

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THURSDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT
THE HONOURABLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

C.M.A. NO: 415 OF 2022

Appeal under Order 43 Rule 1(r) of CPC against the Judgment and decree dated 14/07/2022 passed in IA No.582 of 2021 in OS No.82 of 2021 on the file of the Court of the IV Additional District and Sessions Judge, at Sangareddy.

Between:

Mr. U.Prabhakar Reddy, S/o.Sri.U.Domodar Reddy aged about 55 years, Occ Business, R/o.Nallagandla Village, Sarilingampally Mandal, Ranga Reddy District. Rep.by its GPA Holder Mr.Y.Chinnappa Reddy, S/o.C.Rayapa Reddy, aged 67 years, Occ Business, R o.Plot No.125, Vivekanda Nagar Colony, Kukatpally, Ranga Reddy District.

...APPELLANT/PETITIONER/ PLAINTIFF

AND

1. Smt.Gonela Anthamma, W/o.Late.G.Papaiah, aged about 68 years, Occ House wife, R/o.H.No.4-3, Budhera village, Munipally Mandal, Sanga Reddy District.
2. Mr.Gonela Narasimha, S/o.Late.G.Papaiah, aged about 46 years, Occ Agricultural, R/o H.No.4-3, Budhera Village, Munipally Mandal, Sanga Reddy District.
3. Mr.Gonela Srinivas, S/o.late.G.Papaiah, aged about 44 years, Occ Agricultural, R/o.H.No.4-3, Budhera Village, Munipally Mandal, Sanga Reddy District.

...RESPONDENTS/RESPONDENTS/ DEFENDANTS

IA NO: 3 OF 2022

Petition under Order XXXIX Rule 1& 2 R/w. Section 151 of CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to grant ad-interim injunction against the Respondents restraining them from alienating the Petition schedule property pending disposal of the CMA.

SCHEDULE PROPERTY

All that the agriculture land, admeasuring Ac.1.11 Guntas bearing survey No.72/3/1, of Bhudera Village, Munipally Mandal, Sanga Reddy District, bounded by -

NORTH: Agricultural Land of Manne Somaiah Yadav

SOUTH: National Highway,

EAST: Neighbour's Land

WEST: Road

For the Appellant : SRI CH.RAMESH BABU, Advocate

For the Respondents : SRI PALLE SRIHARINATH, Advocate

The Court delivered the following: JUDGMENT

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

CIVIL MISCELLANEOUS APPEAL No.415 of 2022

JUDGMENT: (Per Hon'ble Dr.SA,J)

This appeal, under Order XLIII Rule 1(r) of Code of Civil Procedure, 1908 (for short "C.P.C"), is filed by the appellant/petitioner/plaintiff, against the respondents/respondents/defendants, aggrieved by the order and decree, dated 14.07.2022, passed in I.A.No.582 of 2021 in O.S.No.82 of 2021, by the learned IV Additional District Judge, at Sangareddy, wherein the subject application filed by the appellant/petitioner/plaintiff under Order XXXIX Rule 1 and 2 of CPC, seeking *ad-interim* injunction restraining the respondents/defendants and their agents, attorneys, or any person or persons claiming through them from alienating and in any way, dealing with the petition schedule property, till the disposal of the suit, was dismissed.

2. Heard the learned counsel for both sides and perused the record.
3. The learned counsel for the appellant/petitioner/plaintiff would contend that at first instance, the agreement of sale dated

03.05.2019 was marked as Ex.P.1 in the subject I.A.No.582 of 2021. Thereafter, the learned Judge who marked the said document was transferred. The present Presiding Officer while considering the subject I.A, rejected the Ex.P.1-agreement of sale dated 03.05.2019 on the ground that it was not duly stamped. The Court below instead of following the procedure contemplated under Section 33(1) of Indian Stamp Act, 1899 and impounding the subject document or directing the appellant herein to take back the subject document and present it before the authority concerned to pay the deficit stamp duty and penalty thereon, erroneously rejected the subject document and dismissed the subject I.A. Thus the learned counsel prays to set aside the impugned order and decree dated 14.07.2022 passed by the Court below and allow the appeal, as prayed for.

4. On the other hand, the learned counsel for the respondents/defendants supported the impugned order and decree dated 14.07.2022 passed by the Court below and submitted that since the agreement of sale dated 03.05.2019 was not duly stamped, the Court below is justified in rejecting the same and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the point that arises for determination in this appeal is:

"Whether the impugned order and decree dated 14.07.2022, passed in I.A.No.582 of 2021 in O.S.No.82 of 2021, by the learned IV Additional District Judge, at Sangareddy, is liable to be set aside?"

POINT:

6. As seen from the material placed on record, the Court below while dealing with the subject Interlocutory Application, rejected the agreement of sale dated 03.05.2019, on the ground that it was not duly stamped and ultimately, dismissed the subject I.A, vide impugned order and decree, dated 14.07.2022. The Court below without following the procedure contemplated under Section 33(1) of the Indian Stamp Act, 1899, straightaway rejected the subject agreement of sale, dated 03.05.2019, which is a material document. Instead of rejecting the subject document, the Court below ought to have impounded the subject agreement of sale, dated 03.05.2019 or directed the appellant herein to present it before the authority concerned to pay deficit stamp duty and penalty thereon. In view of the above circumstances, the impugned order and decree dated 14.07.2022, passed by the Court below, is liable to be set aside.

7. Accordingly, this Civil Miscellaneous Appeal is allowed and the impugned order and decree dated 14.07.2022, passed in I.A.No.582 of 2021 in O.S.No.82 of 2021 by the Court below is set aside. Consequently, the subject I.A.No.582 of 2021 is restored to its file for fresh disposal and to enable the appellant/petitioner/plaintiff to pay the deficit stamp duty and penalty on the subject agreement of sale dated 03.05.2019. The Court below shall not get influenced by any of the observations made in this judgment and dispose of the subject I.A. afresh, in accordance with law, after giving reasonable opportunity of hearing both sides.

Miscellaneous petitions, pending if any, in this appeal, shall stand closed. No costs.

//TRUE COPY//

Sd/-B.S.CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

To

1. The IV Additional District and Sessions Judge, at Sangareddy.
2. One CC to Sri Ch.Ramesh Babu, Advocate [OPUC]
3. One CC to Sri Palle Sriharinath, Advocate [OPUC]
4. Two CD Copies

Kj

HIGH COURT

DATED:03/11/2022



JUDGMENT

CMA.No.415 of 2022

ALLOWING CMA WITHOUT COSTS.

⑥
MA
27/2/23