

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

C.M.A.No.528 of 2020

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the appellant/plaintiff assailing the order dated 28.12.2019 in I.A.No.440 of 2015 in OS No.239 of 2015 on the file of the II Additional District Judge, Ranga Reddy District at L.B. Nagar.

2. As per the order impugned dated 28.12.2019, a common order was passed in IA Nos.440 and 441 of 2015 in OS No.239 of 2015 by the learned II Additional District Judge wherein the applications filed under Order-39 Rules 1 & 2 read with Section 151 of the Civil Procedure Code, 1908 (for short 'C.P.C.') to restrain the respondents/defendants from interfering with the peaceful possession and enjoyment of the petitioner/plaintiff over the suit schedule property and to restrain them from alienating the suit schedule property pending disposal of the original suit were dismissed after due enquiry. Assailing the order dated 28.12.2019 in IA No.440 of 2015, the present C.M.A. is filed.

3. This I.A.No.440 of 2015 was only filed under Order-39 Rules 1 & 2 read with Section 151 of C.P.C. for ad-interim injunction restraining the respondents/defendants and their men from interfering with day-to-day business of the petitioner/plaintiff in the suit schedule premises pending disposal of the original suit.

4. Heard learned counsel on behalf of the appellant/plaintiff and respondents/defendants. The submissions made by the learned counsel on either side have received due consideration of this Court.

5. For the sake of convenience, the parties are hereinafter referred to as plaintiff and defendants as arrayed in the original suit.

6. The plaintiff has filed the original suit in OS No.239 of 2015 for declaration of ownership and possession and also to declare that the registered sale deed dated 24.09.2007 as illegal, null and void and for consequential perpetual injunction. Along with the said

original suit, the present application is filed for the relief stated above.

7. During enquiry in IA No.440 of 2015 along with IA No.441 of 2015, in all Exs.P.1 to P.12 documents were marked on behalf of the petitioner/plaintiff, whereas Exs.R.1 to R.7 documents are marked on behalf of the respondents/defendants. The learned II Additional District Judge after careful appreciation of the entire material including the documents as indicated above, held that except certain oral submissions with regard to possession of suit schedule property from the date of agreement of sale-Ex.P.2, the plaintiff has not produced any documentary evidence. Further held that the boundaries in respect of land covered by Ex.P.2 and the sale deed-Ex.R.3 under which the defendants are claiming suit schedule property are quite distinct and that there is no *prima facie* case in favour of the plaintiff and the balance of convenience is not in favour of the plaintiff and that the defendants would suffer more irreparable loss and injury when compared with the plaintiff in case of grant of

temporary injunction. Accordingly, both the interlocutory applications in IA Nos.440 and 441 of 2015 were dismissed.

8. The simple case of the plaintiff, as culled out from the pleadings in the plaint, is that the plaintiff has entered into the notarized agreement of sale with the erstwhile owner-Smt.G.B. Suguna on 15.07.1986 as in Ex.P.2, though the caption of said document reflects as agreement of sale, it is out and out sale and the entire sale transaction is completed, the plaintiff has paid the entire sale consideration of Rs.25,000/-, it was acknowledged by the owner, possession of the property was also delivered, pursuant to the said agreement of sale and the owner has also delivered a link document dated 16.01.1982, but failed to execute the regular registered sale deed. Having vexed with the attitude of the erstwhile owner, the plaintiff herein has filed OS No.929 of 2000 on the file of the Principal Junior Civil Judge, Ranga Reddy District, East & North, for specific performance of said agreement of sale and also obtained ad-interim injunction, vide IA No.2998 of 2000

dated 07.09.2000, but as the matter was settled amicably outside the Court, the suit was withdrawn on 08.03.2001, thereafter, sale deed was not executed. Thus, the petitioner has perfected her title. She has paid the entire sale consideration to the erstwhile owner, but all of sudden on 24.07.2014, the defendants have tried to interfere with her possession claiming that they are the real owners and that they have purchased the suit schedule property from the erstwhile owner-Smt.G.V. Suguna. Hence, she has verified the records and filed the present suit.

9. The specific case of the defendants is that the suit filed by the plaintiff is not maintainable, she has no locus standi to file the suit and the interlocutory application for interim injunction, she is neither the owner nor in possession of suit schedule property, the description of boundaries given in the petition schedule property are not in accordance with the boundaries as mentioned in Ex.P.2-agreement of sale dated 15.07.1986, the petitioner was never in possession of the suit schedule property, she has no *prima facie* case and balance of convenience is not

her favour. Basing on the agreement of sale, she cannot claim ownership over the suit schedule property. Though the plaintiff has filed OS No.929 of 2000 for specific performance, it was unconditionally withdrawn and no such registered sale deed was executed pursuant to the alleged settlement outside the Court. Whereas the defendants have obtained a sale deed in respect of suit schedule property, vide document No.6752 of 2007 dated 24.09.2007 from Kum. M. Jyothi, who in turn purchased the suit schedule property under agreement of sale-cum-General Power of Attorney from the original owner-Smt. Suguna and since the time of purchase, they are under exclusive possession and enjoyment of the same.

