HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.M.A.No.1060 of 2017

ORDER:

Heard the learned counsel for the appellant and Sri V.Ravi Kumar, learned counsel for the respondent.

2. This appeal is filed challenging the order dt.11-09-2017 in I.A.No.467 of 2017 in O.S.No.63 of 2017 of the Principal Senior Civil Judge, Karimnagar.

3. Appellant is the plaintiff in the suit. He filed the suit for specific performance of agreement of sale allegedly executed by the respondent on 30-12-2016. He claimed to have paid a sum of Rs.10.00 lakhs at the time of execution of agreement of sale. He contended that though he was willing to buy the property by paying the balance consideration, the respondent has declined to execute registered sale deed.

4. He also filed I.A.No.467 of 2017 under Order 39 Rules 1 and 2 CPC for interim injunction restraining the defendant from alienating and transferring the schedule property to third parties till disposal of the suit.

5. Counter affidavit was filed by the respondent contending that the respondent never knew the appellant, that she never approached him for sale of the property, that the suit agreement of sale is forged one, and she did not receive any consideration there under. She contended

that possession and ownership of the suit schedule property continue to be with her and her signature on the agreement of sale was forged in collusion with the respondent's divorced husband by name Thallapalli Sathaiah. She contended that her husband initiated a suit for declaration of title and recovery of possession in respect of the suit schedule properties and other properties on the basis of a registered sale deed bearing document No.1091/1994 allegedly executed by the respondent's mother in O.S.No.100 of 2002, and lost the suit and he instigated the appellant to file the present suit.

6. Though initially ad-interim injunction was granted in favour of the appellant on 01-06-2017, the same was vacated on 11-09-2017 by the Court below. Before the Court below, the appellant marked Exs.P-1 to P-5 and the respondent marked Exs.R-1 to R-3.

7. In its order, the Court below observed that appellant did not file any document showing that an amount of Rs.10.00 lakhs was paid to the respondent on 30-12-2016 despite the Government of India having seized currency notes of denomination notes of Rs.500/- and Rs.1000/- by way of demonetization. It also observed that there is no separate receipt in support of the payment except recital in regard thereto in the Ex.P-1 agreement of sale. It took note of the pleading of the respondent that she denied execution of the agreement of sale and observed that it was for the appellant to establish the same *prima facie*. It also referred to the litigation between the respondent's divorced husband and the respondent's mother wherein the divorced husband of the respondent

lost and noted that during the pendency of the said litigation and the suit schedule property, the respondent could not have executed the agreement of sale Ex.P-1 in favour of the appellant. It noted that the appellant did not file any third party affidavits showing that it was respondent who entered into agreement of sale including affidavits of witnesses to the said transaction. It also recorded that there was no prior notice issued by the appellant to the respondent calling upon her to receive the balance sale consideration and the possibility of the respondent's divorced husband being instrumental in filing the suit by creating Ex.P-1 document cannot be ruled out. It held that at this stage, injunction cannot be granted in favour of the appellant and no injury will be caused to the appellant, if injunction is denied.

8. Assailing the same, this appeal is filed.

9. Learned counsel for the appellant vehemently contended that receipt of Rs.10.00 lakhs is referred to agreement of sale Ex.P-1 itself and the Court below erred in saying that there is a further requirement of a separate document to prove that the consideration was paid. The respondent having categorically denied the execution of Ex.P-1 agreement of sale and having raised the plea that her signature on the said document is forged, it is for the appellant to prove during the trial that it was the respondent who did execute the said agreement of sale and that she received the said consideration of Rs.10.00 lakhs.

10. When there are no third party affidavits or witnesses to Ex.P-1 and payment of such large amount of money of Rs.10.00 lakhs in cash on 30-12-2016 is doubtful, after introduction of demonetization and withdrawal of Rs.500/- and Rs.1000/- currency notes by the Government of India, the Court below was correct in entertaining a *bona fide* doubt about the very payment of the said amount. This fact also needs to be established by the appellant during the trial.

11. The doctrine of *lis pendens* would take care of the anxiety of the appellant about any alienation made by the respondent pending the suit as any such alienation would be subject to the result of the suit.

12. Therefore, there is no serious prejudice caused to the appellant by vacation of the interim injunction granted by the Court below in the impugned order on 11-09-2017.

13. I therefore do no find any merit in the appeal and it is accordingly dismissed. No costs.

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-02-2019
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