

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL NO.801 of 2018

JUDGMENT: (per SK,J)

The appellant is the plaintiff in O.S.No.587 of 2018 on the file of the learned XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. The suit was filed by him for specific performance of the Agreement of Sale dated 07.01.2015. He filed I.A.No.575 of 2018 in the said suit under Order 39 Rules 1 and 2 CPC seeking a temporary injunction restraining the defendant in the suit from alienating the suit schedule property which was the subject matter of the said agreement of sale. By order dated 04.07.2018, the trial Court dismissed the I.A. Aggrieved thereby, he preferred this appeal under Order 43 Rule 1 CPC.

Notice having been ordered, the respondent-defendant was duly served and an acknowledgment card was placed on record in proof of the same by Sri Venkata Rangadas Kanuri, learned counsel for the appellant, who was permitted to effect such personal service of notice. Despite the same, the respondent-defendant did not choose to enter appearance before this Court.

Perusal of the order under appeal demonstrates that the trial Court drew up the point for consideration as under:

'Whether the petitioner is entitled to temporary injunction as prayed for?'

The discussion on this aspect by the trial Court is contained in para 8 of the order which reads as under:

'Petitioner has not filed any admissible documents to prove the contents of petition. Petitioner has to prove about ownership of respondent, over the petition schedule property and Agreement of

Sale said to have been executed by the respondent in favour of petitioner and other relevant documents. Since the petitioner has not filed such documents, he is not entitled to the relief sought by him. Therefore, petition has to be dismissed.'

Sri G.J.Balaji, learned counsel representing Sri Venkata Rangadas Kanuri, learned counsel, would point out that several documents, including the registered Sale Deed dated 07.02.1969, the General Power of Attorney dated 07.11.2014 and the suit Agreement of Sale dated 07.01.2015, were filed along with the plaint. He would also draw our attention to the fact that pahanies for several years were filed along with the plaint apart from third party affidavits.

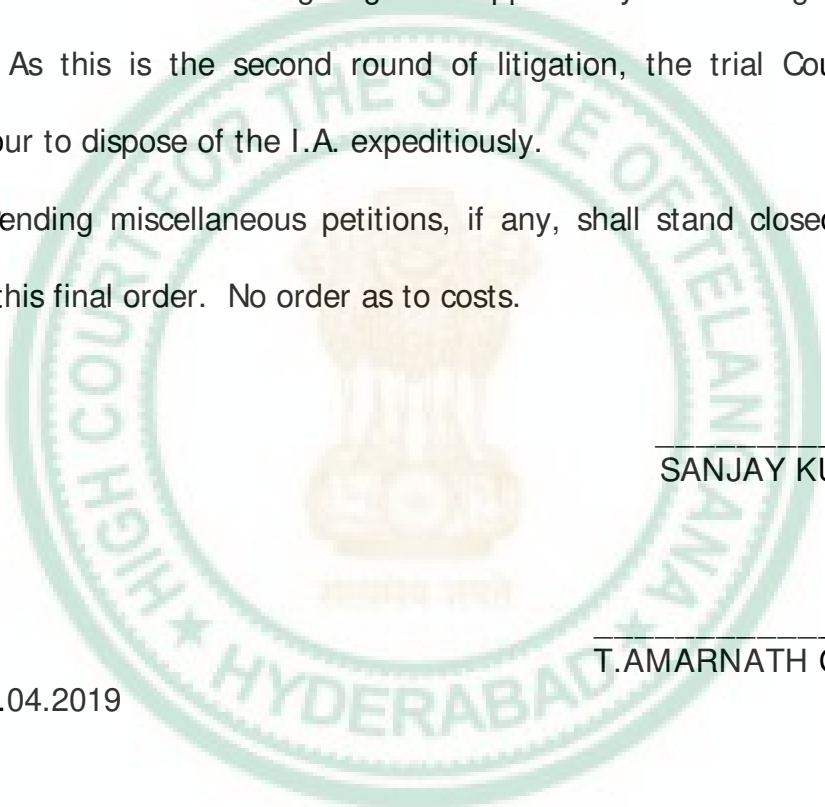
Perusal of the copy of the plaint filed along with this appeal bears out this fact. Despite the same, it appears that the trial Court did not take note of the documents filed by the appellant-plaintiff and straightaway concluded that he had not proved either the ownership of the respondent-defendant or the agreement of sale. It would only be during the course of the trial that the question of the appellant-plaintiff proving the agreement of sale would arise. At this stage, while dealing with the application filed under Order 39 Rules 1 and 2 CPC, the trial Court only had to deal with it as per the settled principles of law with regard to the *prima facie* case, balance of convenience and irreparable injustice, if any.

Further, as already noted *supra*, the trial Court did not even take note of the documents filed along with the plaint. In the event any document was liable to be impounded, it was for the trial Court to do the needful and examine as to whether the said document could be relied upon thereafter. It was not open to the trial Court to baldly say that the party had not filed any 'admissible documents' and deny relief to the party. The trial Court necessarily has to give reasons as to why it found in

favour of or against a party while passing an order. The order under appeal falls woefully short in so far as this expected standard is concerned.

The appeal is accordingly allowed setting aside the order dated 04.07.2018 passed in I.A.No.575 of 2018 in O.S.No.587 of 2018 on the file of the learned XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. The matter is remanded to the file of the trial Court for consideration of the I.A. afresh on its own merits and in accordance with law after giving due opportunity of hearing to both parties. As this is the second round of litigation, the trial Court shall endeavour to dispose of the I.A. expeditiously.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

T.AMARNATH GOUD,J

Date:10.04.2019

PGS