

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.11.2015

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

O.S.A. No.242 of 2015
and
M.P.No.1 of 2015

1.Anil Thampy
2.Ginju Fathima

... Appellants

versus

M/s. Vanni Estates Private Limited,
represented by its Authorised Signatory
C.P.Parsanth Gopal,
No.60, Old No.100, 4th Street,
Abhiramapuram, Chennai 600 018.

... Respondents

Prayer : Appeal filed under Order 36 Rule 2 of
Original Side Rules read with Clause 15 of the Letters
Patent Act, against the order and decree made in
Original Application No.509 of 2014 dated 27.02.2015.

For Appellants : Mr.Senthilnathan

For Respondents : Mr.R.Muthukumarasamy
Senior Counsel
for Mr.D.Ravichander

J U D G M E N T

(Judgment was made by The Hon'ble The Chief Justice)

The present dispute in a sense originates from a Hire
Purchase agreement dated 09.08.1949 stated to have been executed
by Sri Y.Sankar Reddi of Nellore District with the Madras Co-

operative House Construction Society Ltd., to get a conveyance executed in his favour or in favour of his nominee subject to terms, covenants and conditions in respect of a plot of land. The society is stated to have been divided into eight societies on 10.08.1962 and the area in question, Gandhi Nagar is stated to have been transferred to the Gandhi Nagar Co-operative House Construction Society Ltd.

2. The case set up is that the said Sri. Y.Sankar Reddi negotiated for the transfer of his right in the property in favour of Late Smt. Sarada Sukumar in 1954, but ultimately on account of disputes, Late Smt. Sarada Sukumar filed a civil suit on the Original Side of this Court, being C.S.No.98 of 1960 against the said Sri. Sankar Reddi and the Society for transfer of the plot No.132, bearing Corporation D.No.13, 2nd main road, Gandhi Nagar, Saidapet, Madras, and the suit was decreed on 15.01.1963. As a consequence of the decree, Smt.Sarada Sukumar was admitted as a Member of the Society and the rights in the property were transferred to Late Smt.Sarada Sukumar on payment of an aggregate sum of Rs.34,043.76 (Rupees Thirty four thousand forty three and Paise seventy six only).

3. It appears that Smt.Sarada Sukumar issued a letter dated 24.02.1968 (this letter is disputed by the first appellant being the grand-son of Late Smt.Sarada Sukumar) for conveying the property in favour of the predecessor in interest of the respondents and as a consequence thereto, a sale deed came to be executed directly in favour of the predecessor in interest of the respondents on 04.02.1971 which was duly registered.

4. Late Smt. Sarada Sukumar had no quarrel with the aforesaid sale deed during her lifetime, at least none has been brought on record, and she continued to live till 2012.

5. The first appellant, being the grand-son of Late Smt.Sarada Sukumar claims that the aforesaid transfer was obtained fraudulently and it came to light only after the demise of Late Smt.Sarada Sukumar and he, as her legal heir, claimed right over the suit property.

6. The appellants did not file any suit for cancellation of the sale deed or disputing the title and the transfer thereof, but apparently in view of their endeavours to obstruct the possession and enjoyment by the respondents, it is the respondents who approached the Original Side of this Court by

filing a suit for injunction, being C.S.No.417 of 2014. Along with the suit, an application for interlocutory relief under Order XXXIX Rules 1 and 2 of the Civil Procedure Code was filed, and an ex parte order of status quo was passed on 03.07.2014.

7. The suit was contested by the appellants and it is pointed out by the learned Senior Counsel for the respondents that there was no issue raised about possession of the respondents/original plaintiffs. The application was heard on merits and ultimately the impugned order dated 27.02.2015 came to be passed, which is now sought to be assailed in the present appeal.

8. A perusal of the impugned order shows that elaborate arguments were heard on 26.06.2015. The learned counsel for the appellants is stated to have pleaded that the appellants have no objection for the grant of interim injunction, provided the respondents/original plaintiffs gave an undertaking that they will not create any third party interest over the property. On this submission, learned Senior Counsel for the original plaintiffs submitted that the said party had no intention to sell the property to any third party and they are going to use it for their own purposes and it is in consequence of those submissions, the matter was adjourned to 27.02.2015. On the said date, the respondents/original plaintiffs' counsel filed an affidavit on their behalf stating that though the respondents had absolute right to deal with the property in pursuance to the sale deed executed as far back as 1971, they having purchased the suit property for their own use, had no intention of selling or otherwise alienating the suit property. The learned Single Judge took that statement on record and in view thereof, granted the interim injunction till the disposal of the suit.

