

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN**

CIVIL MISCELLANEOUS APPEAL NO.1031 OF 2019

J U D G M E N T

(Per Honourable Sri Justice M.S.Ramachandra Rao)

This Appeal is filed under Order 43 Rule 1 CPC challenging the order dt.15.10.2019 in I.A.No.64 of 2017 in O.S.No.18 of 2017 of the II Additional District Judge at Warangal.

2. The appellants are defendants in the suit. The subject property was inherited by respondents 1 and 2 from their father late Bheem Rao who had purchased it under a registered sale deed bearing Document No.50 of 1951 dt.05.01.1951 (Ex.P17).

3. Sale deed bearing Document No.9126 of 2016 dt.11.11.2016 was executed by the respondents in favour of the 1st appellant.

4. In February, 2017, the respondents filed O.S.No.18 of 2017 on the file of II Additional District Judge at Warangal to declare that the said sale deed executed by them in favour of the 1st appellant on 11.11.2016 is illegal and null and void and to cancel the same; to declare that the respondents are owners of the suit schedule property; to grant consequential permanent injunction restraining the appellants from interfering in any way with the peaceful possession and enjoyment of the respondents over the suit schedule property; and to transmit such a decree to the concerned Registrar for recording the cancelled sale deed in the relevant register.

5. Along with this suit, the respondents filed I.A.No.64 of 2017 invoking Order 39 Rules 1 and 2 CPC and sought an ad interim temporary injunction restraining the appellants from raising constructions over the suit schedule property.

6. It is contention of the respondents that they were defrauded and deceived and the sale deed dt.11.11.2016 was procured from them. It is contended that the value of the property is more than Rs.2.00 crore and the consideration of Rs.93,46,000/- mentioned in the sale deed is very less. Alternatively, it is also contended that no consideration was paid to the respondents and the appellants had misrepresented the facts and the record before the Registering Authority and even cheated. It is contended that the document was deceitfully brought into existence with an oblique motive to usurp the suit schedule property for wrongful gain taking advantage of the respondents' innocence and that the appellants played deliberate fraud on them.

7. The respondents reiterated the same averments in I.A.No.64 of 2017 also.

8. Written statement was filed by the appellants opposing grant of relief to the respondents. In the written statement, they denied the allegations levelled by the respondents in the plaint and contended that the respondents had received the consideration mentioned in the sale deed dt.11.11.2016 from the 1st appellant and also acknowledged the same in the registered sale deed. It is contended that after purchase by

the 1st appellant, he made an application to the Warangal Municipal Corporation for mutation and such mutation was effected in the municipal records after receiving consent letters from the respondents. It is stated that the respondents had addressed a letter to the Commissioner, Municipal Corporation, Warangal on 30.11.2016 stating that they have sold away the subject property to the 1st appellant and they also admitted the registration and gave consent for mutation in favour of the 1st appellant and the present suit is filed as an after thought. It was denied that the respondents are not worldly-wise and are innocent. It is alleged that the 1st appellant had demolished the structures existing in the suit schedule property and constructed a new compound wall around the plot and also raised temporary structures and let out the same to tenants and one such tenant is doing business and another tenant is running car service centre. They also stated that the 1st appellant had obtained two electricity connections—one single phase and another three phase apart from digging a bore well.

9. In the counter-affidavit filed in I.A.No.64 of 2017 also, the appellants reiterated the same.

10. Before the Court below, the respondents marked EXs.P1 to P17 and the appellants marked Exs.R1 to R32.

11. By order dt.15.10.2019, the Court below allowed I.A.No.64 of 2017 and granted temporary injunction restraining the appellants from

proceeding with the construction in the suit schedule property till the disposal of the suit.

