

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN**

CMA.No.s 24 and 364 of 2019

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

1. These two Appeals arise between the same parties, out of the same suit and so they are being disposed of by this common judgment.

2. The parties would be referred to as per their array in O.S.No.61 of 2016 on the file of the Principal District Judge at Warangal.

3. The plaintiff is the owner of the suit schedule property having purchased it under registered Sale Deed dt.11.04.2018 from the previous owner. Plaintiff constructed first floor and the suit schedule property consists of ground + first floor. According to the plaintiff, the front side is a commercial premises having shops with shutters, while the rear and other sides have residential portions.

Contentions of the Plaintiff:

4. An agreement of Sale dt.23.04.2012 was entered into between the plaintiff and the sole defendant for sale of the property for Rs.49,50,000/-. It is the plea of the plaintiff that the defendant paid Rs.6,00,000/- as advance sale consideration and he undertook to pay the remaining balance by 13.05.2012 to get a registered sale deed. He also contended that the time was essence of the contract to complete and conclude the transaction.

According to the plaintiff, time was extended up to 01.08.2012 and 28.12.2012 but the defendant did not pay the balance sale consideration to obtain registered sale deed. Plaintiff alleged that though he had not handed over the possession to the defendant, the defendant being a police constable forcibly occupied the suit schedule property when the plaintiff was at Hyderabad by breaking open the lock of the premises on 04/05-02-2013 and illegally occupied it without permission or consent of the plaintiff.

5. The plaintiff then filed a criminal case CC.No.44 of 2014 before the I Additional Judicial First Class Magistrate, Warangal but the defendant was acquitted on 31.03.2016.

6. Plaintiff therefore filed the suit to evict the defendant and persons in occupation on his behalf on being inducted by the defendant in the suit schedule property and also sought damages for occupying the suit schedule property of Rs.7,20,000/- from 15.06.2013 to 14.06.2016 with interest @ 2% per month apart from future damages @ Rs.20,000/- per month.

Plea of the defendant:

7. Written statement was filed by the defendant admitting that plaintiff is the owner of the property and also admitting that there is an agreement on 23.04.2012 between the parties wherein the defendant agreed to purchase the suit property for Rs.49,50,000/-. It is the case of the defendant that not merely Rs.6,00,000/-, which is admitted by the plaintiff, but more

amounts were also paid. He denied that he had forcibly occupied the suit schedule property and contended that before entering into the agreement with the plaintiff, he was a tenant of the said property, and even after the agreement, with the consent of the plaintiff, he continued in possession of the property. He therefore contended that the suit for eviction is not maintainable, since he was not a trespasser. He stated that two commercial portions with shutters were kept vacant and in the first floor, he had inducted a tenant, but was paying Rs.1,200/- per month but not Rs.12,000/- as alleged by the plaintiff. He pointed out that on the date when the sale deed was supposed to be registered, since the son of the plaintiff filed OS.No.3 of 2011 before the Principal Senior Civil Judge, Warangal for partition of the suit schedule property and obtained interim order from the said Court stopping alienation of the property, the Sub-Registrar refused to register the sale deed.

The application for appointment of Receiver:

8. Pending the suit, plaintiff filed IA.No.304 of 2016 under Order XL Rule 1 CPC to appoint a receiver to take possession of the suit schedule property and to manage the same by leasing it out by auction with the permission of the Court during the pendency of the suit. He alleged that the agreement between himself and defendant got terminated by lapse of time and the defendant cannot enjoy the property belonging to him or damage it as per his wishes. He also stated that he was prepared to

return the advance amount paid to him by the defendant or deposit it in the Court.

9. Counter affidavit was filed by the defendant opposing this application, reiterating the contents of the written statement.

The order of the Court below:

10. By order dt.01.10.2018, the Court below, instead of appointing a receiver directed the defendant to deposit Rs.8,000/- per month into Court from November, 2018 onwards, on or before 10th day of each month and observed that if the plaintiff succeeds in the suit in getting damages, the amount deposited by the defendant is required to be adjusted towards damages, if any granted in the suit, and such deposit by the defendant would be subject to the final result of the suit.

