IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1933 of 2013
and
M.P.Nos.1 & 2 of 2015

M/s.Sree Hitech Constructions
Partnership Firm
represented by Partner G.Narayana Raja, N.Praveena
both are residing at No.105, 3rd Street
SRP Colony, Periyar Nagar,
Chennai-600 082 ...Appellant/4th Respondent/
4th Defendant

vs.

1.K.V.Subramaniam

2.K.V.Purushothaman

3.K.V.Krishnamoorthy

4.G.Jayalakshmi ...Respondents/Petitioners
and R1 to R3/Plaintiff and D1 to D3

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1(4) of the Code of Civil Procedure, to set aside the order, dated 07.07.2015, passed in I.A.No.19235 of 2014 in O.S.No.7103 of 2014, on the file of the XVIII Additional City Civil Judge, Chennai, and dismiss the same by allowing this appeal.

For Appellant : Mr.V.Manohar

For Respondents: Mr.N.A.Sukumaran for R2
Mrs.M.Akila for R3
Mr.A.Palaniappan for R4

J U D G M E N T

Reserved on : 27.10.2015

Pronounced on : 02.11.2015

The appellant has preferred the present appeal against the order, dated 07.07.2015, passed in I.A.No.19235 of 2014 in O.S.No.7103 of 2014, on the file of the XVIII Additional City Civil Judge, Chennai.

2. The short facts of the case are as follows:-

The first respondent filed a suit in O.S.No.7103 of 2014, in XVIII Additional City Civil Court, Chennai, against the appellant and the respondents 2 to 4, to declare the cancellation of settlement deed, dated 15.09.2014, and registered as document No.4090 of 2014, as null and void and not binding on him; to pass a decree for partition and separate possession of his 1/4th share in the suit schedule property by dividing into metes and bounds and thereby allot 1/4th share to him by appointing an Advocate Commissioner for dividing the suit property and allot the same to him; and to pass an order of permanent injunction restraining the appellant and second respondent, their men, servants, agents, subordinates, or any other person acting under their guise, from disturbing the peaceful possession and enjoyment of the suit schedule property.

3. Along with the said suit, he filed an interlocutory application in I.A.No.19235 of 2014 for interim injunction. The appellant and the second respondent resisted the interlocutory application by filing their counter affidavits. The third respondent filed her counter affidavit extending her support to the first respondent / plaintiff to allow the interlocutory application.

4. The learned Trial Judge, after hearing both sides and scrutinizing the documents placed by the parties, by Order dated 07.07.2015, allowed the interlocutory application and granted an order of interim injunction.

5. Challenging the said Order, dated 07.07.2015, the fourth defendant has preferred this civil miscellaneous appeal.

6. The highly competent counsel Mr.V.Manohar appearing for the appellant / fourth defendant has submitted that the suit schedule property belongs to the second respondent /

first defendant by way of an absolute purchase. Further, the Trial Court has no pecuniary jurisdiction to try the suit, since the suit property has a higher pecuniary position. The first respondent / plaintiff has no right to file the suit for partition besides mutual agreement, dated 12.12.2013, for joint venture.

7. Further, the learned counsel has submitted that the claim of the first respondent / plaintiff is only in respect of 1/4th share of the suit schedule property and as such the application for interim injunction is not maintainable in respect of the entire suit schedule property. Further, the owners of the property, after receiving a sum of Rs.8,00,000/-, entered into a joint venture agreement with the appellant / fourth defendant and assigned them the right to develop the property in accordance with the rules and regulations.

8. The learned counsel has further submitted that pursuant to the said agreement, the appellant / fourth defendant has spent huge amount to obtain demolition order and planning permission. The plaintiff and other defendants have extended their cooperation to obtain Patta in respect of the said property. The appellant / fourth defendant has also arranged security deposits to receive planning permission. In such circumstances, the fourth respondent / third defendant had written an objection to Chennai Metropolitan Development Authority stating that actually the suit property was purchased by the second respondent / first defendant, who had also filed a counter affidavit resisting the claim of the first respondent / plaintiff. As such, the suit property is not a joint family property. The second respondent / first defendant had mortgaged the suit property with M/s.Permanent General Benefit Fund Ltd., Chennai-600 007 on his individual capacity that he is the absolute owner of the property. Further, as per the revenue records, the said property stands in the name of the second respondent / first defendant. Further, he has obtained planning permission during 1986 besides a settlement deed, dated 18.10.2012, executed by the other defendants in his favour.

