

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR**

C.M.A.No.736 of 2019

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

This Appeal is filed challenging the order dt.08.03.2019 in I.A.No.1157 of 2018 in O.S.No.1402 of 2018 of the III Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar.

2. The appellants herein are defendants 1 to 3, 6 to 9 and 11 to 15 in the above suit.

3. The said suit had been filed by the 1st respondent herein for specific performance of an Agreement of Sale dt.26.06.2016 executed in her favour allegedly by the appellants and other defendants in the suit.

4. It is the contention of the 1st respondent/plaintiff that the appellants and respondent 2 to 6 belong to the same family and they had jointly purchased the suit schedule property under a registered Sale Deed dt.19.03.2008 and are joint owners and possessors of the suit schedule property.

5. The 1st respondent/plaintiff alleged that the appellants and respondents 2 to 6 jointly agreed and accepted to sell the suit schedule property to her at Rs.1.13 Crores and later the suit Agreement of Sale was executed on 26.06.2018 after receiving Rs.20 lakhs towards advance sale consideration amount; that as per the terms of the Agreement of Sale, she was to pay the

balance sale consideration of Rs.93 lakhs within 50 days from the date of Agreement of Sale; that the appellants and respondents 2 to 6 did not come forward to receive the balance consideration when she approached them twice in a fortnight right from the 1st week of October, 2018 and deliberately avoided to comply with her request; and therefore she filed the said suit.

6. Written statement was filed by the 1st appellant herein opposing the suit claim.

7. Along with the suit, the 1st respondent had also filed I.A.No.1157 of 2018 under Order XXXIX Rules 1 and 2 CPC to restrain the appellants and respondent 2 to 6 from alienating the suit schedule property in any manner pending disposal of the suit by reiterating the contents of the plaint.

8. Counter affidavit was filed by the 1st appellant on behalf of himself and other appellants. In para 8 of the counter filed in the said I.A., it was stated by the appellants that the husband of the 1st respondent by name K.Venkatesh came and negotiated to purchase the suit schedule property at Rs.1.30 crores and also agreed to pay Rs.10 lakhs towards advance sale consideration. They contended that the husband of the 1st respondent himself got prepared the suit agreement of sale and only some of the appellants scribed their signatures on the Agreement of Sale. It is contended that the husband of the 1st respondent did not pay the advance sale consideration of Rs.10 lakhs. It is also

contended that the husband of the 1st respondent removed 3rd and 4th pages of the suit Agreement of Sale and replaced it with new pages by showing the sale consideration as Rs.1.13 Crores and the advance amount paid as Rs.20 lakhs, and that he had forged the signatures of the appellants on 3rd and 4th pages of the said Agreement of Sale. It is contended that appellant had requested for copy of the said Agreement of sale to be furnished to them, but the same was not sent.

9. Before the Court below, the 1st respondent marked Exs.P1 to P13 but the appellants did not mark any documents.

10. By order dt.08.03.2019, the Court below granted interim injunction in favour of the 1st respondent restraining the appellants from alienating, pledging, mortgaging, changing or transferring the title of the suit schedule property to third parties till disposal of the suit. It referred to the contentions of the parties and also noted that the issue of forgery pleaded by the appellants needs to be gone into in the suit and there are other triable issues also. After referring to the contents of Ex.P1 Agreement of Sale, which shows that Rs.20 lakhs was received by the appellants out of the total consideration of Rs.1.13 Crores, the Court below observed that the 1st respondent had made out a *prima facie* case and balance of convenience is also in his favour, and if the property is alienated, the 1st respondent would suffer.

11. Assailing the same, this Appeal is filed.

12. Counsel for the appellants sought to contend that even according to the Court below all the defendants in the suit had not signed Ex.P1 Agreement of Sale; that the Court below had in fact directed the 1st respondent to deposit Rs.20 lakhs at the time of numbering of the suit, which had not been complied with by the 1st respondent/plaintiff; and in view of the plea of forgery taken by the appellants, the 1st respondent cannot be said to have made out any *prima facie* case.

13. It is not in dispute that all the defendants including the appellants jointly own the suit schedule property, which is a house property.

14. In the counter affidavit filed by the appellants, it is the case of the appellants that the husband of the 1st respondent came and negotiated to purchase the suit schedule property at Rs.1.30 Crores and agreed to pay Rs.10 lakhs and some of the respondents in the I.A./defendants had scribed their signatures on the Agreement of Sale; but the husband of the 1st respondent did not pay the advance sale consideration of Rs.10 lakhs. The other pleadings have already been set out above.

15. Since the plaint schedule property is joint property of all the defendants and since there is no partition among them, it would not be possible for the persons, who have allegedly

scribed their signatures to the Agreement of Sale, to sell any portion of the suit schedule property, since it is not known which portion of the said property belongs to them exclusively.

16. In these circumstances, if the appellants or the respondents 2 to 6 are permitted to alienate the suit schedule property in its entirety or any portion thereof, then third parties, who purchase any portion of the suit schedule property, would also suffer. Therefore, we are not inclined to interfere with the order passed by the Court below.

17. Accordingly, this Civil Miscellaneous Appeal fails and it is dismissed. No order as to costs.

18. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S. RAMACHANDRA RAO, J

T.VINOD KUMAR, J

28th August, 2019.

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