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SAKETA VAKSANA LLP & ANR.

v.

KAUKUTLA SARALA & ORS.

(Civil Appeal No. 9483 of 2019)

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DECEMBER 17, 2019

**[UDAY UMESH LALIT, INDU MALHOTRA
AND KRISHNA MURARI, JJ.]**

- Interim Order: Agreement of sale between appellant-*
- C *Developer and respondents- landowners for sale of agricultural land comprising of 54 acres 13 guntas – The said agreement was unregistered – As per the agreement, the possession of entire land was handed over to Developer – Out of total extent of land, four registered agreements of sale cum GPA executed with respect to 36*
 - D *acres 21-1/2 guntas of land in favour of Developer – Dispute between parties for payment of balance consideration for land admeasuring 17 acres 31-1/2 guntas (suit property) – Suit for specific performance by Developer – Developer prayed that the landowners be directed to execute the Sale Deed for the suit*
 - E *property admeasuring 17 acres 31½ guntas and provide ingress and egress to the land admeasuring 36 acres 21½ guntas for which the registered Agreements of Sale cum GPA had been executed – Developer also filed two interim applications, one seeking temporary injunction restraining landowners from interfering with peaceful possession over entire land and second seeking temporary injunction restraining landowners from alienating or creating third party interest in the suit property – In the first interim application, landowners disputed the possession of Developer over suit property and produced rent agreement to show that a parcel of land admeasuring 12000 sq. feet was in possession of a third party – Trial court disposed of first interim application granting temporary injunction in respect of property excluding the extent of 12000 sq. feet – In the second interim application, trial court granted temporary injunction restraining landowners from alienating or creating third party interest in suit property till the disposal of suit*
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subject to deposit of balance sale consideration – Order passed in first interim application challenged before High Court – Division bench of the High Court by the impugned interim orders set aside the order of Temporary Injunction passed by the trial court in first interim application – Division Bench held that there was no documentary evidence to prima facie case to show that the Developer was in physical possession of the suit property and furthermore, the issue whether the Developer has paid part consideration for the entire suit property was required to be determined in the trial and therefore, no prima facie case was made out for grant of Temporary Injunction – Developer challenged the impugned interim orders by way of the instant appeals – Held: There are seriously disputed questions of fact involved in this matter – The first issue is whether possession of the suit property was at all handed over to the Developer or not and second is whether part consideration for the suit property was paid by the Developer to the landowners or not – Developer submitted that it had paid a total of Rs. 17.25 lacs to the landowners, and only Rs. 3.72 lacs was the balance payable for the suit property – Landowners however, submitted that the Developer had paid only Rs. 14.25 lacs and was still liable to pay Rs. 10.73 lacs towards the balance sale consideration for the entire suit property, as well as some part of the land already transferred in favour of the Developer – Since both the issues raised are seriously disputed which will be decided during the course of trial, the impugned orders passed by the Division Bench of the High Court did not warrant any interference – High Court has already granted a Temporary Injunction restraining the landowners from alienating or creating third party rights in the suit property till the disposal of the Suit – The interest of the Developer has been sufficiently protected with respect to ownership of the suit property – In view of this, order of vacation of Temporary Injunction by High Court whereby the respondents were restrained from interfering with the possession of the Developer over the suit property is upheld – Trial court to expedite the disposal of the suit – Appeals dismissed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9483
of 2019

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- A From the Judgment and Order dated 14.08.2019 of the High Court for the State of Telangana at Hyderabad in I.A. No. 1 of 2019 in CMA No. 646 of 2019

With

- B Civil Appeal No. 9484 of 2019.

Neeraj Kishan Kaul, Sr. Adv., Gaurav Aggarwal, Raghavendra Mohan, Ms. Garima Bajaj, Ankit Gambhir, Anup Karawadi, Ms. Pratha Suri, Bhuvam Jayant, Sanskar Agarwal, Advs. for the Appellants.

- C Ranjit Kr., Sr. Adv., S. Udaya Kr. Sagar, T. Sudhakar Reddy, Ms. Akanksha Mehra, Vasudha Singh, G. Shridhar Reddy, Ms. Elizabeth Antony, M/S. Lawyer S Knit & Co., Advs. for the Respondents.

The Judgment of the Court was delivered by

- D **INDU MALHOTRA, J.**

Leave granted.

- E 1. The present Civil Appeals have been filed by the Appellants to challenge the Interim Orders dated 14.08.2019 passed in I.A. No. 1/2019 and I.A. No. 2/2019 filed in CMA No. 646/2019 by the High Court of Telangana.

- F 2. The factual background is that the Appellant – Developer and the Respondent – Landowners entered into an Agreement of Sale dated 17.11.2017, whereby the Respondents agreed to sell agricultural land comprising of 54 acres 13 guntas situated in Turkapalli Village, Shamirpet Mandal, Medchal-Malkajgiri District to the Appellant – Developer. The sale consideration was fixed at Rs. 46,00,000/- per acre.