9. The learned counsel has further submitted that the mutual understanding agreement for the joint venture clearly spelt about the required construction and the allocation of 50% to the appellant / fourth defendant as well as the respondents 2 to 4 / defendants 1 to 3. The appellant / fourth defendant has invested huge amount on the account and unaccounted manner. The first respondent / plaintiff has no

right to cancel the settlement deed and the joint venture agreement since there is no cancellation clause in the said instruments. The unilateral cancellation is not maintainable under law. Hence, the learned counsel prayed this Court to suspend the order granting interim injunction passed by the Trial Court.

10. The learned counsel for the second respondent has submitted that the suit itself is devoid of merits in order to claim a relief for partition and separate possession. The first respondent / plaintiff filed the suit to determine the rights of the second respondent over the suit property. The proposed project is for the welfare of the whole family. The first respondent / plaintiff and the other defendants 1 to 3 admitted the transaction for joint venture and hence the first respondent / plaintiff has no right to prevent the appellant / fourth defendant from proceeding with the development of the property and the implementation of the remaining projects. As such, the appellant / fourth defendant cannot be restrained from developing the property. The first respondent / plaintiff has misconceived the suit. Actually, the property was originally a vacant land and the second respondent herein had purchased the same during 1983 under a registered sale deed. The said property had been mortgaged with the Permanent General Benefit Fund Ltd., under a registered mortgage deed and the same was redeemed by the second respondent. Subsequently, the second respondent obtained planning permission and developed the property and obtained all basic amenities. Further, the second respondent has remitted the mandatory taxes to the Electricity Board.

11. Further, the learned counsel for the second respondent has submitted that the second respondent's mother advised him to accommodate the blood brothers and sister under one roof. Accordingly, due to love and affection, the first respondent / plaintiff and the defendants 2 and 3 were accommodated. Subsequently, the second respondent executed a settlement deed, whereby assigned 3/4th undivided share to his brothers and sister. The husband of the third defendant brought promoters to develop the property, but the same was negatived and hence the husband of the third defendant was prejudiced and disturbed the present promoters. Further, the appellant / fourth defendant had paid a sum of Rs.8,00,000/- to the occupants for vacating their possession and handing over the vacant possession to them. Subsequently, after a detailed discussion, a regular mutual agreement for joint venture had been entered into among the parties besides the general power of attorney executed in favour of the

appellant / fourth defendant to deal with and administrate the property including the development of the entire property. Accordingly, the appellant started administration of the property. Under these circumstances, the husband of the third defendant had demanded a sum of Rs.12,00,000/- and accordingly the said amount was paid to the first respondent / plaintiff, defendants 2 and 3. Thereafter, the appellant / fourth defendant took possession. The appellant / fourth defendant also obtained an order of demolition and also obtained a sanctioned plan after remitting a sum of Rs.2,23,900/- to the Corporation of Chennai. Under these circumstances, the first respondent / plaintiff and the third defendant had colluded together and cancelled the power of attorney with mala fide intention. The cancellation of the power of attorney is not sustainable under law since the power agent has not violated neither breached any of the conditions mentioned in the power of attorney deed. Subsequently, the first respondent / plaintiff and the defendants 2 and 3 threatened the appellant / fourth respondent not to interfere with the suit property.

12. The learned counsel has further submitted that the second respondent had executed a settlement deed, dated 18.10.2012, and the same was cancelled by him on 15.09.2014 and as such the first respondent / plaintiff and the defendants 2 and 3 have no right over the said property and the original sale deed, dated 13.06.1983, came into effect. Hence, the second respondent is the absolute owner of the property. After disclosing the factual position and legal position before the Trial Court, the learned Trial Judge erroneously granted interim injunction without following the three principles, namely, prima facie case, irreparable loss and balance of convenience. All these principles are in favour of the appellant / fourth defendant. Hence, the learned counsel prayed this Court to set aside the order of interim injunction granted by the Trial Court.

13. The learned counsel appearing for the third respondent has submitted that the respondents 1 to 4 are blood brothers and sister. Originally, the suit property was purchased in the name of the second respondent. Subsequently, he had executed a registered settlement deed and assigned $3/4^{th}$ share to and in favour of the first respondent / plaintiff and the defendants 2 and 3. As such, the suit property is a joint family property. Initially, a general power of attorney had been executed to and in favour of the appellant / fourth defendant in respect of 1819 sq.ft., of undivided share of land out of the total property. As such, the appellant herein

has no right to develop the entire property besides the general power of attorney has also been cancelled. Hence, the appellant /fourth defendant has no locus standi to interfere with the suit property, which is a joint family property. Till the division of the suit property, should not be encumbered or alienated in any way. Therefore, the learned Trial Judge had granted interim injunction restraining the appellant /fourth defendant and his agents, men etc. The interim injunction will not be prejudiced to either party.

