

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

**MONDAY, THE FOURTEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

AND

THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

CIVIL MISCELLANEOUS APPEAL NO: 403 OF 2022

Appeal Under Order 43 Rule 1 of CPC, aggrieved by the orders dated 08-08-2022 passed in I.A.No.620 of 2021 in OS No.121 of 2021 on the file of the Principal District and Sessions Judge at Medchal Malkajgiri District at Malkajgiri.

Between:

1. M. Srinivas, S/o M. Narayana aged about 51 years, Occ. Business, R/o H.No. 42-481/2, Shramik Nagar, Moulali, Hyderabad.
2. Subhash Chander Passi, S/o Bhagath Ram Passi Aged about 58 years, Occ. business, R/o H.No. 1-10-32E-307, Wellikin Park, Prakash Nagar, Begumpet, Hyderabad.
3. Abhishek Passi, s/o Subhash Chander Passi Aged about 32 years, Occ. business, R/o H.No. 1-10-32E-307, Wellikin Park, Prakash Nagar, Begumpet, Hyderabad.
4. Pashkanti Rajandra Venkat, s/o P. Venkataiah, Aged about 55 years, occ. business, R/o H.No. 12-113-691/10-11, Nagarjuna Nagar, Tarnaka, Secunderabad.

...APPELLANTS/PLAINTIFFS

AND

1. Dr. S.E Anjaneyulu, s/o late B. Ellaiah, aged about 65 years, Occ Doctor, R/o H.No. 12-14-101, Lalagudai Tarnaka, Manjira Narsingh Home, Secunderabad.
2. Kandadi Srikanth Reddy, s/o Kandadi Bal Reddy, H.No. 1-82, Rampally Dayara, Keesara Mandal, Ghatkesar-501301
3. Sanjay Pandya, s/o Ram Gopal Pandya aged about 36 years, Occ. business, R/o H.No. 59-64, Flat no. 303, Area Residency, Ayodhya Nagar, ECIL Post, Kapra Hyderabad.
4. Malligari Praveen Kumar, s/o late Malligari Biksharathy Aged about 36 years, Occ. business, R/o H.No. 12-1-1-A/57/1, Laxmi Nagar, Lalapet, Secunderabad

5. Chittipolu Shiva ram, s/o Chitipolu Yadgiri aged about 35 years, occ. business, R/o H.No. 12-1-503/45, Laxmi nagar, Lalapet, Hyhderabad.
6. The Hyderabad Metropolitan development Authority, Rep by its commissioner, Swarna Jayanthi complex, Ameerpet, Hyderabad-500082
7. The sub-Registrar, Keesara, Medchal-Malkajgiri District.
8. The Tahsildar Cum sub-registrar, Keesara, Medchal-Malkajgiri District.
9. The Panchayat Executive officer, Gram Panchayat, Cheeryal.

...RESPONDENTS/DEFENDANTS

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed herewith, the High Court may be pleased to suspend the order dated. 08.08.2022 passed in I.A.No.620 of 2021 in O.S No.121 of 2021 of Hon'ble Principle District and Sessions Judge at Malkajgiri

Counsel for the Appellants: SRI. DURGA PRASAD SADAM

Counsel for the Respondents 1 to 5: S V RAMANA

Counsel for the Respondents 6 to 9: NONE APPEARED

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.403 of 2022

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

This appeal, under Order XLIII Rule 1 of Code of Civil Procedure, 1908 (for short "C.P.C"), is filed by the appellants/ petitioners/plaintiffs, aggrieved by the conditions imposed in the impugned order, dated 08.08.2022, passed in I.A.No.620 of 2021 in O.S.No.121 of 2021, by the learned Principal District Judge, Medchal-Malkajgiri District, at Malkajgiri, wherein the subject Interlocutory Application filed by the appellants/ petitioners/plaintiffs under Order XXXIX Rule 1 and 2 of C.P.C, seeking to grant temporary injunction restraining the respondent Nos.1 to 5 and their agents, nominees, assignees, henchmen in any manner from alienating, transferring, mortgaging, altering in any manner in respect of suit schedule property, pending disposal of the suit, was allowed by the Court below directing the petitioners/ appellants to deposit the balance sale consideration with interest @ 18% per annum from the date of agreement to till the date of deposit within one week from the date of the impugned order and also to give

an undertaking that the respondent is entitled to withdraw the said amount or to fixed deposit the amount for a period of five years with a permission to renew from time to time and in such circumstances, the respondents are restrained from transferring or alienating or mortgaging the petition schedule property to any third party and in case the petitioners fail to deposit the amount within the stipulated period i.e, within one week from the date of the impugned order, the subject application stands dismissed.

2. Heard Sri Durga Prasad Sadam, learned counsel for the appellants/plaintiffs, Sri S.V.Ramana, learned counsel for the respondent Nos.1 to 5 and perused the record. Notices sent to respondent Nos.6 to 9 not yet returned.

