

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.373 of 2018

JUDGMENT:

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 (for short, 'C.P.C'), is filed by the appellant/plaintiff aggrieved by the order and decree, dated 21.03.2018, passed in I.A.No.201 of 2017 in O.S.No.148 of 2017 by the II Additional District Judge (Fast Track Court), Sangareddy, wherein the petition filed under Order XXXIX Rules 1 and 2 read with 151 C.P.C., to grant *ad interim* injunction restraining the respondents/defendants from interfering with the appellant's/plaintiff's peaceful possession and enjoyment of the suit schedule property, was dismissed.

2. Heard the learned counsel for the appellant/plaintiff, learned counsel for respondent No.2/ defendant No.2 and perused the record.

3. Learned counsel for the appellant/plaintiff would submit that the appellant/plaintiff is in possession of the suit schedule property. Under the guise of obtaining registered mortgage deed, respondent No.1/defendant No.1 obtained false Agreement of Sale-cum-General Power Attorney from the appellant/plaintiff in respect of the suit schedule property. The respondents/defendants have not filed a single document before the Court below to show their possession over the suit schedule property. The appellant/plaintiff filed number of documents before the Court below to substantiate her case. The Court below

erroneously dismissed the subject Interlocutory Application and ultimately prayed to set aside the impugned order and allow I.A No.201 of 2017 as prayed for.

4. On the other hand, learned counsel for respondent No.2/defendant No.2 would submit that the appellant/plaintiff herself executed Ex.P.1-Agreement of Sale-cum-General Power of Attorney, dated 22.01.2016, in respect of the suit schedule property in favour of respondent No.1/defendant No.1. Thereafter, respondent No.1/defendant No.1 alienated the subject property in favour of respondent No.2/ defendant No.2 under the original of Ex.P.2, dated 27.09.2017. Respondent No.1/defendant No.1 was in possession and thereafter, respondent No.2/defendant No.2 came into possession of the subject suit house. The aforementioned documents clinchingly establish the transaction made in between the parties to the litigation. Therefore, there is no *prima facie* case and balance of convenience in favour of the appellant/plaintiff to grant *ad-interim* injunction. The Court below is justified in dismissing the subject Interlocutory Application. There are no grounds to set aside the impugned order and ultimately prayed to dismiss the Civil Miscellaneous Appeal.

5. Admittedly, the appellant/plaintiff has not filed affidavits of the attesting witnesses to the original of Ex.P.1. She has filed only Ex.P.3- Electricity Bill, dated 08.10.2017. Ex.P.1 reveals the sale transaction between the appellant/plaintiff and respondent No.1 / defendant No.1. Ex.P.2 also reveals the sale transaction

in between respondent No.1/ defendant No.1 and respondent No.2/defendant No.2, wherein possession was delivered to respondent No.2/defendant No.2 by alienating the same for a valuable consideration. These two documents are registered documents. Therefore, it is difficult to believe the case of the appellant/plaintiff.

6. Under these circumstances, there is no *prima facie* case and balance of convenience in favour of the appellant to grant the relief under Order XXXIX Rules 1 and 2 C.P.C. The Court below, having examined the documents and contentions, justified in passing the impugned order. There is nothing to take a different view. The Civil Miscellaneous Appeal is devoid of merit and the same is liable to be dismissed.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

2nd December, 2019
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Date:02.12.2019

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