11. For passing this order, the reason given by the Court below was that though the defendant had pleaded that he had paid the entire consideration amount, no documentary evidence was placed to substantiate the same and at this point of time it was not possible for the Court to come to a definite conclusion on the point. It observed that the ownership of the property continued to be with the plaintiff and had not been transferred to the defendant, though the defendant is in possession of the property. The value of the property was admittedly Rs.49,50,000/- and the plaintiff had admittedly received only Rs.6,00,000/-, that the defendant did not take any steps for seeking specific performance of the said agreement of sale, and therefore it was just and proper

to direct the defendant to deposit certain amounts into the Court instead of appointing a receiver. It also took note of the fact that the plaintiff is 88 years old.

The present CMAs:

12. Assailing this order, both the plaintiff and defendant have filed these CMA Nos.364 and 24 of 2019.

13. Heard Sri M.N.Narasimha Reddy, counsel for plaintiff Sri M.Srinivasa Rao, counsel for defendant.

14. It is the contention of the plaintiff that the amount of Rs.8,000/- fixed by the Court below for depositing every month by the defendant is too low, and having regard to the age of the plaintiff and the time which would elapse for the suit to be decided, more amount i.e., around Rs.20,000/- per month be directed to be deposited by the defendant pending suit.

15. Counsel for the defendant on the other hand contended that the defendant had paid full consideration amount, though no material evidence is placed before the Court below; that the evidence would be adduced during the trial; and contended that he ought not to have been directed by the Court below in IA.No.304 of 2016 to deposit any amount to the credit of the suit.

The consideration by the Court:

16. We have noted the submissions of both sides.

17. It is important to note that the plaintiff is, as of date, aged 90 years and admittedly he is the owner of the suit schedule property.

18. The defendant is employed as a police constable and though there is an agreement of sale dt.23.04.2012 executed by them, and though the defendant claims to have paid the entire sale consideration, he has not filed any suit for specific performance of the agreement of sale. He has also not filed any document evidencing payment of full consideration of Rs.49,50,000/- to the plaintiff.

19. We have also noticed that the property in question consists of ground + first floor and the front side is commercial property having shops with shutters, whereas the rear and other sides have residential portions. Therefore, potentiality of the property cannot be lost sight of, as also the loss which would be caused to the plaintiff by being deprived of the possession of the property during the pendency of the suit.

20. In these facts and circumstances of the case, the Court below did not commit any error in holding that defendant must be directed to deposit certain sum of money to the credit of the suit pending disposal of the suit, though we are of the opinion that having regard to the fact that the defendant is squatting over the property from February, 2013 allegedly, the amount of Rs.8,000/- per month fixed by the Court below commencing from November, 2018 onwards appears to be on the lower side.

21. Therefore, while dismissing CMA.No.24 of 2019, we partly allow CMA.No.364 of 2019 by modifying the order dt.01.10.2018 in IA.No.304 of 2016 in OS.No.61 of 2016 to the following affect:

“The defendant in OS.No.61 of 2016 shall deposit a sum of Rs.6,000/- per month for the period 20.06.2016 to 19.06.2018, and Rs.8,000/- per month from 20.06.2018 to 19.06.2020, to the credit of the suit; and for every two year period thereafter, he shall continue to deposit an additional amount of Rs.2,000/- per month over the previous period; and shall continue to do so, till the disposal of the suit. The amount so deposited by the defendant is permitted to be withdrawn by the plaintiff without furnishing any security. The defendant shall deposit the arrears from 20.06.2016 till 31.11.2019 within a period of three months from today. The amount from 01.12.2019 to 31.12.2019 shall be deposited before 31.12.2019. The amount as directed above, from 01.01.2020 onwards shall be deposited on or before 10th of every month without fail. In default of making any of these deposits, the Court below shall appoint a receiver, who shall take possession of the property from the defendant and lease out the property by auctioning and deposit the proceeds to the credit of the suit. The Court below shall also endeavor to

decide the suit expeditiously, having regard to the age of the plaintiff.

22. Consequently, miscellaneous petitions pending if any shall stand dismissed. No order as to costs.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

04th December, 2019.

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