

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CIVIL REVISION PETITION No.385 OF 2023

ORDER :

The Civil Revision Petition has been filed aggrieved by the Order dated 19.12.2022 passed in C.M.A.No.1 of 2021 on the file of the VI Additional District Judge, Kurnool, whereby the appeal preferred against the Order dated 07.01.2021 passed in I.A.No.35 of 2020 in O.S.No.6 of 2020 on the file of the Additional Senior Civil Judge, Kurnool was confirmed.

2. The petitioners herein are defendants 3 and 4; 1st respondent herein is plaintiff and respondents 2 and 3 herein are defendants 1 and 2, in the Original Suit. For sake of convenience, the parties are hereinafter referred to, as per their array in the Original Suit.

3. Plaintiff filed Original Suit No.6 of 2020 against defendants 1 to 4 for specific performance of contract of sale dated 07.08.2015 executed by defendants 1 and 2, by directing them to receive the balance sale consideration and to execute a registered sale deed in respect of the plaint schedule properties, alternatively, to refund the part sale consideration of Rs.19.00 lakhs paid by the plaintiff together with interest @ 24% per

annum. In the said suit, I.A.No.35 of 2020 has been filed seeking temporary injunction restraining defendants 3 and 4 from alienating the petition schedule properties till disposal of the suit. The trial Court, vide Order dated 07.01.2021 in I.A.No.35 of 2020 in O.S.No.6 of 2020, allowed the petition granting temporary injunction restraining defendants 3 and 4, their men and agents from executing any agreement of sale or alienating the petition schedule property to third parties till disposal of the suit. Aggrieved by the same, the defendants 3 and 4 preferred C.M.A.No.1 of 2021 on the file of the VI Additional District Judge, Kurnool. Vide the impugned Order dated 19.01.2023 in the said C.M.A.No.1 of 2021, the learned District Judge dismissed the appeal, confirming the order passed by the trial Court. Challenging the same, the present Civil Revision Petition came to be filed.

4. Heard Sri P.Veera Reddy, learned senior counsel appearing for the learned counsel for petitioners/defendants 3 and 4 and the learned counsel for 1st respondent/plaintiff. Perused the record.

5. It is contended by the learned senior counsel appearing for the petitioners that the actual dispute is between the plaintiff and

defendants 1 and 2, and defendants 3 and 4 are not parties to the subject agreement of sale dated 07.08.2015; that the defendants 3 and 4 are *bona fide* purchasers of the subject property for a valuable consideration under registered sale deeds, as such, no injunction can be granted against them; that the suit is barred by limitation since the subject agreement of sale is dated 07.08.2015 and the suit was filed in January, 2020 viz. nearly 4 ½ years after execution of the agreement of sale, and there is no *prima facie* case or balance of convenience in favour of the plaintiff warranting grant of temporary injunction in his favour; that both the Courts below have not considered these aspects in right perspective and came to perverse findings. Hence, he prays to set aside the impugned order.

6. On the other hand, learned counsel for 1st respondent/ plaintiff contended that defendants 1 and 2, who are the original owners of the schedule property, offered to sell the property to the plaintiff and accordingly, the subject agreement of sale dated 07.08.2015 (Ex.A1) was executed by them in favour of the plaintiff, after receiving Rs.5.00 lakhs towards part sale consideration and agreeing to execute a regular sale deed after receipt of balance of sale consideration and after getting the land surveyed to know the exact extent of land; that defendants 1 and

2 received a sum of Rs.14.00 lakhs under Exs.A2 to A6, being part sale consideration, and thereafter inspite of expressing readiness by the plaintiff, instead of executing regular sale deed in his favour, the defendants 1 and 2 sold away the said property under registered sale deeds dated 15.10.2019 and 17.10.2019 in favour of the defendants 3 and 4, who, in turn are making hectic efforts to alienate the property to create multiplicity of litigation. He also relied upon Section 22 of the Specific Relief Act, 1963 and submitted that 1st respondent/plaintiff is entitled to the relief sought in the I.A. Considering these aspects, the trial Court rightly allowed the temporary injunction petition filed by the plaintiff and the same was rightly confirmed by the lower appellate court, and there are no grounds to interfere with the concurrent findings of the courts below.

7. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. In exercise of jurisdiction under Article 227 of the Constitution of India, the High Court can set aside or ignore the findings of fact, of an inferior Court or Tribunal, if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion, which the Court or Tribunal has come to, or, in other

words, it is a finding which was perverse in law. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. However, this Court is not justified in embarking upon an enquiry as to the probabilities, reliability or genuineness of the allegations made therein. It cannot be used as an appellate or revisional power. In short, as regards the findings of fact of inferior Court, the jurisdiction of this Court under Article 227 of the Constitution of India, is limited only to the extent of examining whether the subordinate Court keeps itself within the bounds of its authority in reaching a finding of fact.

