

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

And

HON' BLE SRI JUSTICE T. AMARNATH GOUD

C.M.A.No. 463 of 2017

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

- 1) Assailing the order, dated 30.03.2017, passed in I.A.No.126 of 2017 in I.A.No.1674 of 2014 in O.S.No.664 of 2014, on the file of the II Additional Chief Judge, City Civil Court, Hyderabad, wherein the trial Court granted *status quo*, the present C.M.A. came to be filed under Order 43 Rule 1 of C.P.C.
- 2) Two main grounds which are urged by Sri C.V.Mohan Reddy, learned Senior counsel appearing for the appellant are (1) whether an application filed under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. to direct the District Registrar, Hyderabad District and their Subordinates, restraining them from entertaining the respondents and their agents from registering the subject property during the pendency of the interim application filed for recall of the orders dated 16.08.2016, is maintainable without challenging the order dated 16.08.2016 passed in I.A.No.1674 of 2014 and (2) what could not be achieved in the application filed earlier is sought to be achieved indirectly by making the present application. In other words he would contend that though the appellant herein was ordered to be impleaded as party in the main suit, which order is still in force as on today, the Court should have found fault with the respondents in not making the appellant as party to the impugned

proceedings and should heard the appellant before passing any orders.

3) On the other hand, Sri P.Gangaiah Naidu, learned Senior Counsel appearing for the plaintiff would contend that it is false to state that the order impleading the appellant herein was not challenged. According to him, it was an *exparte* order and an application came to be filed to *set aside* the same which is pending consideration. He took us through the order passed in I.A.No.1674 of 2014, dated 16.08.2016, to show that even by 16.08.2016, the appellant was not shown as defendant No.10, but still order came to be passed as if he was defendant No.10. Since I.A.Nos.174 and 175 of 2017 filed by the appellant are still pending consideration before the Court and even I.A.Nos.125 and 16 of 2017 filed by the plaintiff are pending consideration, he would submit that it would be just and proper if all the I.A.s are heard together by the trial Court and decide the same, in accordance with law.

4) The facts in brief are as under:

The plaintiff filed the above suit for specific performance of agreement of sale dated 29.06.2013, against defendant Nos.1 to 9 for execution of registered sale deed and delivery of physical possession of the suit schedule property. Along with the suit, the plaintiff filed I.A.No.1674 of 2014 for interim injunction restraining the defendants therein from alienating the suit schedule property. By an order dated 13.08.2014, an injunction order came to be passed restraining the respondents therein from alienating the

property. Along with the suit, the plaintiff also filed I.A.No.475 of 2014 seeking impleadment of the registering authority as a necessary party. While things stood thus, the appellant herein, filed I.A.No.1015 of 2015, under Order I Rule 10 of C.P.C., seeking his impleadment as defendant No.10 in the main suit. Vide orders dated 06.11.2015, the said application was allowed and the appellant herein was impleaded as defendant No.10 in the said suit. Aggrieved by the same, the plaintiff filed C.R.P.No.5528 of 2015 before this Court, which was allowed on 18.04.2016. While setting aside the order of impleadment, this Court remanded the I.A. back to the trial Court, with a direction to give an opportunity to both the parties to exhibit their respective documents and dispose of the said application afresh, on merits, in accordance with law. Pursuant thereto, the I.A. was remanded back and since then the respondent counsel is said to be taking time, on one pretext or the other, though the appellant herein was opposing the same. Subsequently, documents came to be marked on both sides and the matter was posted to hearing on 16.08.2016. It is said that on that day, the plaintiff filed a petition seeking adjournment, but however the same was opposed by the appellant. It is said that on that day, the trial Court suspended the interim order passed earlier, until further orders and posted the matter to 19.08.2016, on which date I.A.No.1015 of 2015 was allowed impleading the appellant herein as defendant No.10 in the suit. It is said that though the implead application was allowed, but for the reasons best known, the plaintiff did not carryout the amendment by filing

the amended fair copy. It is said that since the appellant herein was taking steps to alienate the property, two applications came to be filed vide I.A.No.125 of 2017, for recall of the order dated 16.08.2016 passed in I.A.No.1674 of 2014 and also I.A.No.126 of 2017 seeking a direction to the District Registrar, Hyderabad and their Subordinates, not to register the subject property during pendency of I.A.No.125 of 2017. At that stage, applications came to be filed by the appellant herein vide I.A.Nos. 174 of 2017 and 175 of 2017 seeking his impleadment as respondent No.10 in the two applications, which are also pending consideration.

5) From the above, it is clear that the order of injunction which was granted on 13.08.2014 in I.A.No.1674 of 2014 was suspended until further orders on 16.08.2016 and the matter was called on 19.08.2016 and on 19.08.2016, I.A.No.1015 of 2015 impleading the appellant herein was allowed. Without challenging the order suspending the injunction order, the plaintiff appears to have filed an application to *set aside* the said *exparte* order, which is also pending consideration. Though the appellant herein was impleaded as a party vide I.A.No.105 of 2015, another application came to be filed seeking some what identical relief more particularly directing the Registering Authorities not to register the flats constructed in the land, which is subject matter of the suit. As urged, what could not be achieved directly i.e., either by way of challenging the injunction order or obtaining necessary orders in an application filed to *set aside* the *exparte* order, independent application came to be filed without making the appellant as party, though the Court

as well as the respondents were aware that the application filed by the appellant to implead himself as a party was allowed. It is true that technically the cause title was not amended by the respondents, but when the order of impleadment is still in force, it would have been just and property to give the appellant an opportunity to contest the matter.

6) Hence, we feel that the trial Court erred in passing an order granting *status quo*, when the earlier order of injunction granted in favour of the plaintiff was suspended, without hearing the appellant.

7) Having regard to the facts and circumstances of the case, the C.M.A. is allowed setting aside the order dated 30.03.2017, passed in I.A.No.126 of 2017 in I.A.No.1674 of 2014 in O.S.No.664 of 2014 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad and the matter is remitted back to the trial Court to decide I.A.Nos.125, 126, 174 and 175 of 2017 and also I.A.No.674 of 2017 together as early as possible. Having regard to the fact that the *status quo* order which has been passed by the Court is in force, the same shall be in force for a period of five (05) weeks from today. Meanwhile, the respondents or appellant as the case may be, shall approach the trial Court and obtain interim orders, if any, in which event the trial Court shall decide the same in accordance with law, after hearing all the concerned, including the appellant herein.

8) There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

C. PRAVEEN KUMAR, J

T. AMARNATH GOUD, J

02.05.2018

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