

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.758 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of CPC, is filed by the appellant/defendant, challenging the order, dated 10.08.2016, passed in I.A.No.658 of 2015 in O.S.No.230 of 2015 by the II Additional Chief Judge, City Civil Court, Hyderabad, whereby, the subject interlocutory application filed by the respondent/plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of CPC requesting to grant interim injunction restraining the appellant/defendant or anybody claiming through it from incorporating the survey No.92 in the notice board and interfering with the petition schedule property, was partly allowed, restraining the appellant/defendant or anybody claiming through it from causing interference with the possession of the respondent/plaintiff over the petition schedule property.

2. Heard learned counsel for both the sides and perused the record.

3. The learned counsel for the appellant/defendant would contend that the Court below, in the impugned order, did not record a finding that there is *prima facie* case and balance of convenience in favour of the respondent/plaintiff. Further, there is no finding that in the event of not granting injunction in favour of the respondent/plaintiff, it would suffer irreparable loss. Furthermore, the appellant/defendant, having purchased the

land admeasuring 3,332 square yards in Survey No.91 situated at Deverkonda Nagar Colony, Shaikpet Village and Mandal, Hyderabad District, under registered sale deed, filed a suit in O.S.No.628 of 2010 for declaration of title and recovery of possession of the said land. The filing of the said suit is borne by record. Under these circumstances, the Court below, without recording a finding with regard to the *prima facie* case and balance of convenience in favour of the respondent/plaintiff, ought not have granted the relief claimed by the respondent/plaintiff in the subject interlocutory application and ultimately prayed to set aside the order under challenge and dismiss the subject I.A.No.658 of 2015.

4. On the other hand, the learned counsel for the respondent/plaintiff would contend that there is no single document to demonstrate the contentions raised on behalf of the appellant/defendant. The Court below, while dealing with the subject interlocutory application, had recorded a finding with regard to the purchase of the suit schedule property by the respondent/plaintiff under the original of Ex.P.1 and also held that the respondent/plaintiff is in possession of the suit schedule property. The subject suit is filed for declaration of title and recovery of possession. The Court below rightly granted the relief claimed in the subject interlocutory application. There is nothing to interfere with the impugned order and ultimately prayed to dismiss the appeal.

5. In view of the above rival contentions, the point that arises for determination in this appeal is as follows:

*“Whether the Court below is justified in partly allowing the subject interlocutory application in I.A.No.658 of 2015, without recording a finding that there is prima facie case and balance of convenience in favour of the respondent/plaintiff and if injunction is not granted, it would suffer irreparable loss?”*

6. In the impugned order, the Court below dealt with the documentary evidence adduced on behalf of the respondent/plaintiff, i.e., Ex.P.1-Certified copy of Agreement of Sale-cum-irrevocable GPA, Ex.P.2-Certified copy of affidavit filed in I.A.No.3698 of 2010 in O.S.No.628 of 2010 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, Ex.P.3-Certified copy of order in I.A.No.3698 of 2010 in O.S.No.628 of 2010 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, Ex.P.4-Certified copy of order in I.A.No.3699 of 2010 in O.S.No.628 of 2010 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, Ex.P.5-Two photographs of notice board of suit schedule property and Ex.P.6-Market Value Certificate, dated 28.11.2014, but did not record a specific finding that there is *prima facie* case and balance of convenience in favour of the respondent/plaintiff and in the event of not granting injunction, the respondent/plaintiff would suffer irreparable loss. Admittedly, no document is filed on behalf of the appellant/defendant before the trial Court. Grant of temporary injunction is governed by three cardinal principles,

i.e., *prima facie* case, balance of convenience and irreparable injury. The existence of *prima facie* case is a *sine qua non* but the consideration of other two principles is equally important and at least one of the aforesaid two principles should also exist before the Court grants the discretionary relief of interim injunction. As noted above, there is no specific finding in the impugned order with regard to any of the three cardinal principles for grant of temporary injunction. For this reason alone, the impugned order is liable to be set aside. It is made clear that no opinion is expressed with regard to the merits and demerits of the subject interlocutory application.

7. Accordingly, the order, dated 10.08.2016, passed in I.A.No.658 of 2015 in O.S.No.230 of 2015 by the II Additional Chief Judge, City Civil Court, Hyderabad, is set aside. The subject I.A.No.658 of 2015 is remitted to the Court below for disposal afresh, in accordance with law, in the light of the observations made *supra*.

8. The Civil Miscellaneous Appeal is, accordingly, allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

30<sup>th</sup> January, 2020  
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Dr. SHAMEEM AKTHER, J