

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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C.M.A.Nos.429 and 439 of 2009

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COMMON ORDER:

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These two appeals are filed by the same individual but against the orders passed in two different suits. Hence, they are disposed of through a common order.

The respondents in the appeals are owners of two pieces of land at Seethaphalmandi. The appellant entered into a development agreement with them and he is said to have paid an advance of Rs.25,00,000/-. However, on a complaint submitted by neighbours, the Municipal Corporation issued a notice dated 16.10.2004 requiring the appellant to stop the construction. Thereafter, disputes arose between the parties. The appellant filed O.S.No.49 of 2005 in the Court of I Additional Chief Judge, City Civil Court, Hyderabad for recovery of a sum of Rs.25,00,000/- and for damages. An application filed by him for interlocutory orders is said to be pending.

The respondents on the other hand filed O.S.Nos.189 and 190 of 2006 in the same Court against the appellant for the relief of cancellation of the agreement of sale-cum-General Power of Attorney, dated 24.07.2003 and for consequential injunction. They also filed I.A.Nos.201 and 202 of 2007 under Order 39 Rules 1 and 2 C.P.C. for temporary injunction to restrain the appellant from interfering with their possession of the plot and construction being undertaken by them. Applications were opposed by the appellant. Through separate orders, dated 14.11.2008, the trial Court allowed the applications.

Hence, these Civil Miscellaneous Appeals under Order 43 Rules 1 and 2 C.P.C.

Heard the learned counsel for the appellant and the learned counsel for the respondents.

The appellant does not dispute the fact that the respondents are in possession and enjoyment of the suit schedule property. As of now, his interest is only to recover the amount of advance said to have been paid by him. The very fact that the permission to construct was obtained way back in the year 2004 discloses that the property is identified for that purpose and it cannot be kept idle. But for the fact that the disputes have arisen between the parties, the appellant himself would have completed the construction by this time. The respondents appear to have undertaken the construction either by themselves or through a different agency. The interference with the construction at this stage would lead to further loss to the respondents and without any corresponding benefit to the appellant. The trial Court has taken correct view of the matter and passed an order of temporary injunction.

The appellant is more concerned about the protection of his interests in the event of O.S.No.49 of 2005 being decreed. For that purpose, one of the flats that are being constructed over the suit schedule property can be required to be kept aside free from any encumbrances.

Hence, the C.M.As. are disposed of by modifying the orders under appeals to the effect that respondents shall set apart one flat of not less than 1500 square feet to be constructed over the suit schedule property to meet the obligation that may arise in the event of O.S.No.49 of 2005 being decreed. There shall be no order as to costs.

07.07.2011

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