2 supra, the defendants 1 and 2 and Prabhunath sold 300 square yards only under Ex.P7 and plaintiff No.1 for and on behalf of the daughters thereunder is in possession and enjoyment for only 300 square yards. The Sale Deed-Ex.P7 describes only 300 square yards site with building constructed bearing municipal Nos.1-2-62, 1-2-62/ 1 and 1-2-63 and it further speaks the vendors 1 to 3 could not complete the construction, for which the permission was obtained in the name of their father, due to financial difficulties and they offered to sell the 300 square yards for Rs.2.00 lakhs to the purchasers, who are already in

possession, and the vendors convey the property with door numbers supra admeasuring 300 square yards, that is shown in red colour in the plan annexed to the Sale Deed. Thus, as per the schedule appended to Ex.P7-Sale Deed the extent of property sold is 300 square yards with buildings therein. It is the contest of plaintiffs in seeking to read Ex.P7 as a whole saying the property sold by defendants 1 and 2 and Prabhunath under Ex.P7 covers H.Nos.1-2-62, 1-2-62/ 1 and 1-2-63 together with the open land admeasuring 300 square yards appurtenant to it and if it is calculated, it comes to 544 square yards. Ex.R1-Agreement of Sale executed by the defendants 1 to 5 and their father P.Pandit Rao and their brother P.Prabhunath describes the possession of entire property except the portion bearing No.1-2-65 admeasuring 300 square yards was delivered to the plaintiffs. Prabhunath examined as DW1 in O.S.No.1138 of 1991 and P.Amarnath examined as DW1 in O.S.No.1139 of 1991, whose depositions referred in the impugned order of the lower Court as exhibits P24 & P25 where they stated that they cancelled Ex.R1-Agreement of Sale in 1984 itself and the property covered thereunder redelivered to them. Ex.P19-certified copy of the proceedings in P.L.C.No.180 of 2013, dated 30.11.2013, also speaks P.Jamuna and G.Lavanya handed over the possession of property bearing H.No.1-2-64, part of 1-2-62/ 1 and part of 1-

2-65/ 1 admeasuring 300 square yards, which forms part of the suit schedule property to the defendants 1 to 5. However, B.Pavani, who is one of the daughters of plaintiff No.1, filed objection by affidavit, that was not considered by the Legal Services Authority saying that the award is binding only on the parties. The lower Court therefrom observed in paragraph No.16 of the impugned common order that once the Sale Agreement-Ex.R1 speaks of 600 square yards has delivered and there is no record to show the property delivered back, it is not known as to how 300 square yards out of it delivered to P.Jamuna and G.Lavanya under the Sale Agreement and under the proceedings in P.L.C.No.180 of 2013-Ex.P19 redelivered back by them and therefrom held the 'B' schedule property is 544 square yards and plaintiff No.1 and her husband are in possession and enjoyment on behalf of their daughters (plaintiffs 4 and 5 added in the suit). The defendants 1 to 4 entered into a Development Agreement-cum-G.P.A-Ex.P31, dated 10.01.2014, with defendant No.6 for 610 square yards, which, according to the plaintiffs, forms part of the plaint 'B' schedule property and under the guise of that the defendants are trying to interfere and are to be restrained by temporary injunction. The said Ex.P31 is not in dispute so also the Supplementary Development Agreement-cum-G.P.A. further executed on 28.05.2015. Sri K.Laxmaiah, Advocate, the

husband of plaintiff No.1, presented the police complaint under exhibits P14 & P15 in December 2013 and January 2014 to the Chikkadpally Police complaining of the defendants are trying to interfere with the possession over the 'B' schedule property. The plaintiffs apprehend therefrom of the defendants will dispossess them.