3. The learned counsel for the appellants/petitioners/plaintiffs would contend that the Court below ought not have directed the appellants to deposit the balance sale consideration with interest @ 18% per annum within one week from the date of the impugned order and also to give an undertaking that the respondents are entitled to withdraw the said amount. The conditions imposed by the Court below are not inconsonance with law. It is further contended that the

total extent of the land agreed to be sold under the disputed agreement of sale dated 01.11.2019 was Ac.4-00gts but in the survey conducted by the respondent No.1 himself, the total land appears to be an extent of Ac.2-00gts only and the respondent No.1 has cheated the appellants. Several alienations are made in respect of part of the land covered under the disputed agreement of sale dated 01.11.2019 and ultimately, prayed to allow the appeal and set aside the impugned order dated 08.08.2022 passed by the Court below.

4. On the other hand, the learned counsel for the respondent Nos.1 to 5 would contend that as per the agreement of sale dated 01.11.2019, the total sale consideration was Rs.7,20,00,000/- but the appellants paid only Rs.25,00,000/- as advance and the remaining amount was agreed to be paid within six months from the date of the agreement but the appellants/ plaintiffs failed to pay the same within the time stipulated. Therefore, the respondent No.1 issued legal notice dated 18.06.2020 to the appellants and cancelled the subject agreement of sale dated 01.11.2019. There is no *prima facie* case and balance of convenience in favour of appellants/ plaintiffs to grant the relief sought for.



The Court below is justified in passing the impugned order dated 08.08.2022 and ultimately, prayed to dismiss the appeal.

5. As seen from the material placed on record, there is no dispute in relation to execution of subject agreement of sale between the appellants and the respondent No.1 on 01.11.2019. As per the said agreement, the total sale consideration for the sale of agricultural land admeasuring Ac.2-26gts in Sy.No.110B and Ac.1-14gts in Sy.No.111, total admeasuring Ac.4-00gts, situated at Chiryal Village, Keesara Mandal, Medchal-Malkajgiri District, Telangana, was Rs.7,20,00,000/-. The appellants paid Rs.25,00,000/- to the respondent No.1 as advance and the balance sale consideration was agreed to be paid within six(6) months from the date of agreement. Further, there is a clause in the agreement of sale that the property covered under the agreement of sale is in litigation and it has to be cleared within six months from the date of agreement. According to the appellants, the litigation has not been cleared by the respondent No.1. According to the respondent No.1, the appellants failed to pay the balance sale consideration within the stipulated time and therefore, he got issued a legal notice dated 18.06.2020 to the appellants and

cancelled the subject agreement of sale dated 01.11.2019. The appellants issued a reply notice dated 20.06.2020 to the respondent No.1 showing their readiness and willingness to get the sale deed executed in their favour by paying the balance sale consideration to the respondent No.1, subject to clearance of the dispute over the property under sale. Here, the fact remains that the total land which was agreed to be sold under the agreement of sale i.e, Ac.4-00gts is not available right now and the appellants did not pay the balance sale consideration within the time stipulated in the agreement of sale dated 01.11.2019. The Court below vide impugned order dated 08.08.2022, passed in I.A.No.620 of 2021 in O.S.No.121 of 2021, was pleased to allow the subject Interlocutory Application on certain conditions. The operative portion of the impugned order dated 08.08.2022, passed by the Court below reads as follows:

"8. In the result, the petition is allowed by directing the petitioners to deposit the balance sale consideration with interest @ 18% p.a from the date of agreement till the date of deposit within one week from the date of this order and also to give an undertaking that the respondent is entitled to withdraw the said amount or to fixed deposit the amount for a period of five years with permission to renew from time to time and in such circumstances, the respondents are restrained from transferring or alienating or mortgaging the petition schedule property to any third party and in case the

petitioners fail to deposit the amount, within the stipulated period i.e, within one week from the date of this order, the petition stands dismissed. Both parties shall bear their own costs."

In the given facts and circumstances of the case, the Court below ought not have imposed the aforesaid conditions. The conclusions reached by the Court below are not in consonance with law. The Court below while dealing with the subject Interlocutory Application ought to have examined the contentions raised by both sides in relation to three mandatory requirements for granting temporary injunction under Order XXXIX Rule 1 and 2 of C.P.C.

6. Under these circumstances, the impugned order, dated 08.08.2022, passed in I.A.No.620 of 2021 in O.S.No.121 of 2021, by the learned Principal District Judge, Medchal-Malkajgiri District, at Malkajgiri, is set aside. Consequently, the subject I.A.No.620 of 2021 is restored to its file. 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.

7. Accordingly, this Civil Miscellaneous Appeal is disposed of.

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

Sd/- C.V.MALLIKARJUNA VARMA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal District and Sessions Judge at Medchal Malkajgiri District at Malkajgiri.
2. One CC to SRI. DURGA PRASAD SADAM Advocate [OPUC]
3. One CC to SRI. S V RAMANA Advocate [OPUC]
4. Two CD Copies

VH

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HIGH COURT

DATED: 14/11/2022

JUDGMENT

CMA.No.403 of 2022



DISPOSING OF THE APPEAL.

⑥ Copies

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