9. We have heard the learned counsel for the parties and perused the records, as also the impugned order.

10. In our view, a bare reading of the impugned order would show that it partakes the character of a consent order. It is this consent order which is now sought to be assailed by the appellants by engaging a different counsel before this Court. We did put to the learned counsel for the appellants as to how such an appeal is maintainable against a consent order. Learned counsel submits that there was no authority vested with the counsel for the appellants to give such a concession on their behalf. In fact, in our view, there is no such concession by

the appellants, but it is the respondents who have been made to give a concession despite having a registered sale deed in their favour unchallenged for more than forty years - the entire lifetime of the predecessor-in-interest of the appellants.

11. Learned counsel for the appellants seeks to rely upon the Judgment of the Honourable Supreme Court in Himalayan Co-operative Group Housing Society vs. Balwan Singh and Others reported in (2015-7 SCC 373) to contend that the appellants cannot be bound by the statement of their counsel seeking to distinguish an admission of fact and law, since a lawyer is only an agent of the party and stands in a fiduciary relationship with his client. In the present case, however, there is no decree passed by consent and the issue is of passing of an interim order pending trial of the suit, which does not decide the title by itself. The fact, however, remains that the title stands vested in the respondents in pursuance to the sale deed for more than forty years. Despite this fact, it is the respondents who have been persuaded by the Court to give an undertaking, which in a sense restricts the enjoyment of the property by the respondents to the extent they will not be able to deal with the property during the pendency of the suit.

12. We are informed that it is only much later, after the demise of the grand-mother of the first appellant, the appellants chose to move the Registrar of the Co-operative Societies alleging fraud and writ petitions in W.P.Nos.29323 and 32061 of 2015 have been filed by the respondents, in which stay of proceedings has been granted. Interestingly, there is no civil proceedings initiated for cancellation of the registered document being the sale deed.

13. We express our strong reservations on the manner in which the appellants have proceeded in the matter by seeking to challenge a consent order, which is at the interlocutory stage, and the aforesaid circumstance, which in effect grants protection to the appellants, with an endeavour now to make out a case as if the rights of the appellants for enjoyment of the property are affected while the fact is that the allegation of the original plaintiffs/respondents in the plaint of being in physical possession of the property is uncontested in the counter affidavit filed to the application for interim stay.

14. We, thus, find the appeal completely devoid of merits and dismiss the same with costs quantified at Rs.10,000/-

(Rupees ten thousand only) payable to the respondents within a period of fifteen days from today. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ksr

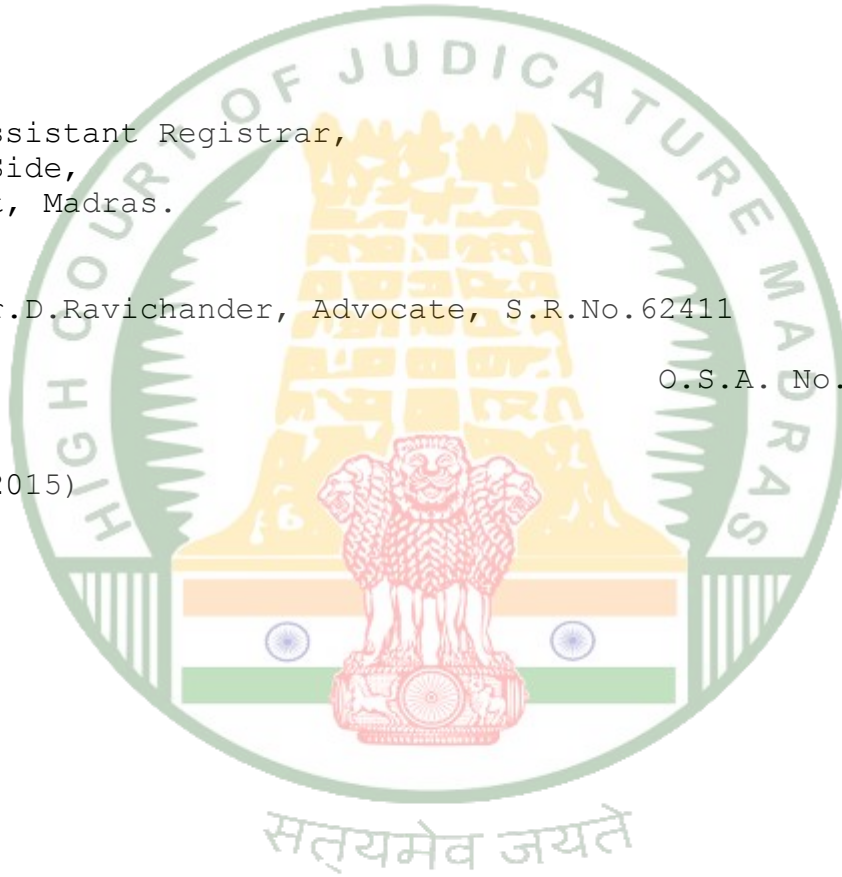
To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.62411

O.S.A. No.242 of 2015

PPA(CO)
CA(16/12/2015)



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