

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

C.M.A.No.118 of 2015

JUDGMENT:

This appeal, by the unsuccessful defendants, under Order XLIII Rule 1 of the Code of Civil Procedure is directed against the order dated 19.12.2014 of the learned XII Additional District Judge of Krishna District passed in I.A.No.578 of 2014 in O.S.No.482 of 2014 granting temporary injunction in favour of the plaintiff/respondent herein restraining the defendants/appellants herein from making permanent constructions in the plaint schedule property.

2. I have heard the submissions of the learned counsel for both sides. I have perused the material on record.

3. It is necessary to first advert to the basic facts and the facts leading to the filing of this appeal

3.1 The Plaintiff had filed the above suit against the defendants for specific performance of the agreement of sale dated 6.09.2014 avering *inter alia* as under: 'That the defendants agreed to sell the suit schedule property to the plaintiff for a total consideration of Rs.53,20,000/-and that under the said agreement Rs.5,00,000/- was paid as advance and as part of sale consideration. Despite the fact that the plaintiff is always and ready and willing to perform his part of contract and had expressed his readiness and willingness and asked the defendants to get ready with the necessary documents to execute the sale deed, but, the defendant having postponed the same one way or the other did not come forward to execute the sale deed. However, the defendants had offered to sell the property to third parties in order to defeat his legitimate rights under the agreement. When the plaintiff met the defendants along with the elders, the defendant grew wild and had proclaimed to either sell the property to third parties or make constructions. Therefore, the plaintiff having got issued a legal notice is constrained to file the suit for perpetual injunction.'

3.2 In the said suit two Interlocutory Applications, one to restrain the

defendants from alienating the property and the other i.e., the subject application to restrain the defendants from making any constructions over the property, were also filed.

3.3 The defendants 1 and 2 are resisting the suit stating that they had never executed such an agreement to sell as alleged by the plaintiff. The defendants *inter alia* averred in their defence as under: 'That the sale consideration alleged to have been agreed to by both the parties under the agreement was Rs.35,000/- per sq. yard, while in fact the total value of the property covered by the agreement of sale is more than a crore of rupees. The alleged agreement is fabricated. It is alleged that only Rs.5,00,000/- was paid as advance when as per the alleged agreement the total sale consideration was Rs.53,20,000/-. The defendants, who are admittedly the owners of the property, had paid Rs.71,015/- to the Municipal Corporation for obtaining permission to make constructions. Thus, they had obtained the approval of the plan for making construction over the property. Therefore, they have no intentions to sell the property. If they are restrained from making constructions they would be put to serious loss. Since they are the owners, the plaintiff has no prima facie case and the balance of convenience is in their favour.

3.4 At the time of enquiry before the trial Court no documents were exhibited. On merits the trial Court had allowed the application of the plaintiff.

4. The learned counsel for the defendants while submitting that if the constructions, which are intended to be made and are being made by the owners of the property, viz., the defendants, are stopped at this stage, they would be put to serious loss. The learned counsel for the defendants would further submit that the defendants are prepared to undertake not to claim equities in case of their ultimate failure to succeed in the *lis*.

5. On the other hand learned counsel for the plaintiff had supported the order of the Court below.

6. I have bestowed my attention to the facts and I have noted the

submissions made by both the learned counsel.

7. Since the defendants are admittedly the owners of the property and had already spent huge amount for obtaining approval and permission for making constructions in the property and as the genuineness or otherwise of the agreement of sale is to be decided on merits after full fledged trial in the suit, this Court finds it just and fair not to restrain the defendants from making any constructions in view of their undertaking that they are not going to claim equities in the event of their ultimate failure to succeed in the *lis*. Therefore, this Court is of the well considered view that the order impugned in this appeal calls for interference.

8. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order is set aside. The undertaking of the defendants that they will not claim any equities in the event of their ultimate failure to succeed in the *lis* is recorded and it is made clear that in case, the defendants make any constructions (temporary or permanent) over the suit schedule property during the pendency of the suit, they shall not be entitled to claim any equities in the event of their ultimate failure to succeed in the suit.

There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

25th June, 2015

Js.