8. Coming to the *prima facie* case, balance of convenience and the irreparable injury concerned, to the entitlement of injunction by the plaintiffs in the case of Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy¹ the Apex Court observed that the party, who seeks injunction, has to prove that he has made out a *prima facie* case to go for trial, the existence of balance of convenience in his favour and he will suffer irreparable injury unless the injunction is granted, and when the party fails to prove the same for any of them, it is not open to the Court to grant injunction, particularly the *prima facie* case as *sinequonon*. In Mahadeo Salvaram Shelke v. Pune Municipal Corporation² it is observed that no injunction can be granted against the original owner and in favour of a person even in unlawful possession. In the case of Surendra Kumar Baid v. Rajendra Kumar Baid³ it was held the granting of injunction ignoring the possession with

¹ AIR 2010 SC 296

² (1995) 3 SCC 33

³ 2002 (2) Raj LW 900

defendant in favour of the plaintiff is unsustainable. The trial Court referring to the three expressions in paragraph Nos.19 to 24 observed that the Mahadeo's case (supra 2) concerned states the injunction cannot be granted against the original owner, however, when Ex.P7-Sale Deed shows the defendants 1 and 2 and another executed the Sale Deed in favour of the daughters of plaintiff No.1, still it cannot be said the defendants are the owners. So far as the Kashi Math's case (supra 1) is concerned, plaintiff No.1 is able to show of she and her husband including of her daughters are in possession of the 'B' schedule property in claiming under Ex.P7, right over it and Sudrenda Kumar Baid's case (supra 3) has no application to the facts for the defendants not shown in possession and thereby, the plaintiffs are entitled to temporary injunction in respect of the 'B' schedule property. It was held thereafter from paragraph No.25 onwards of the common order that the defendants 1 to 5 and their father Pandit Rao and their brother Prabhunath entered Ex.R1-Sale Agreement, dated 16.12.1983, with the plaintiffs for 902 square yards and the plaint 'A' schedule property forms part of it and the defendants 1 and 2 and Prabhunath sold the 'B' schedule property to the daughters of plaintiff No.1 under Ex.P7-Sale Deed, dated 14.08.1986, and the plaintiffs have filed the suit for specific performance of Ex.R.1-Sale

Agreement, dated 16.12.1983, for 'A' schedule property and I.A.No.210 of 2014 for temporary injunction in respect of the 'A' schedule property. Ex.P2, the copy of legal notice, issued by the plaintiffs to the defendants 1 to 5 to execute the Sale Deed in terms of Ex.R1. The said legal notice was dated 14.12.1984 and the telegraphic notices a day prior to that covered by exhibits P3 to P6 to produce the documents in terms of Ex.R1. Ex.P16 is the copy of notice dated 12.01.2014 issued by the plaintiffs to the defendants 1 to 5 to execute the regular Sale Deed. The apprehension of the plaintiffs is that if the defendants construct any building pursuant to exhibits P31 and P32 agreements and sell the same to the third-parties, which may lead to multiplicity of litigation. If defendant No.6 is allowed to construct the building, pursuant to the said development agreements, the purpose of filing the suit will be defeated. In this regard, in the case of Ahmed Bin Sayeed v. Kamala Bai⁴ this Court held of the trial Court granted injunction restraining the defendants from changing the nature of property and making construction till disposal of the suit and the High Court confirmed the same. In the case of Julien Educational Trust v. Sourendra Kumar Roy⁵ it is observed that in a suit for specific performance of the contract for sale, the trial Court granted temporary injunction

⁴ 2014 (6) ALD 505 (DB)

⁵ 2010 (2) ALD 55 (SC)

restraining the defendants from selling and alienating or changing the nature and character of the suit property pending the suit, and the High Court set aside the said order and the Supreme Court set aside the order of the High Court saying if the suit property is allowed to be commercially exploited by raising multi-storied structures, the object of the suit will be rendered meaningless and thereby, the existing *status quo* can be ordered to be maintained without expressing any opinion on merits and demerits of the suit claim. With these references the lower Court observed that under Ex.R1-Sale Agreement the time stipulated is one year or till obtaining of the permission, whichever is earlier and as per the defendants' contest the Sale Agreement that was barred by law from 1983-84 of the notice issued and the suit filed in 2014, which is 30 years later and the claim is hopelessly barred and they sought for rejection of the plaint by filing I.A.No.285 of 2014 under Order VII Rule 11 C.P.C. and the said petition was dismissed holding that it is a mixed question of facts and law which can be decided by framing specific issue in regard to the limitation during the trial. Once such is the case, the claim barred by limitation or not to decide the *prima facie* case and need not be gone into is the observation. Leave about the other contention of Ex.R1-Sale Agreement is not in subsistence since cancelled in the year