- G The land was divided into 5 schedules, and each schedule of land was to be sold to the Appellant – Developer upon payment of the proportionate sale consideration.

- H Clause 7 of the Agreement dated 17.11.2017 stated that physical possession of the entire land was handed over to the Appellant – Developer on the day of execution of the Agreement.

The Agreement of Sale dated 17.11.2017 was an unregistered document executed on a Stamp Paper of Rs. 100. The Stamp Duty on this Agreement was paid by the Appellant – Developer on 27.08.2018.

3. Out of the total extent of land, the Respondents executed four registered Agreements of Sale cum General Power of Attorney with respect to 36 acres 21½ guntas of land in favour of the Appellant – Developer. The first two Agreements of Sale were executed on 03.01.2018; the third on 24.03.2018; and the fourth on 31.03.2018.

The Appellant – Developer submitted that it has paid Rs. 17,25,00,000/- for the aforesaid four Agreements of Sale.

The Respondents have seriously disputed this submission, and stated that an amount of only Rs. 14,25,00,000/- was paid by the Appellant – Developer.

This gave rise to disputes between the parties for payment of the balance consideration for land admeasuring 17 acres 31½ guntas (“suit property”).

4. The Appellant – Developer filed a Suit for Specific Performance bearing O.S. No. 213/2018 seeking Specific Performance of the Agreement of Sale dated 17.11.2017 before the XVI Additional District and Sessions Judge, Ranga Reddy District (“Trial Court”).

The Appellant/Plaintiff prayed that the Respondents be directed to execute the Sale Deed for the suit property admeasuring 17 acres 31½ guntas; and provide ingress and egress to the land admeasuring 36 acres 21½ guntas for which the registered Agreements of Sale cum GPA had been executed.

5. The Respondents filed the Written Statement cum Counter Claim seeking payment of Rs. 2,55,72,500/- towards the balance consideration for the 36 acres 21½ guntas of land already transferred in favour of the Appellant – Developer. The Respondents further claimed an amount of Rs. 1,00,00,000/- towards the damage caused by the Appellant – Developer to the suit property.

The said Suit is pending final determination before the Trial Court.

6. The Appellant – Developer filed two I.A.s in the Suit praying for Temporary Injunction under Order XXXIX Rule 1 and 2 of the CPC before the Trial Court.

A I.A. No. 766/2018 was filed for a temporary injunction restraining the Respondents from interfering with the peaceful possession and enjoyment of the Appellant – Developer over the entire land admeasuring 54 acres 13 guntas.

B I.A. No. 767/2018 was filed for a temporary injunction restraining the Respondents from alienating or creating any third-party interest in the suit property admeasuring 17 acres 31½ guntas.

C 7. In I.A. No. 766/2018, the Respondent/Defendants disputed the possession of the Appellant – Developer over the suit property admeasuring 17 acres 31½ guntas. They produced a Rent Agreement to show that a parcel of land admeasuring 12,000 sq. feet was in the possession of a third party.

D However, in the Agreements of Sale executed by the Respondents in favour of the Appellant – Developer, it was mentioned that possession of the entire land admeasuring 54 acres 13 guntas was handed over to the Appellant – Developer at the time of the execution of the Agreement dated 17.11.2017.

E The Trial Court passed an Interim Order dated 01.05.2019 in I.A. No. 766/2018 with respect to the prayer for injunction restraining the Respondents from interfering with the peaceful possession of the Appellant – Developer over the suit property, and held that the issue with respect to possession of the suit property admeasuring 17 acres 31½ could only be decided in trial.

F G In view of the aforesaid facts, the Trial Court held that the Appellant – Developer made out a *prima facie* case, and the balance of convenience was in their favour. The Trial Court granted a temporary injunction restraining the Respondents from interfering with the possession of the Appellant – Developer over the suit property excluding the extent of 12,000 sq. feet.

H 8. In I.A. No. 767/2018, the Trial Court *vide* Interim Order dated 01.05.2019 granted a Temporary Injunction restraining the Respondents from alienating or creating third party interest in the suit property till the disposal of the suit, subject to the Appellant – Developer depositing the balance sale consideration @Rs. 46,00,000/- per acre.

9. The Appellant – Developer filed two Miscellaneous Appeals bearing C.M.A. No. 535/2019 and C.M.A. No. 536/2019 before a Single Judge of the High Court to challenge the Interim Orders passed by the Trial Court.

10. The Respondents filed a cross Miscellaneous Appeal bearing C.M.A. No. 646/2019 before the division bench of the High Court praying for setting aside the Temporary Injunction restraining them from interfering with the peaceful possession of the Appellant – Developer over the suit property.

It is relevant to note that the Order dated 01.05.2019 passed by the Trial Court in I.A. No. 767/2018 has not been challenged by the Respondent – Landowners.

11. A Single Judge of the High Court *vide* Interim Order dated 22.05.2019 directed that the Temporary Injunction restraining the Respondents from interfering with the peaceful possession of the Appellant – Developer would extend to the entire suit property, including the parcel of 12,000 sq. feet of land.

