HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

CMA.No.98 of 2023

JUDGMENT: (*per Hon'ble D.V.S.S.Somayajulu*)

This Civil Miscellaneous Appeal is filed questioning the order dated 21.10.2022 in I.A.No.477 of 2020 in O.S.No.30 of 2020.

2. This Court has heard Sri P.Rajashekhar, learned counsel for the appellant instructed by Sri A.K.Kishore Reddy, and Sri V.R.Reddy Kovvuri learned counsel appearing for the respondents.

3. The CMA arises out of an interim order in a suit O.S.No.30 of 2020 filed for a specific performance of an agreement of sale dated 30.01.2009. This agreement pertains to sale of land measuring Ac.2.73 cents in Gudur Village of Kadapa. The total sale consideration is Rs.2.12 crores; out of which the plaintiffs says they have paid Rs.1.18 crores. It is also mentioned that they secured the balance and went to the Office of the Joint Sub-Registrar, Kadapa for purchase of stamps and got prepared draft sale deeds which however could not be registered because, the plaintiffs learnt that there was a suit O.S.No.33 of 2007 and A.S.No.489 of 2016 pending with reference to the land. Plaintiffs submit that they also learnt that defendant No.1

executed agreement in favour of defendant Nos.2 and 3, basing on which they filed a suit O.S.No.20 of 2020 for specific performance etc. Therefore, the plaintiffs submit that they got issued a lawyers notice and later filed a suit for specific performance.

4. The defendants in the course of their written statement admit that an agreement was entered into by them and also admit that an advance of Rs.53 lakhs was paid. The other payments are however denied. It is also admitted that the measurement of the land was also carried out in terms of the agreement. However, it is asserted that the rest of the averments in the plaint are not correct. It is forcefully argued that as the time is the essence of contract and as the plaintiffs failed to perform their part of the contract, there was forfeiture of the advance paid. The sale in favour of the defendant Nos.2 and 3 is also admitted in the written statement. But it is stated that the same is in the knowledge of the plaintiffs. Defendant Nos.2 and 3 have filed their written statements stating that they are *bona fide* purchasers for the value and are not concerned with the earlier transactions.

5. The facts are as set out above in brief. Along with the suit, the plaintiffs filed an interlocutory application I.A.No.477 of 2020 seeking an order restraining the respondent Nos.1 to 3 from alienating the suit schedule property. After hearing the parties, the injunction granted on merits is the subject matter of the Civil Miscellaneous Appeal.

6. Sri Rajashekhar, learned counsel for the appellant, apart from arguing the facts which are stated above relies upon the clauses of the agreement to argue that time is the essence of the contract. Other than the initial sum of Rs. 53 lakhs, all the subsequent payments are however denied. Learned counsel also submits that readiness and willingness are not proved. Relying upon the Bank statements filed, he argues that the necessary financial capacity or willingness is not visible and the plaintiffs failed to prove that they are in possession of the necessary money to pay the amount outstanding. He also submits that the conduct of the parties is an important factor which should be kept in mind when an injunction in a suit for specific performance is decided. He relies upon the following cases in support of his contentions.

(1) Martin Burn Ltd., v. R.N.Banerjee[1],

(2) Colgate Palmolive (Indian) Ltd., v. Hindustan Lever Ltd.,[2]

(3) M.Gurudas and others v. Rasaranjan and others[3],

(4) Kishorsinh Ratansinh Jadeja v. Maruti Corporation and others[4] and

(5) ***Bhimavarapu Nageswaramma v. Bommu Sivareddy***[5],

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1 AIR 1958 SC 79
2 AIR 99 SC 3105
3 (2006) 8 SCC 367
4 2009 (11) SCC 229
5 (2022) 2 ALD 1

7. Relying upon these judgments, learned counsel submits that before granting injunction, the Court should consider the three important ingredients; *prima facie* case, balance of convenience and also irreparable loss. In addition, he submits that the conduct of the parties and the manner of their behavior should be kept in mind. He points out that on the basis of an injunction, which is sought a lawful owner cannot be prevented from enjoying the benefits of the property. He relies upon para 40 of the ***Kishorsinh Ratansinh Jadeja's*** case (4 supra). He also urges strongly that the plaintiffs conduct in making out a false cause of action including a theory about the approaching the Sub-Registrars Office and getting prepared these sale deeds etc., must be noted. He points out that so called sale deeds which were prepared are not filed. Therefore, he urges that the trial Court committed a very serious error in granting an injunction as prayed for.

8. In reply, Sri V.R.Reddy Kovvuri argues the matter and submits that the execution of the agreement is admitted. The measurement of the property pursuant to the agreement of sale is admitted. Payment of certain advance is admitted. He points out that the subsequent denial of the other payments etc., are matters of pleading and proof. The sale in favour of defendant Nos.2 and 3 is admitted. He contends that once it is realized that the property has been alienated, it further strengthens the case of the plaintiffs in seeking an injunction against the further alienation of the property. He points out that the plaintiffs

have come to Court with a specific case and before the same is proved, the property is alienated. The loss will be irreparable, if further alienation takes place. He points out that the conduct of the defendants and the subsequent sale in favour of defendant Nos.2 and 3 also adds support to the plaintiffs' case.

