

HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

Civil Miscellaneous Appeal No.311 of 2020

JUDGMENT : (Per Sri Justice M.S.Ramachandra Rao)

This Civil Miscellaneous Appeal is preferred by the appellant challenging the order dt.03.02.2020 passed in A.O.P.No.19 of 2019 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad.

2. The said O.P. had been filed by the appellant under Section 9 of the Arbitration and Conciliation Act, 1996 seeking *ad interim injunction* restraining the respondents from alienating the 'B' Schedule property, and for costs.

3. The 'B' Schedule property in question is a constructed area of 6,300 Sq.ft. being constructed in an extent of 118 Sq.Yds. of undivided share of property out of total area of 1182 Sq.Yds. in H.No.3-4-796 situate at Kachiguda, Hyderabad.

4. The 2nd respondent is the brother-in-law of the petitioner.

5. The respondent nos.3 and 4 are alleged by the appellant to be close associates of 2nd respondent.

The case of the appellant in the A.O.P.No.19 of 2019

6. The case of the appellant in the A.O.P.No.19 of 2019 was that the appellant and respondent nos.2 and 3 had entered into a Partnership Deed dt.19.11.2007, and decided to carry on constructions under the name and style 'M/s. Sri Krishna Constructions' (1st respondent in the Appeal / O.P.). The appellant claimed that he initially acted as a Managing Director, that himself and respondent nos.2 and 4 invested Rs.25 lakhs, and 3rd respondent invested 35 lakhs, at the commencement of the business activity of the said Firm.

7. According to him, there was another Partnership Deed executed on 26.06.2008 whereunder the 2nd respondent was made the Managing Partner in the place of the appellant to manage the affairs of the Firm.

8. The appellant contended that the Firm purchased property admeasuring 1182 Sq.Yds., in House No.3-4-794, 3-4-795, 3-4-796/1, 3-4-797 and 798 at Kachiguda, Hyderabad, under three Sale Deeds, in the name of respondent nos.2 and 4 but the consideration was paid from the funds of the Firm).

9. He stated that the 4th respondent transferred the property standing in his name in favour of 1st respondent-Firm on 28.07.2010; that the property was then handed over to another builder by name, 'Pranava Companies Pvt. Ltd.' and the 1st respondent received Rs.2,70,49,603/- from the said builder on execution of the Sale Deed in its favour for an extent of 16,000 Sq.ft. built-up area with undivided share of 706

Sq.Yds., out of 1182 Sq.Yds. under a registered Document No.1919 of 2010; but the 2nd respondent transferred the sum of Rs.1.9 crores to the 4th respondent in collusion with the 4th respondent by deceiving the appellant. He stated that he got issued a Notice on 03.08.2012 asking the 2nd respondent to repay the amounts borrowed from the market from different persons by the appellant and 2nd respondent for running the affairs of the 1st respondent-Firm, apart from seeking appointment of an arbitrator for resolution of disputes between the partners as per Clause 19 of the Partnership Deed dt.26.06.2008.

10. To the said Notice, the 2nd respondent got published a Notice dt.05.09.2012 in 'Eenadu' Daily Newspaper claiming 118 Sq.Yds., out of 1182 Sq.Yds., as his own individual property and denying the title of the firm over the property.

11. The appellant contended that this 118 Sq.Yds. was also transferred in the name of 1st respondent-Firm by the 4th respondent on 28.07.2010 as it was purchased by spending amounts from the accounts of the Firm.

12. He also contended that he filed Arbitration Application No.34/2013 under Section 11(6) of the Arbitration and Conciliation Act, 1996, that the respondents entered their appearance, but the same is still pending on the file of this Court.

13. He alleged that the project was completed and the 1st respondent-Firm was entitled to 44,000 Sq.ft. as per the Memorandum of Understanding, and the 2nd respondent is making efforts to alienate the property standing in the name of the 1st respondent-Firm in favour of third parties to frustrate the claim of the appellants and other partners.