1984 itself through Ex.R2-legal notice dated 15.12.1984, and later entered Ex.R3-Agreement dated 04.01.1986 with plaintiff No.1, Ex.R4-agreement of even date with P.Jamuna and G.Lavanya and Ex.R7-Agreement of Sale dated 20.03.1989 with K.Damodar and K.Rajamani for the property, which is part of the cancelled Sale Agreement-Ex.R1. However, it is the question to be gone into during the trial. It is observed on another contention of in the earlier round of litigation in O.S.Nos.1138 & 1139 of 1991, particularly in O.S.No.1139 of 1991 filed by P.Jamuna, who is the sister of plaintiff No.1 herein, the matter went upto the Supreme Court and K.Laxmaiah, the husband of plaintiff No.1, represented P.Jamuna and G.Lavanya as their G.P.A. holder in O.S.No.1139 of 1991 *supra* and it operates as *resjudicata* to the present claim of plaintiffs. However, it is a matter to be decided during trial because the plaintiffs or their representatives are not parties to those proceedings and therefrom observed that it is just and necessary to preserve the property till disposal of the suit by granting injunction as prayed for. It is crystal clear from the above that the impugned order of injunction granted in respect of the plaint 'A' and 'B' schedule properties respectively.

9. The contentions in the grounds of appeals against the impugned common order are that the impugned common order of the Court below is contrary to law and outcome of ill-appreciation of facts and ignorance of the requirements of existence of *prima facie* case, balance of convenience and irreparable injury to grant the discretionary relief of injunction and also in ignorance of no *prima facie* case from the Sale Agreement the claim is barred by limitation long back, also in ignorance of the fact that the said Sale Agreement was cancelled including by notice and by subsequent agreements and still claiming as if in possession is untrue and unsustainable and the earlier round of litigation run by K.Laxmaiah as G.P.A. of Lavanya in O.S.No.1139 of 1991 and after that delivered back the possession to the defendants covered by the award in P.L.C.No.180 of 2013. It is also the contention while answering that the 'B' schedule property admeasuring 300 square yards (56 yards constructed area (G.F.+F.F+244 square yards of appurtenant land) only as per the registered Sale Deed-Ex.P7 and the plaintiffs cannot claim for 544 square yards or any thing beyond 300 square yards supra, that too which is part of 902 square yards covered by the Sale Agreement, dated 16.12.1983, and the impugned order of the Court below is unsustainable and is liable to be set aside.

10. Learned counsel for the appellants-defendants reiterated the same, whereas the learned counsel for the respondents-plaintiffs supported the order of the lower Court.

11. Heard both sides and perused the material on record.

12. The facts need not require repetition in deciding the appeals so also the legal position covered by the expressions referred by the lower Court, but for to decide the impugned common order of the lower Court is sustainable in granting the injunction or not.

13. What is meant by the *prima facie* case is covered by the expression of the Apex Court referred in the order of the lower Court of Kashi Math's case (supra 1). It is settled law that the *prima facie* case means not the ultimate chance of success, but something more than the *bona fide* contention or tribal issue and as held in Kashi Math's case (supra 1) it must be shown of existence of *prima facie* case between the parties for the plaintiff to go for trial. The balance of convenience is in computing the pros and cons from the contentions of the parties to decide as to in whose favour the scale tilts and the irreparable injury need not always be not capable of compensation in money, but injury to the existing right itself is suffice.

