

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CMA.Nos.877 & 819 of 2018

DATE: 26-09-2018

Between:

Smt.S.Meera Bai

..... APPELLANT

AND

Smt.P.Rukmini and another

.....RESPONDENTS

COUNSEL FOR THE APPELLANT: Sri C.B.RAM MOHAN REDDY

COUNSEL FOR RESPONDENTS : Sri K.L.B.KUMAR

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CMA.Nos.877 & 819 of 2018

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

Plaintiff in O.S.No.682 of 2017 filed these two Civil Miscellaneous Appeals against separate orders, dated 12.04.2018, passed in I.A.Nos.741 & 742 of 2017, on the file of the XV Additional District Judge, Ranga Reddy District at Kukatpally.

We have heard Mr.C.B.Ram Mohan Reddy, learned counsel for the appellant and Mr.K.L.B.Kumar, learned counsel for the respondents.

The appellant has filed O.S.No.682 of 2017 for specific performance of agreement of sale, dated 7/9.4.2016. The undisputed facts are that respondent No.1 has agreed to sell the suit schedule property for a sale consideration of Rs.64 lakh. The appellant has paid an advance sale consideration of Rs.10 lakh at the time of entering into the agreement. The agreement has stipulated 5 months period for payment of balance sale consideration and the execution of sale deed by respondent No.1. The period of 5 months expired on 7/9.9.2016. On 12.09.2016 the appellant has caused a legal notice issued to respondent No.1, calling upon her to receive the balance sale consideration and execute the sale deed. On 21.09.2016 respondent No.1 has issued reply notice, calling upon the appellant to pay the balance sale consideration within one week and get the sale deed executed and registered. This notice was admittedly received by the appellant on 26.09.2016. Though the appellant has claimed that on receipt of the said notice, she approached

respondent No.1 with a request to receive the balance sale consideration through cheques/demand drafts and that the latter has not cooperated in that regard, except the vague pleading, no *prima facie* material was produced by the appellant in support of her said plea.

Be that as it may, respondent No.1 has cancelled the agreement of sale by issuing a notice to the appellant on 07.10.2016 and subsequently sold the suit schedule property to respondent No.2. After waiting for more than 8 months, the appellant has filed the aforementioned suit seeking specific performance of the agreement of sale. Admittedly, respondent No.2 has constructed a building over the property purchased by her from respondent No.1.

Along with the suit, the appellant has filed I.A.No.741 of 2017 seeking injunction against respondent No.1 from alienating or creating third party interest over the suit schedule property. She has also filed I.A.No.742 of 2017 for temporary injunction restraining respondent No.1 from changing the nature of the suit schedule property. After weighing the elements of *prima facie* case, balance of convenience and irreparable injury, the lower court has dismissed both these applications.

At the hearing, the learned counsel for the appellant did not dispute the fact that the suit schedule property was sold by respondent No.1 to respondent No.2, almost 8 months prior to filing of the suit, and that respondent No.2 has raised construction.

Interestingly, the appellant has not sought injunction against respondent No.2. At any rate, respondent No.2 having already purchased the property from respondent No.1, relief of injunction sought against

respondent No.1 from alienating or creating any third party interest in I.A.No.741 of 2017 has become infructuous.

As regards the relief claimed in I.A.No.742 of 2017, as respondent No.2 has purchased the property from respondent No.1 and she has already changed the property by raising construction, even this application has also become infructuous.

For the aforementioned reasons, both these Civil Miscellaneous Appeals are dismissed as without any merit. No order as to costs.

As a sequel to dismissal of both these appeals, I.A.No.1 of 2018 in CMA No.877 of 2018, and I.A.No.1 of 2018 in CMA No.819 of 2018, filed by the appellant for interim injunction, shall stand disposed of as infructuous. No order as to costs.



C.V.NAGARJUNA REDDY,J

GUDI SEVA SHYAM PRASAD,J

Date: 26.09.2018
Dsr