14. He therefore sought *ad interim injunction* restraining the respondents or anybody claiming through or under them from alienating the 'B' schedule property referred to above which is constructed area of 6,300 Sq.ft in an extent of 1182 Sq.Yds. in the above referred premises.

The stand of respondents

15. Counter-affidavit was not filed by the 1st respondent, but respondent nos.2 and 3 filed a counter.

16. The 4th respondent remained *ex parte* in the Court below.

17. The defence of respondent nos.2 and 3 to the A.O.P.No.19 of 2019 was that the appellant was accused in Crime No.271 of 2012 of P.S. Kachiguda which was instituted on a complaint made by the 2nd respondent; that petitioner filed an application for anticipatory bail in Crl.M.P.No.3176 of 2016 wherein he admitted that the 118 Sq.yds. out of 1182 Sq.yds. in respect of which orders under Section 9 of the Act have now been sought, were purchased by the 2nd respondent himself under a registered Sale Deed dt.25.03.2008.

18. It is pleaded that in the said application for anticipatory bail, the appellant himself mentioned that 2nd respondent entered into registered Development Agreement-cum-Agreement of Sale with possession dt.17.03.2011, and that pursuant thereto, the 2nd respondent is entitled for one flat, viz., G.1 in the Ground Floor, admeasuring 1686 Sq.ft. with proportionate undivided share in the land in the residential complex by name, 'Sri Sai Pranava Gokuldham'.

19. The 2nd respondent claimed that he invested Rs.1 crore in the 1st respondent-Firm and the Firm then purchased 946 Sq.Yds. in the premises bearing H.Nos.3-4-795, 796/1, 797 and 798; that the 2nd respondent purchased 118 Sq.Yds., as mentioned above with his own funds without any connection with the property acquired by the 1st respondent-Firm; they then entrusted the property of the Firm to M/s.Pranava Avenues Pvt. Ltd. after executing an Agreement of Sale – cum – General Power of Attorney apart from a Memorandum of Understanding dt.30.07.2010.

20. It is also contended that the 2nd respondent executed another Agreement of Sale – cum – General Power of Attorney in favour of M/s.Pranava Avenues Pvt. Ltd., in respect of 16,000 Sq.ft. of built-up area with undivided share of land admeasuring 706 Sq.Yds., vide Document No.1929 of 2010 and another General Power of Attorney was also executed by him in respect of his personal property of 118 Sq.yds., in favour of M/s. Pravana Avenues Pvt. Ltd.

21. It is also alleged that the appellant and brothers were controlling the finance and other activities of the 1st respondent-Firm, and they embezzled amounts of the Firm and diverted funds in collusion with others.

22. It is contended that after the construction of the complex, M/s.Pranava Avenues Pvt. Ltd. agreed to give 33,000 Sq.ft. to the 1st respondent in addition to 11,000 Sq.ft. area; and also promised to give 6,300 Sq.ft. constructed area to the 2nd respondent's property of 118 Sq.Yds.

23. He denied that he had borrowed any amount from the market and any alleged that such borrowing might have been done by the 1st respondent through the appellant himself. He denied that he ever engaged in any illegal activity or dealt with the property of any third party, and alleged that only the appellant engaged in illegal activities; and therefore, prayed that the A.O.P. be dismissed.

The order passed in AOP.No. 19 of 2019

24. In the Court below, the appellant marked Exs.P.1 to P.12, while the respondent marked Exs.R.1 to R.5.

25. The Court below referred to Ex.P.1 - Memorandum of Understanding executed between M/s.Pranava Avenues Pvt. Ltd. and respondent nos.1 to 3 and the appellant, in respect of development of properties of the 1st respondent-Firm.

26. It also took note of Ex.P.2 registered Sale Deed dt.25.03.2008 which indicated that the 'B' schedule property of 118 Sq.Yds., was purchased by the 2nd respondent exclusively.

27. It observed that while there is arbitration clause in Ex.P.6 – Partnership Deed dt.19.11.2007, there is no such arbitration clause in Ex.P.5 – Partnership Deed, dt.26.06.2008.