10. Be it stated that admittedly/undisputedly the plaintiff has filed OS No.929 of 2000 on the file of the learned Principal Junior Civil Judge, Ranga Reddy District, East and North, for specific performance of contract of sale deed dated 15.07.1986 as in Ex.P.2. Copy of the plaint is marked as Ex.P.3/Ex.P.8, that suit was dismissed as not pressed and the plaintiff has not obtained any permission

from the Court before withdrawing the said suit. Though, it is alleged by the plaintiff that in view of amicable settlement outside the Court for execution of the registered sale deed that the suit in OS No.929 of 2000 was withdrawn by her, no such document is filed by the plaintiff to that effect.

11. As per the plaint averments, possession was delivered to the plaintiff and she is in exclusive possession and enjoyment of the suit schedule property from the date of Ex.P.2. But, having filed the suit for specific performance in OS No.929 of 2000, the plaintiff withdrew the same and that suit not reached/ended to its logical conclusion. The plaintiff has also not filed any piece of paper to show her possession or enjoyment either before filing the suit in OS No.929 of 2000 or subsequent to withdrawal of the same, except Ex.P.4 complaint lodged before the Police, Naredmet, Exs.P.5 & 6 letter addressed and acknowledgment from the GHMC and Ex.P.7 with regard to payment of certain amount to the President of Muthyala Rao Cooperative Housing Society. But these documents

stated above by no stretch of imagination would establish the title and possession over the suit schedule property.

12. Whereas, the defendants having pleaded that they have purchased the suit schedule property through Ex.R.3 able to establish that their predecessor-in-title has obtained agreement of sale-cum-G.P.A. and that a sale deed was executed in Ex.R.3 in their favour. They have also furnished Encumbrance Certificate and electricity consumption bills to show they are *prima facie* possession over the suit schedule property. It is pertinent to mention that though the plaintiff is claiming suit schedule property under Ex.P.2, the boundaries mentioned therein and the boundaries of suit schedule property are quite distinct and the plaintiff is not able to explain the same.

13. This application in IA No.440 of 2015 is filed under Order-39 Rules-1 & 2 of CPC for temporary injunction. Order-39 of CPC provides that in any suit if it is proved by the affidavit or otherwise that the defendant threatens the plaintiff with respect to the property in the suit, the Court may by order grant temporary injunction,

restraining the defendant until the disposal of the suit, as the Court thinks fit. The fundamental principle for grant of temporary injunction is that no injunction would be granted unless a *prima facie* case is made out from the plaint, the documents filed along with it and the affidavit filed by the party. The second principle is that unless the injunction prayed for is not granted, the plaintiff would be put to irreparable loss and injury before the suit is finally decided.

14. The object of granting temporary injunction is to preserve the matter in *status quo* till the case is finally decided. The law is also well-settled that the grant of interim injunction is a discretionary remedy and in exercise of judicial discretion in granting or refusing such relief, the Court will look into the following:

- i) whether the person seeking a temporary injunction has made out a *prima facie* case. This is *sine qua non*;
- ii) whether the balance of convenience is in his favour i.e., whether it would cause much inconvenience to him if injunction

is not granted than the inconvenience which either side would be put if injunction is granted.

- iii) Whether such person seeking a temporary injunction would suffer irreparable loss and injury.

However, it is not necessary that all the three conditions must be satisfied. That the first condition is *sine qua non*. At least two conditions must be satisfied by the plaintiff conjunctively and mere proof of one of three conditions does not entitle a person to obtain temporary injunction.

15. The above being the legal position, let me examine the pleadings in the plaint and averments in the supporting affidavit filed in IA No.440 of 2015 and Exs.P.1 to P.12 and Exs.R.1 to R.7. As discussed above, none of the documents filed on behalf of the plaintiff shows her exclusive possession, title or enjoyment over the suit schedule property and right from the date of Ex.P.2 or from the date of dismissal of the suit in OS No.929 of 2000 or at any point of time. Whereas, Ex.R.3-document would show that the defendants have obtained sale deed through the

GPA holder of the original title holder and they have also filed link documents and electricity consumption bills to establish their possession.

16. Among all these documents exhibited on behalf of both the parties, Ex.R.3 is the crucial document i.e., sale deed executed in favour of the defendants *prima facie* discloses the possession of defendants over suit schedule property. Equally, Ex.P.8 copy of the plaint along with a memorandum filed by the plaintiff showing that the plaintiff is not pressing the suit and the suit may be dismissed as withdrawn on 08.03.2001 is fatal to the case of the plaintiff, since subsequent to the withdrawal of the suit in OS No.929 of 2000 which was filed for specific performance of agreement of sale dated 15.07.1986, no steps were taken nor any sale deed was executed in favour of the plaintiff.

17. That being the factual situation, in my considered opinion, the plaintiff has failed to establish the essentials required for grant of ad-interim injunction as prayed for and that I do not find any irregularity in

appreciation of the material available on record by the Court below. The order impugned dated 28.12.2019 in IA No.440 of 2015 does not warrant any interference by this Court and it is sustained.

18. In the result, the Civil Miscellaneous Appeal is dismissed as devoid of merits. The order impugned dated 28.12.2019 in IA No.440 of 2015 in OS No.239 of 2015 on the file of the II Additional District Judge, Ranga Reddy District at L.B. Nagar, is hereby confirmed. However, in the circumstances of the case, there shall be no order as to costs.

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

A. VENKATESHWARA REDDY, J.

Date: 16.11.2022
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