14. The competent counsel appearing for the fourth respondent has submitted that the suit property was purchased by the fourth respondent's mother in the name of the second respondent out of their joint family income. During the relevant period, the second respondent was studying in a private College. After completion of his degree course, he is jobless. The fourth respondent's father had purchased valuable properties at various places in Chennai. Her father had settled properties to five sons. As such, the suit property had not been purchased by the second respondent out of his own earnings. Therefore, the first respondent / plaintiff and defendants 1 to 3 are equally entitled to receive 1/4th share each. Hence, the suit for partition and separate possession is sustainable under law. The property had been mortgaged by the mother of the fourth respondent and the mortgaged amount with interest was repaid by the mother of the fourth respondent.

15. Further, the learned counsel has submitted that the second respondent had received some money without the knowledge of the co-owners of the suit property. Therefore, the second respondent colluded with the appellant / fourth defendant herein. However, the co-owners asked the appellant / fourth defendant to collect back his money. The appellant / fourth defendant and his associates made a wrong entry with the suit property. Hence, a police complaint had been lodged against him. The learned Trial Judge, after considering the entire factual position of the case, had granted interim injunction, since there is a prima facie case on the side of the first respondent / plaintiff. Therefore, the learned counsel prayed this Court to dismiss the appeal.

16. From the above discussions, this Court is of the view that:

i. The first respondent / plaintiff and the defendants 1 to 3 had duly executed a Joint Venture Agreement, dated 12.12.2013, to and in favour of the appellant / fourth defendant, after receiving a part of the amount. The said agreement is valid and sustainable under law and it is in force and existing.

ii. As per the said Joint Venture Agreement, the owners of the property have agreed to obtain planning permission for developing the suit property by way of constructing superstructure. Further, the owners of the property / second party of the agreement had also agreed to demolish the existing building on the appellant's cost and risk. Once the land owners executed the Joint Venture Agreement in favour of the appellant / fourth defendant, the said agreement has become a major document in the instant case. The conditions of the Joint Venture Agreement have not been breached by the appellant / fourth defendant. Therefore, there is a prima face case on the side of the appellant / fourth defendant.

iii. The appellant / fourth defendant had paid a sum of Rs.8,00,000/- and the same was acknowledged by the land owners, namely, first respondent / plaintiff and defendants 1 to 3 and the same was admitted by the first defendant in his counter statement. Further, the appellant /fourth defendant had paid a sum of Rs.12,00,000/- on the basis of a Joint Venture Agreement and the same was admitted by the first defendant besides the appellant / fourth defendant had also spent some amount for demolishing the existing superstructure and also remitted a sum of Rs.2,23,900/- to the Corporation of Chennai for obtaining planning permission. The same was categorically admitted by the first defendant in the counter statement. As such, the appellant / fourth defendant has incurred his money power, man power and time for developing the said property. Hence, the appellant / fourth defendant is put into hardship and irreparable loss, since the interim injunction order is operating against him.

iv. After the land owners jointly executed a general power of attorney to and in favour of the appellant / fourth defendant to act on their behalf in order to carry out the necessary legal formalities and administration over the suit property. The appellant / fourth defendant has not violated any terms and conditions of the irrevocable power of attorney. The same was cancelled without informing the appellant / fourth defendant and also not assigning any valid reason for cancelling the power of attorney. As such, the balance of convenience is on the side of the appellant / fourth defendant In such circumstances, the interim injunction granted by the Trial Court is unsustainable and it is liable to be set aside.

17. In the result, the civil miscellaneous appeal is allowed and the order, dated 07.07.2015, passed in I.A.No.19235 of 2014 in O.S.No.7103 of 2014, by the learned XVIII Additional City Civil Judge, Chennai, is set aside. The learned Trial Judge is directed to dispose of O.S.No.7103 of 2014 on merits and in accordance with law without being influenced by aby discussion of this Court, within a period of four months from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Judge,
XVIII Additional City Civil Court,
Chennai.

1 CC to Mr.V.Manohar, Advocate SR.No. 59988
1 CC to Mr.A.Palaniappan, Advocate SR.No. 59991
1 CC to Mr.A.Jenesnan, Advocate SR.No. 60026

C.M.A.No.1933 of 2013
and M.P.Nos.1 & 2 of 2015

CTK (CO)
PSI (27.11.2015)