28. But the appellant had issued Ex.P.7 – Legal Notice dt.03.08.2012 to 2nd respondent invoking Clause 19 of the Partnership Deed dt.26.06.2008.

29. It also noted that this Partnership Deed Ex.P.5 dt.26.06.2008 is disputed by respondent nos.2 and 3.

30. It quoted the contents of Ex.R.4 – Anticipatory Bail petition filed by the appellant who as Accused No.6 in CrI.M.P.No.3175 of 2012 in Crime No.271 of 2012, admitted that only the 2nd respondent purchased the 118 Sq.Yds. out of 1182 Sq.Yds. in the suit schedule property at Kachiguda, Hyderabad.

31. It held that therefore as per Ex.P.2, the 2nd respondent is the exclusive owner of the 'B' Schedule property, and that it is self-acquired property and he entered into a Development Agreement with M/s.Pranava Avenues Pvt. Ltd. on 16.04.2019, and flat No.G.1 was allotted to the 2nd respondent and delivered to the 2nd respondent.

32. It also observed that the 'B' Schedule property is not the property of the 1st respondent-Firm because the Sale Deed Ex.P.2 stands in the name of the 2nd respondent instead of the 1st respondent-Firm. It also held that there is no material to show that the 2nd respondent purchased the 'B' Schedule property with the funds of the 1st respondent-Firm.

33. Therefore, it dismissed the A.O.P.No.19 of 2019.

The present Appeal

34. Challenging the same, the present Civil Miscellaneous Appeal is filed.

35. The learned counsel for appellant contended that the findings recorded by the Court below are erroneous; that the Court below ought to have held that the 'B' Schedule property in respect of which interim protection was sought under Section 9 of the Arbitration and Conciliation Act belongs to the 1st respondent-Firm; and that the Court below erred in relying upon the recitals in Ex.R.4 – Anticipatory Bail application in CrI.M.P.No.3175 of 2012 in Crime No.271 of 2012.

36. A reading of Ex.P.2 – Sale Deed dt.25.03.2008 indicates that the 'B' Schedule property of 118 Sq.yds, was purchased by the 2nd respondent exclusively. No material is placed before this Court by the appellant to show that the consideration for the said purchase proceeded from out of the funds of the 1st respondent-Firm.

37. Though the counsel for appellant sought to rely on Memorandum of Understanding Ex.P.1 dt.30.07.2010 between the appellant / respondent nos.2 to 4 and M/s. Pranava Avenues Pvt. Ltd. and sought to point out that 1182 Sq.Yds. including 118 sq.yds was stated therein to have been purchased by the 1st respondent-Firm, the recitals in the Sale Deed Ex.P.2 indicate that the recital in Ex.P1 was a mistake and the purchaser of 118 sq.yds was only the 2nd respondent.

38. The counsel for appellant could not explain how the appellant in the anticipatory bail application under Ex.R.4 admitted that 118 Sq.Yds. out of 1182 Sq.Yds., was purchased only by the 2nd respondent exclusively, if really the said property was purchased out of funds of the 1st respondent-Firm.

39. *Prima facie*, it appears that the 'B' Schedule property was exclusively purchased by the 2nd respondent only and such purchase had nothing to do with the 1st respondent-Firm, and so the appellant cannot seek any interim relief in respect of 'B' schedule property.

40. Also there is arbitration clause in Ex.P.6 – Partnership Deed dt.19.11.2007, but there is no such arbitration clause in Ex.P.5 – Partnership Deed, dt.26.06.2008, and the appellant had issued Ex.P.7 – Legal Notice dt.03.08.2012 to 2nd respondent invoking Clause 19 of the Partnership Deed dt.26.06.2008. The Partnership Deed Ex.P.5 dt.26.06.2008 is disputed by respondent nos.2 and 3.

41. In these circumstances, we do not find any error of Law or fact in the order passed by the Court below refusing to grant interim relief to the appellant in A.O.P.No.19 of 2019.

42. Accordingly, the appeal fails and it is dismissed. No order as to costs.

43. As a sequel, miscellaneous petitions pending if any in this Appeal, shall stand closed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 23 .09.2020
Ndr