9. This Court after hearing all the learned counsels notices that the following facts are admitted. (1) That an agreement of sale dated 30.01.2019 was concluded is admitted. (2) The payment of the parties of Rs.53 lakhs is also admitted. (3) That the land was measured pursuant to the agreement of sale is admitted. (4) The sale of the property to defendant Nos.2 and 3 is admitted, but it is asserted that the sale is in the knowledge of the plaintiffs.

10. The filing of the case O.S.No.20 of 2020 by defendant Nos.2 and 3 against defendant No.1 is borne out by record. Its compromise in Lok adalat is also seen and the said documents are marked as Exs.B.4 and B.5. The sale deed in favour of defendant Nos.2 and 3 by defendant No.1 is marked as Ex.B.6. It is also admitted that this Sub-Registrar refused to register a document executed in favour of the defendant Nos.2 and 3 due to the pendency of the litigation namely O.S.No.33 of 2007 and A.S.No.580 of 2016. The said 'refusal to register' document is marked as Ex.B.2. The agreement entered into *inter se* the defendants is also filed. All these facts are visible from

Exs.A.1 to A.6 which are marked on behalf of the petitioners/plaintiffs and Exs.B.1 to B.6 marked on behalf of the defendant Nos.2 and 3. It is not in dispute that the same property is involved in all these litigations.

11. The essential submission of Sri P.Rajashekhar, learned counsel for the appellant is that time is the essence of the contract and the plaintiffs have failed to prove that they fulfilled the terms and conditions according to the agreement. It is also emphatically asserted that other than the initial sum of Rs.53 lakhs, all the other payments are denied and the plaintiffs could not actually prove the payments. He also submits that the Bank statements filed do not prove that the petitioners have the necessary capacity to pay the sum agreed upon. He strongly asserts that the documents purportedly executed as stated in the plaint namely proposed sale deeds are not even filed as exhibits. Therefore, learned counsel urges that neither the readiness/willingness is proved nor is the conduct of the parties above board for this Court to grant an equitable relief of specific performance.

12. The argument at first blush appears to be attractive, but the Hon'ble Supreme Court of India in more than one judgment has clearly held that the issue of time being the essence in a contract of sale has to be judged from the terms of the contract and attendant

circumstances. The conduct of the parties is also important. On the basis of the mere agreement, it cannot by itself be concluded, whether or not time is the essence of the contract. The totality of circumstances must be seen. The general rule is that for sale of immovable property time is not the essence of the contract. As far as readiness and willingness is concerned, the plaintiffs before this Court stated that they have paid Rs.1.18 crores in all and that they have got prepared the draft sale deeds, but the same were not registered because of the pendency of a litigation. The pendency of the allegedly suppressed litigation is borne out by the exhibits filed by the respondents themselves which clearly show that the Sub-Registrar has in fact refused to register the document because of the pending litigation. It is also borne out by record that a subsequent suit O.S.No.20 of 2020 has been filed for specific performance and the same was also compromised before the Lok Adalath. The plaintiffs' case that the sister of respondent No.3 has filed a suit O.S.No.33 of 2007 which was decreed in her favour and an appeal A.S.No.580 of 2016 has been filed is borne out by the record. The compromise entered into is borne out by copy of the judgment filed by the respondents in A.S.Nos.489 of 2016 and 580 of 2016.

13. In these circumstances and also in the light of this evidence, this Court is of the opinion that preserving the *status quo* namely the property in the current state itself is essential. The plaintiffs have

asserted the payment of Rs.1.18 crores in all. They also assert that they have necessary financial capacity to pay the balance. The sale of the property and the litigation which has not been disclosed is also a factor which weighed with the trial Court. Whether the other defendants who have purchased the property are *bona fide* purchasers for value is also a matter that has to be decided in the course of the trial. The existence of the litigation has been brought on to the Courts record and it has been considered in the course of the impugned interim order. The fact that the Sub-Registrar refused to register the document because of the pendency is also borne out by the record. The filing of the other suit O.S.No.20 of 2020 and the compromise in the Lok Adalath is also now on the record of the Court. Therefore, in these circumstances, this Court is of the opinion that all the essential ingredients for grant of an injunction are in fact present. The plaintiffs have made out more than a *prima facie* case and have actually laid the foundation for seriously triable issues. Balance of convenience is also in favour of the plaintiffs and greater harm will be caused if further transactions are entered into by the respondents/defendants. Creation of further third party interest and multiplicity of proceedings will lead to irreparable loss and further complications. In the opinion of this Court, preserving the existing state of affairs with regard to the property and preventing its further alienation are all highly essential in the facts and circumstances of this case.

14. In view of the evidence available and the contentions, this Court is of the opinion that the trial Judge did not commit any error whatsoever in granting an injunction on 21.10.2022.

15. The Civil Miscellaneous Appeal is therefore dismissed. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU,J

DUPPALA VENKATA RAMANA,J

Date: .08.2023
KLP