

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

APPEAL SUIT No.453 of 2006

JUDGMENT:

This appeal is filed against the order of the trial Court in E.A.No.42 of 2004 in E.P.No.85 of 2003 in O.S.No.8 of 2002 dated 15.04.2006.

2. Petitioner is the third party. He filed an application under Order 21 rule 58 of C.P.C to raise the attachment with regard to house bearing Door No.9 – 113 situated at Teachers colony, Dasnapur, Adilabad District. The trial Court considering the arguments of both sides and the citations filed before the Court dismissed the application. Aggrieved by the same, present appeal is preferred. Appellant mainly contended that trial Court without considering Exs.A1 to A9 which are receipts filed by him and also without considering evidence of P.W.2 attesting witness dismissed the application on the ground that agreement of sale is not filed by him and it is erroneous. He is the bonafide purchaser for consideration and he was inducted into the possession of the suit schedule property but he was compelled to suffer for no fault of him. Therefore, requested the Court to set aside the order of the trial Court.

3. Heard arguments of both sides and perusal of record shows that the petitioner herein entered into an agreement of sale with the first respondent on 26.09.2001 for sale consideration of Rs.4,00,000/-. In fact, first respondent borrowed loan from State Bank of Hyderabad (hereinafter referred as 'SBH') for construction of house and created equitable mortgage in favour of SBH by depositing his title deed. The first respondent constructed house bearing Door No.9-113 and sold away the same to the petitioner on 26.09.2001 under agreement of sale. As per agreement of sale petitioner paid Rs.60,000/- on the date of agreement of sale and out of balance amount Rs.3,36,000/- is paid to the SBH towards outstanding loan of first respondent and balance amount of Rs.4,000/- was paid at the time of registration of the sale deed. The amount paid by the petitioner is tabled as follows:

Date	Amount	Amount paid to
26.09.2001	60,000/-	Respondent No.1
05.12.2001	2,000/-	Respondent No.1
21.01.2002	1,24,000/-	S.B.H
06.03.2002	6,000/-	S.B.H
09.03.2002	3,000/-	S.B.H
13.03.2002	5,000/-	S.B.H

09.05.2002	2,000/-	Respondent No.1
TOTAL	Rs.2,02,000/-	

4. He also invested Rs.1,00,000/- towards development of the house. After 15 days respondent No.2 approached him and informed that decree was passed against respondent No.1 and asked the petitioner to vacate the house. As he is the bonafide purchaser respondent No.1 has no right to attach the property. Respondent No.1 set ex-parte and respondent No.2 filed Counter stating that prior to the decree a publication was made seeking objections, but the petitioner has not filed any application when the suit was pending. The petitioner has to see the clear title of the house before entering into agreement of sale as such requested the Court to dismiss the application.

5. There is no dispute regarding loan taken by the respondent No.1 from the SBH and E.A.No.5 of 2004 was filed by the SBH for raising attachment stating that they got charge over the property. The petitioner was examined under P.W.1, but he has not filed agreement of sale before the Court and he stated that he could not pay the stamp duty and penalty of Rs.2,50,000/-, as such willfully and voluntarily he has not filed

it before the Court. The trial Court observed that as per Ex.A1 to A4 and A9 which are receipts filed before the Court petitioner paid the amount to the loan account of the respondent No.1, but mere payment of amount by the petitioner to the bank basing on the receipts cannot prove the title over the property, as he failed to file the agreement of sale dismissed the suit. The petitioner ought to have filed suit for specific performance but he failed to do so and he paid Rs.2,02,000/-. After entering into agreement of sale, the respondent No.2 stated that they gave publication and called for objections but the petitioner has not filed any objection during the pendency of suit. O.S.No.8 of 2002 is filed by respondent No.2 against respondent No.1 for recovery of amount basing on the promissory note, as it was decreed in favour of respondent No.2 they filed Execution Petition for attachment of the property. This clearly shows that respondent No.1 obtained loan from SBH on 01.11.1997 and mortgaged the property with the Bank and the petitioner knowing very well about the mortgage of the property entered into an agreement of sale, therefore it cannot be said that he has no knowledge about the loan of the Bank when he entered into an agreement of sale. As the agreement of sale is not filed before the Court, the Court cannot verify whether there was any

time limit for payment of amount and other required details. As this application is filed only to raise the attachment of the house bearing Door No.9 – 113 situated at Teachers colony, Dasnapur, Adilabad District and the said property was attached by the Bank duly after getting decree and after filing of the Execution Petition, as the petitioner is the third party to the proceedings he is not entitled for raising the attachment. The trial Court rightly passed the order by considering all the factors and thus this Court finds no reason to interfere with the order of the trial Court.

In the result, appeal is dismissed confirming the order of the trial Court in E.A.No.42 of 2004 in E.P.No.85 of 2003 in O.S.No.8 of 2002 dated 15.04.2006. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED: 26 .12.2022

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