12. In the impugned order, the Court below has observed that the appellants did not produce any documentary proof that the cheques given by the 1st appellant were encashed by the respondents to prove the payment of consideration and their *bona fides*. It observed that when there is a title dispute and cancellation of the sale deed Ex.R1 has been sought, the Greater Municipal Corporation, Warangal, which is a party to the suit, ought not to have granted permission for construction of the building. It observed that the mode of payment of consideration of Rs.73,46,000/- to the appellants by way of cash also creates a doubt. It held that the Corporation had granted permission on 19.03.2019 under Ex.R21 during the pendency of the suit and this indicates collusion between the appellants and the 3rd defendant Corporation in the suit. It also remarked that the original sale deed Ex.P17 dt.05.01.1951 under which the father of the respondents had purchased the property was not handed over to the appellants and without receiving it, the sale deed could not have been executed. It even went to the extent of stating that the appellants were not in possession of the suit schedule property though the name of the 1st appellant was muted in the municipal records and electricity connections were obtained in the name of the 1st appellant and municipal taxes and power bills were being paid.

13. Assailing the same, this appeal is filed.

14. Heard Sri V.Ravichandran, learned counsel for the appellants/defendants and Sri P.V.Sanjeeva Rao, learned counsel for the respondents/plaintiffs.

15. A perusal of Ex.R1 registered sale deed dt.11.11.2016 executed by the respondents in favour of the 1st appellant shows that there is an admission in the said document about the receipt of the entire sale consideration of Rs.93,46,000/- by the respondents. So *prima facie*, there is material to show passing of consideration from 1st appellant to other respondents.

16. Clause 2 of the sale deed specifically recorded an admission by the respondents that the 1st appellant was already inducted into the vacant possession of the suit schedule property by them. The fact that possession of the property was delivered to the appellants was admitted by the respondents in para 12 of the plaint where they stated that the appellants had demolished the structures in the subject property also. The mutation effected by the 3rd defendant Corporation in the name of the 1st appellant is admitted by the 2nd respondent. The appellants have also filed Exs.R3 and R4 orders issued by the Assistant Divisional Engineer for sanction of service connections to them. They also filed property tax assessment records Ex.R6 dt.08.02.2016, Ex.R8 dt.08.04.2018 apart from online payment receipts of electricity consumption charges Ex.R11 dt.27.02.2017, Ex.R12 dt.07.02.2017, etc. In the light of this material placed on record, in our considered opinion,

the Court below could not have taken a view that the appellants are not in possession of the suit schedule property.

17. It is no doubt true that the respondents have sought cancellation of Ex.R1 registered sale deed but merely because such a suit has been filed, the respondents would not be entitled to any interim order of the nature granted by the Court below in the light of the material referred to *supra*.

18. In our opinion, the Court below could not have drawn any inference that there is collusion between the appellants and the 3rd defendant Corporation. Its view that the 3rd defendant Corporation ought not to have granted permission for construction of the building pending suit merely because it was aware of the title dispute is also not correct because it is settled law that when there is a registered sale deed in favour of the appellants, *prima facie* title is alone taken into account while deciding grant of permission by the Corporation to make construction.

19. It was also not open to the Court below to express any opinion on the mode of payment of consideration or on the respondents having custody of the original sale deed Ex.P17 dt.05.01.1951 when the suit is pending.

20. When the 1st appellant had procured the registered sale deed on 11.11.2016 and had also obtained permission to make construction on 19.03.2019 under Ex.R21, the respondents did not have any *prima facie* case in the sense that they have admitted about the execution of the sale

deed as well as receipt of consideration by signing the sale deed before the concerned Registrar. The Court below therefore ought not to have granted temporary injunction sought by the respondents against the appellants restraining the appellants from proceeding with the construction in the suit schedule property till disposal of the suit.

21. Therefore, the appeal is allowed; order dt.15.10.2019 in I.A.No.64 of 2017 in O.S.No.18 of 2017 of the II Additional District Judge, Warangal is set aside and the said I.A. is dismissed. It is however made clear that any construction made by the appellants in the subject property will abide by the result in the suit.

22. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

M.S.RAMACHANDRA RAO, J

K. LAKSHMAN, J

14th NOVEMBER, 2019

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