14. From the above, coming to the facts the very Sale Agreement-Ex.R1 dated 16.12.1983 is for 902 square yards that covers the entire property. Ex.R2 is the copy of notice, dated 15.12.1984, canceling the said Sale Agreement. Ex.P1 is the notice, dated 10.12.1984, and Ex.P2 is the copy of notice, dated 14.12.1984, and exhibits P3 to P6 are the telegraphic notices dated 13.12.1984 sent to Prabhunath and the defendants 1, 2 and 4. From it is coming to Ex.P7-Sale Deed, dated 14.08.1986, a perusal of the Sale Deed as reproduced in the impugned common order of the Court below clearly speaks the extent is only 300 square yards and not 544 square yards. Paragraph Nos.12 & 13 of the lower Court order reproduces the contents are crystal clear as referred in paragraph No.14 of the order also the contention of the defendants in this regard that is also covered by the discussion by the lower Court.

15. Once such is the case, there is nothing to ignore the same by the lower Court. Further once there is stipulation in the very Ex.R1-Agreement of Sale, dated 16.12.1983, of the outer time limit of one year period and after exhibits P1 to P6 notices Ex.R2-notice given and it shows the agreement cancelled. The plaintiffs cannot claim still they are in possession of any portion of the property covered thereunder. Further, irrespective of what is the extent mentioned in the

Agreement and its schedule once the subsequent Sale Deed executed is crystal clear of the area, particularly covered by Ex.P7 supra, which is subsequent to that on 14.08.1986 for 300 square yards and the other agreement holder of O.S.No.1139 of 1991 for 300 square yards is no other than the sister of plaintiff No.1, represented by K.Laxmaiah, husband of plaintiff No.1, Advocate as G.P.A. holder and after the litigation went upto the Supreme Court unsuccessfully in O.S.Nos.1138 & 1139 of 1991 in respect of 300 and 302 square yards excluding Ex.P7-Sale Deed 300 square yards, out of 902 square yards covered by Ex.R1, and it is said Laxmaiah that represented the plaintiffs in O.S.No.1139 of 1991 as their G.P.A. holder being the close relative to them and Ex.P7-Sale Deed is in favour of the daughters of plaintiff No.1 and said Laxmaiah when the Sale Deed is very clear of 300 square yards and not specifically of 544 square yards, it is difficult to accept the said contention of the plaintiffs atleast in deciding the existence of *prima facie* case or not of still after cancellation of the agreement they are in possession, leave about the P.L.C.No.180 of 2013 covered by Ex.P19 dated 30.11.2013 the pre-litigation settlement and re-delivery of 300 square yards cited by said G.Lavanya and P.Jamuna. As referred supra, G.Lavanya represented earlier by Laxmaiah as G.P.A. holder and these clearly show the plaintiffs have no

prima facie case. Leave about the suit Sale Agreement claim is on its face otherwise in subsistence if any, apart from the same is cancelled as referred supra, once hopelessly barred by limitation, the question of seeking specific performance of the contract does not arise and even sought from the cause of action set up with claim within limitation, there is nothing for the trial Court to hold that still the plaintiffs got *prima facie* case of entitlement to the enforcing of the Sale Agreement to go for trial irrespective of the plaint rejection application dismissed of the limitation aspect the mixed question of fact and law can be decided in the suit by framing specific issue, that is not be all and end all, nor that order allowed to shirk the duty of the Court to consider the existence of *prima facie* case or not in this regard.

16. Having regard to the above, the granting of injunction by the trial Court in allowing the two applications in I.A.Nos.209 & 210 of 2014 is unsustainable for no *prima facie* case as a *sinequonon*. Further, as held by the Apex Court in Tirumala Tirupati Devasthanams v. K.M.Krishnaiah⁶ under Section 13 of the Indian Evidence Act of the judgment not inter parties is even admissible in evidence in assertion of a right to property in dispute in the subsequent suit in deciding entitlement to the injunction or not from the earlier finding

⁶ (1998) 3 SCC 331

even though the subsequent suit party to the claim is not party to the earlier proceedings. Therefrom also the plaintiffs have no *prima facie* case.