The Single Judge *vide* a further Interim Order dated 22.05.2019 directed that the injunction restraining the Respondents from creating third party rights in the suit property would operate, without the condition of depositing the balance sale consideration.

12. In C.M.A. No. 646/2019, the division bench of the High Court *vide* the impugned Interim Orders dated 14.08.2019 has set aside the Order of Temporary Injunction dated 01.05.2019 passed by the Trial Court in I.A. No. 766/2018.

The division bench held that there is no documentary evidence to *prima facie* show that the Appellant – Developer is in physical possession of the suit property. Furthermore, the issue whether the Appellant – Developer has paid part consideration for the entire suit property was required to be determined in the trial. The division bench took the view that the Appellant – Developer had not made out a *prima facie* case for grant of Temporary Injunction. The Respondents being the lawful owners of the suit property, granting such an injunction would cause irreparable loss and hardship to them.

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A Consequently, the Temporary Injunction restraining the Respondents from interfering with the peaceful possession of the Appellant – Developer in the suit property was vacated.

B 13. The Appellant – Developer has challenged the Interim Orders dated 14.08.2019 by way of the present Civil Appeals.

C We have heard Mr. Neeraj Kishan Kaul, Sr. Adv. on behalf of the Appellant – Developer and Mr. Ranjit Kumar, Sr. Adv. on behalf of the Respondents, and perused the material on record.

D 14. The Appellant – Developer submitted that they have developed and sold plots on the tract of land admeasuring 36 acres 21½ guntas to third parties. It was prayed that unless an Agreement of Sale with respect to the suit property admeasuring 17 acres 31½ guntas is registered in their favour, they cannot provide ingress and egress to the plots already sold by them. As a consequence, the purchasers of those plots have been threatening to initiate criminal proceedings against the Appellant – Developer.

E 15. The Respondent – Landowners submitted that the Appellant – Developer has ingress and egress to the land admeasuring 36 acres 21½ guntas, which has already been transferred. The Respondents had filed a Counter Claim in the Suit before the Trial Court for payment of the balance sale consideration for 36 acres 21½ guntas of land which had already been transferred to the Appellant – Developer.

F It was further submitted that the Appellant – Developer has not paid any consideration whatsoever with respect to the suit property admeasuring 17 acres 31½ guntas. Consequently, the Agreement of Sale dated 17.11.2017 stands cancelled *qua* the suit property.

G 16. We find that there are seriously disputed questions of fact involved in this matter. The first issue is whether possession of the suit property was at all handed over to the Appellant – Developer or not.

H On the one hand, the Appellant – developer relied on Clause 7 of the Agreement dated 17.10.2017 to show that possession of the suit property was handed over to them at the time of execution of the Agreement.

On the other hand, the Respondents submitted that it was only symbolic possession which was given to the Appellant – Developer, while physical possession remained with the Respondent – Landowners. The Respondents averred that they are growing vegetables, and have a guest house, servant quarters and a shed on the suit property.

17. The second issue is whether part consideration for the suit property was paid by the Appellant – Developer to the Respondent – Landowners or not.

The Appellant – Developer submitted that it had paid a total of Rs. 17,25,00,000/- to the Respondents, and only Rs. 3,72,03,750/- was the balance payable for the suit property.

The Respondents however, submitted that the Appellant – Developer had paid only Rs. 14,25,00,000/-, and was still liable to pay Rs. 10,73,95,000/- towards the balance sale consideration for the entire suit property, as well as some part of the land already transferred in favour of the Appellant – Developer.

18. During the course of hearing, the Senior Counsel for the Appellant – Developer made an offer to deposit Rs. 10,00,00,000/- in this Court on a “without prejudice” basis. The Respondents however, rejected the said offer.

19. Since both the issues raised are seriously disputed which will be decided during the course of trial, we are of the view that the Orders dated 14.08.2019 passed by the division bench of the High Court do not warrant any interference.

The High Court has already granted a Temporary Injunction restraining the Respondents from alienating or creating third party rights in the suit property till the disposal of the Suit. The interest of the Appellant – Developer has been sufficiently protected with respect to ownership of the suit property.

20. In view of the aforesaid discussion, we affirm the Orders dated 14.08.2019 passed by the division bench of High Court, whereby the Temporary Injunction restraining the Respondents from interfering with the possession of the Appellant – Developer over the suit property has been vacated.

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- A 21. We have expressed no opinion on the merits of the matter, since the observations have been made at an interim stage of the proceedings.
- B 22. We however direct that the hearing of O.S. No. 213/2018 pending before the XVI Additional District and Sessions Judge, Ranga Reddy District be expedited, and disposed of preferably within a period of one year from today.

The Civil Appeals are therefore, dismissed.

Pending Applications if any, are accordingly disposed of.

- C Ordered accordingly.

Devika Gujral

Appeals dismissed.