Original Application Nos.478, 479 of 2014 and Application No.955 of 2015 in C.S.No.363 of 2014

K.K.SASIDHARAN,J.

The applications in O.A.Nos.478 and 479 of 2014 are at the instance of the plaintiff in C.S.No.363 of 2015 and the prayer is to restrain respondents 1 to 3 from in any manner encumbering or dealing with the suit 'B' schedule property forming part of suit 'A' schedule property, pending disposal of the civil suit.

2. The first respondent in A.No.478 of 2014 has come up with the application in A.No.955 of 2015 to vacate the interim order granted by this Court.

Original Application Nos.478 and 479 of 2014

3. The applicant filed a suit in C.S.No.363 of 2014 against the respondents praying for a decree of specific performance in respect of the suit schedule property.

4. According to the applicant, at the instance of the respondents, action was initiated by him to set aside the fraudulent sale deed executed by land grabbers and to restore the property to the possession of the respondents. The first respondent has entered into a sale agreement on

22.06.2011 agreeing to sell the suit 'B' Schedule property for a total sale consideration of Rs.52,92,000/-. The applicant paid a sum of Rs.1,00,000/- on 28.04.2011 and a sum of Rs.4,00,000/- on 22.06.2011. The applicant is ready and willing to perform his part of the contract. However, the first respondent failed to honour his commitment and the same made the applicant to file the civil suit for specific performance.

5. The applicant alleging that there is an attempt to alienate the property during the pendency of the suit filed the interlocutory applications for temporary injunction.

a) The first respondent, in his counter affidavit submitted that the applicant purchased the property knowing very well the encumbrances created by third parties and the acts of land grabbing. The applicant inspite of receiving several notices for payment of balance consideration failed to tender the amount. The agreement is now barred by limitation. The applicant suppressed the material particulars and as such, he is not entitled to discretionary remedy.

Summary of Submissions

6. The learned counsel for the applicant submitted that the applicant spent his money and energy to restore the property from the possession of the land grabbers. It was only in consideration of the earnest efforts taken by

the applicant, the respondents agreed to sell the property to him. According to the learned counsel, the applicant would be satisfied in case an undertaking is given by the respondents to the effect that they would inform the prospective purchasers with regard to the pendency of the civil suit before entering into a sale agreement.

7. The learned counsel for the first respondent submitted that the applicant purchased the property only after ascertaining the encumbrance created by third parties. According to the learned counsel, the applicant took advantage of the vulnerable position of the respondents and also the act of land grabbing by third parties and entered into an agreement. The applicant failed to pay the balance consideration inspite of issuing several notices by the first respondent. The applicant is not entitled to a decree of specific performance and as such, he is equally not entitled to an interim injunction during the currency of the suit.

8. The learned counsel for the second respondent submitted that there is no sale agreement between the applicant and the second respondent. The applicant is therefore not entitled to a decree of specific performance against the second respondent. Such being the factual position, he is not entitled to an injunction against the second respondent.

Discussion

9. The only question that arises for consideration is as to whether the applicant is entitled to an interim injunction during the currency of the suit for specific performance.

10. There is no dispute that the applicant entered into a sale agreement with the first respondent, who is said to be an ex service men, on 22.06.2011. The documents available on record very clearly shows that the applicant himself applied for an encumbrance certificate with respect to the suit schedule property well before the execution of sale agreement. The application was filed on 09.06.2011. The Encumbrance Certificate issued by the Sub-Registrar contained the details relating to the fraudulent transactions made at the instance of land grabbers. Therefore, it is very clear that only with a clear knowledge that there are several fraudulent transactions entered into with respect to the suit schedule property, the applicant agreed to purchase the property. The applicant was expected to pay the balance sale consideration on or before 01.11.2011.

11. The first respondent vide letter dated 12.10.2011 called upon the applicant to pay the balance sale consideration. However, there was no response. The first respondent has taken up a specific contention that the applicant has not been ready and willing to perform his part of the contract

and as such, he is not entitled to the equitable decree of specific performance.

12. The applicant wanted a blanket injunction against all the respondents. There is no sale agreement between the applicant and the second respondent. Even then, the applicant claimed a decree of specific performance against the second respondent and in fact wanted even an order of injunction restraining him from in any manner encumbering or dealing with the suit schedule property.

13. While considering an application of this nature, the Court is expected to look into the prima facie case, balance of convenience and irreparable injury. It is true that the applicant has entered into a sale agreement with the first respondent. The time limit prescribed for completing the transaction expired long back and only thereafter, the very suit was filed by the applicant for specific performance,. The question of injuncting the respondents from selling the schedule property would arise only in case the applicant has made out a *prima facie* case. The documents available on record does not contain any indication that an effort was taken by the applicant before the epxiry of the agreement to perform his part of the contract.

14. The plaint averments proceeds as if it was only after entering into the agreement, the applicant came to know of the encumbrance created by third parties. However, the fact is otherwise. The applicant with a clear knowledge of the past transactions including the encumbrance created by third parties agreed to purchase the property. Such being the factual position, the applicant is not entitled to an interim injunction during the currency of the suit.

15. In the upshot, I dismiss the interlocutory applications in O.A.Nos.478 and 479 of 2014.

In view of the order dismissing the interlocutory applications for injunction, the application in A.No.955 of 2015 is closed.

30.11.2015

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30.11.2015