IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2801 of 2014
and
M.P.No.1 of 2014

S.Ramathal ... Appellant/Plaintiff

Vs.

1. C.S.Venkitaswamy

2. V.Kanchana

3. The Federal Bank Ltd.,
rep. by its Senior Manager,
S.S.I.Branch,
Variety Hall Road,
Coimbatore - 641004. ... Respondents/Defendants 1, 2 and 7

Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) of the C.P.C., against the Judgment and decree dated 5.3.2014 made in I.A.No.287 of 2013 in O.S.No.98 of 2013 on the file of the Court of the IV Additional District and Sessions Judge, Coimbatore.

For appellant : Mr.R.Nandhakumar

For 3rd respondent : Mr.V.Bhiman
for M/s.Sampathkumar and Associates

For respondents 1 & 2 : No appearance



JUDGMENT

This Civil Miscellaneous Appeal is directed against the impugned order dated 5.3.2014 passed in I.A.No.287 of 2013 in O.S.No.98 of 2013 passed by the IV Additional District and Sessions Judge, Coimbatore.

2. While disposing of the Interlocutory Application filed by the appellant/plaintiff viz., S.Ramathal, who is the mother of C.S.Venkataswamy, the first respondent/first defendant, the lower Court held that the appellant is not entitled for

temporary injunction since her petition suffers from suppression of material facts. It has been further held that when the Federal Bank, which is the seventh defendant/third respondent Bank in the Interlocutory Application, had initiated action against the property for recovering dues payable to them, the appellant cannot seek for temporary injunction.

3. The suit in O.S.No.98 of 2013 was filed by S. Ramathal, the appellant/plaintiff, seeking for a preliminary decree and judgment in her favour - (i) directing the first defendant that the suit properties may be divided into two equal shares and to allot one such share to the plaintiff; (ii) declaring that the alleged sale deed dated 31.12.2001 said to be executed by the first defendant in favour of the second defendant and registered as Document No.4045 of 2001 on the file of SRO, Singanallur as null and void and not binding on the plaintiff regarding "A" Schedule property; (iii) declaring that the alleged settlement deed dated 18.12.2002 said to be executed by the first defendant in favour of the 2nd defendant and registered as Document No.5236 of 2002 on the file of SRO Singanallur as null and void and not binding on the plaintiff regarding "B" schedule property; (iv) granting permanent injunction restraining the seventh defendant, his men, agents, servants, partisans or any persons claiming under or through them from taking any action regarding "A" Schedule property on the strength of the alleged encumbrance created by the 2nd defendant and (v) granting permanent injunction restraining the seventh defendant, his men, agents, servants, partisans or any persons claiming under or through them from taking any action regarding "B" schedule property on the strength of the alleged encumbrance created by the second defendant.

4. The defendants 1 and 2 had availed the loan facility from the seventh defendant/Federal Bank Ltd., by depositing the title deeds pertaining to their properties. After availing the loan facility for their business purpose, they committed default in repaying the loan amount. Hence, the Federal Bank filed an Application for recovery of the said amount, namely, O.A.No.14 of 2005 before the Debts Recovery Tribunal, Coimbatore impleading all the defendants. A suit in O.S.No.126 of 2005 was filed against C.S.Venkataswamy and V.Kanchana so as to recover a sum of Rs.6,40,218/- before the Fast Track Court, Coimbatore - II, with interest and costs. In the said suit, a preliminary decree was passed on 29.3.2007 directing the defendants to pay a sum of Rs.6,40,218 along with interest and costs. Since there was failure on the part of the defendants, namely, Venkataswamy and Kanchana, an Application under Section 31 A of the Debts Relief Act was filed before the Debts Recovery Tribunal, Coimbatore and the same is pending. In order to thwart the attempt made by the bank to recover the amount from the property, the plaintiff/appellant appears to have filed the

suit in O.S.No.98 of 2013 seeking for permanent injunction restraining the seventh defendant, namely, the Federal Bank from taking action. Therefore, the lower Court, considering the fact that after an action was initiated by the Federal Bank against the property for recovery of the amount due and payable, the plaintiff had filed the suit, rightly came to the conclusion that the appellant/plaintiff was not entitled for temporary injunction since the Interlocutory Application suffers from suppression of material facts. The lower Court refused to grant the decree on the ground that the appellant's conduct was not good to answer the prayer in her favour. It is further stated that inspite of a direction given by the trial Court to inform the status of her earlier suit in O.S.No.634 of 2008 on the file of the First Additional District and Sessions Judge, wherein the Federal Bank was also a party, she did not turn up to the trial Court to report about the pendency, hence, the same was dismissed for default.

5. Therefore, for the reasons stated above, the impugned order of the lower Court being a reasoned order, this Court does not find any infirmity or illegality in the order. Hence, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. The connected Miscellaneous Petition is closed.

6. The learned counsel appearing for the Federal Bank requested this Court to give a direction to the trial Court to dispose of the suit on merits and in accordance with law expeditiously. The trial Court is directed to dispose of the suit in O.S.No.98 of 2013 on merits and in accordance within law within a period of five months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

asvm

To
The IV Additional District
and Sessions Judge,
Coimbatore.

+1cc to Mr.R.Nandhakumar, Advocate, S.R.No.62471
+1cc to M/s.Sampathkumar and Associates, Advocate, S.R.No.62419

C.M.A.No.2801 of 2014
and M.P.No.1 of 2014

KS(CO)
CA(27/05/2016)