8. In the case on hand, the defendants 1 and 2, being owners of the plaint schedule properties, entered into Ex.A1-agreement of sale dated 07.08.2015 with the plaintiff agreeing to sell the said properties at Rs.4,40,000/- per acre viz. for total consideration of Rs.30,93,200/- and also received Rs.5.00 lakhs towards advance sale consideration, and it is agreed that balance sale consideration would be paid by 07.01.2016 and regular sale deed

would be obtained. A perusal of the terms of the agreement of sale dated 07.08.2015 goes to show that defendants 1 and 2 have to get the property surveyed in order to ascertain the actual extent available, to arrive at the balance sale consideration payable. It is also the case of the plaintiff that subsequently, the defendants 1 and 2 received Rs.14.00 lakhs under Exs.A2 to A6 towards part of balance sale consideration payable by the plaintiff. It is also the case of plaintiff that he came to know that the subject property is a dotted land and it was rectified, and thereafter, he requested the defendants 1 and 2 to execute registered sale deed after receiving balance sale consideration or repay the amount received by him. According to the plaintiff, a panchayat was held in the presence of elders wherein the defendants 1 and 2 agreed to refund the amount received by them with interest on or before 15.10.2019 or else they undertook to execute the registered sale deed after receiving balance sale consideration of Rs.9,80,000/-. Subsequently, instead of doing so, the defendants 1 and 2 executed registered sale deeds dated 15.10.2019 and 17.10.2019 in favour of the petitioners/ defendants 3 and 4, without repaying the amount received from the plaintiff.

9. The defendants 1 and 2 admitted execution of agreement of sale dated 07.08.2015, but pleaded that payments under Exs.A2 to A6 are false and Ex.A7-agreement was created after obtaining their signatures on blank papers on the pretext of obtaining NoC from revenue authorities. Whereas, it is the case of the defendants 3 and 4 that the agreement of sale is barred by limitation and that they are *bona fide* purchasers for a value under registered sale deeds and are not aware of the transactions between the plaintiff and defendants 1 and 2.

10. The plaintiff got issued a lawyer's notice under Ex.A8 to the defendants 1 and 2 calling upon them to survey the land, receive the balance sale consideration in respect of the land available and execute a registered sale deed. In Ex.A9 reply notice got issued by defendants 1 and 2, there is no whisper regarding the obligation to take measurements of the subject property to ascertain the exact land available on ground. As per the terms of Ex.A1-agreement, the plaintiff has to pay balance sale consideration in respect of the exact extent of land available on ground, after deducting the advance amount paid by him. Therefore, *prima facie*, the defendants 1 and 2 did not take any steps to get the land surveyed as per the terms of Ex.A1 agreement of sale.

11. The plaintiff filed documents under Exs.A2 to A6 in support of his contention that he paid Rs.14.00 lakhs under the said documents to defendants 1 and 2. It is his contention that despite receipt of the same and though he is ready to pay the balance amount, defendants 1 and 2 did not come forward to execute registered sale deed after receiving balance sale consideration. Plaintiff also exhibited Ex.A7-receipt issued by defendants 1 and 2. Whereas the defendants 1 and 2 admitted signatures on Ex.A7, but contended that the plaintiff obtained their signatures on blank paper for the purpose of obtaining NoC from revenue records and created Ex.A7. Therefore, burden lies on them to substantiate the same. As per recitals in Ex.A7, it is clear that defendants 1 and 2 acknowledged their liability to execute a registered sale deed in favour of the plaintiff on or before 15.10.2019 or to pay Rs.24.00 lakhs to him. *Prima facie*, the recitals in Ex.A1, coupled with recitals in Ex.A7, show that time under Ex.A1 stood extended. Therefore, the plaintiff established *prima facie* case and balance of convenience in his favour. The contention of petitioners/defendants 3 and 4 is that they are the *bona fide* purchasers for a valuable consideration under registered sale deeds and they do not know the transactions between the plaintiff and defendants 1 and 2.

Whereas it is the contention of the plaintiff that that defendants 3 and 4, having knowledge that there is an agreement of sale in his favour, purchased the subject property, are trying alienate the suit schedule property and are creating third party interests therein. Therefore, if temporary injunction restraining alienation of the schedule properties is not granted, it would lead to multiplicity of litigation and would cause irreparable loss to the plaintiff. Therefore, the trial Court rightly exercised the discretion vested in it, by granting the temporary injunction. The said order is rightly affirmed by the first appellate Court. There is no infirmity. The Civil Revision Petition is devoid of merits.

12. Accordingly, the Civil Revision Petition is dismissed.

There shall be no order as to costs of the C.R.P.

As a sequel, pending miscellaneous petitions, if any, in the C.R.P. shall stand closed.

JUSTICE K. SREENIVASA REDDY

12.1.2024
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