17. As held by this Court in *Saraswathi v. Dr. Jaganmohana Rao*⁷ and reiterated by this Court the said principle referring to several expressions of the Apex Court, in *Dasari Laxmi v. Bejjenki Sathi Reddy* (C.R.P.No.76 of 2014, dated 21.10.2014) held at paragraph Nos.24 to 26 as follows:

24) This Court in *Saraswathi* supra way back held that even the Court holds that the temporary injunction relief pending suit cannot be granted within the discretion, it can impose terms on the party in possession to deposit income from the property to the credit of the suit till disposal of the suit or the like and the terms may be modified or varied from time to time and the Court also can appoint a receiver or Commissioner in a temporary injunction application pending suit, for taking possession of the property and management pending suit by restraining both the parties from interference with possession as a custodia legis to entrust the property to the party ultimately succeeded.

25) This Court way back held in *Dulichand V. Khaja Mohammad Ibrahim Khazi* [AIR 1975 APHN 207] that the imposing of terms from non-entitlement to the injunction within the judicial discretion may include restraining both parties from entering the suit land or doing any particular act for maintaining and protecting the subject matter of the lis pending suit.

26) In fact in *Halsbury's Laws of England*, 2nd edition, Volume 18 – Para No.49 and Volume 21, Para 775 – it was stated that –it is within the powers of the Court of equity for sole purpose of effective justice between the parties while granting or refusing injunction to impose terms on the parties. Courts will take care that the order is so framed that neither party will be deprived of the benefit he is entitled to, if in the event it turns out that party in whose favour, it was made is the wrong, for the purpose it will be necessary to impose terms if required on the party as a condition in granting or refusing injunction.

⁷ 1985 (1) APLJ 277

18. As held by this Court in Kuruvakotapaty Chinna Linganna v. Alla Mallikarjuna Reddy⁸ that in a suit for specific performance based on the possession of Sale Agreement of the suit land for specific performance shown barred by limitation that Doctrine of scope of part performance under Section 53-A of the Transfer of Property Act does not confer any title on person even shown in possession, pursuant to the written contract of sale, but for a protection as a shield subject to satisfying with the legal requirements of it. There it is observed Order II Rule 2 C.P.C. also applies if initially the specific performance not asked, but injunction simplicitor and even amended subsequently for specific performance. It is also observed Article 54 of the Limitation Act clearly speaks the period of limitation to compute from the terms of the agreement fixing time on its expiry or where no time fixed from date of demand and refusal.

19. Even from the expression of this Court in Pattamsetty Vital Srinivasa Rao v. Pattamsetty Venkateswara Rao⁹ wherein referring to the expression of the Apex Court in Skyline Education Institute (India) Private Ltd. v. S.L.Vaswani¹⁰, it observed that the Court of first instance

⁸ 2011 (5) ALD 317

⁹ 2017 (2) ALD 102

¹⁰ 2010 (2) SCJ 344

exercised its discretion to grant or refuse to grant the relief of temporary injunction based on the objective consideration of material placed before it and is supported by cogent reasons, the appellate Court will be loath to interfere. However, in the facts discussed supra, the order of the lower Court is unsustainable and the reasons assigned are unsustainable and baseless and without proper application of mind to the facts and thereby, the appellate Court can interfere even as can be seen from the expression of the Apex Court in Skyline Education's case (supra 10) that is referred in Pattamsetty Vital Srinivasa Rao's case (supra 9).

20. In fact, the impugned order of the lower Court at paragraph No.27 refers the expression of the Apex Court in Julien Education Trust's case (supra 5) of paragraph No.17 therein that the existing *status quo* of the suit property pending the suit for specific performance with a direction for expeditious disposal of the suit can be ordered without expressing further merits of the matter.

With the above observations, these Civil Miscellaneous Appeals are allowed in part by setting aside the common order of the trial Court in I.A.Nos.209 & 210 of 2014, however, by ordering both the parties to maintain the existing *status quo* only as to any alienations or any constructions pending

disposal of the suit and the trial Court is directed to give expeditious disposal of the suit as early as possible preferably within a period of six (6) months from the date of receipt of a copy of this order. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

01.02.2018
MVA

Note: L.R. copy to be marked

(B/ O)
MVA

