THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.577 of 2014

JUDGMENT:

This appeal under Order XLIII Rule (1)(d) of the Code of Civil Procedure, 1908 ('the Code' for short) by the unsuccessful petitioner/plaintiff is directed against the orders dated 11.04.2014 of the learned XXV Additional Chief Judge, City Civil Court, Hyderabad passed in IA.No.392 of 2014 in OS.No.191 of 2014 filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code for grant of a temporary injunction restraining the respondents/defendants from creating third party interests in the flats constructed over the land admeasuring Ac.4.04 guntas in Survey Nos.48 and 49 of Neknampur village, Rajendranagar Mandal.

2. I have heard the submissions of the learned counsel for the appellant/petitioner/plaintiff ('the plaintiff", for brevity). Though proof of service of notice on the counsel for the respondents 1 to 7 in the proceedings before the trial court is filed, none appeared for the said respondents. I have perused the material record.

3. The point for determination is:

Whether the plaintiff had made out valid and sufficient grounds and satisfied the cardinal principles for granting temporary injunction as prayed for? And, if so, whether the order impugned is liable to be set aside?

4. POINT:

4.1 The case of the plaintiff, in brief, is this: - 'The plaintiff is the Director of the 1st defendant company, which was incorporated on 06.03.2008 in accordance with the provisions of the Companies Act. The defendants 2 and 3 are also the Directors of the said company. The company was incorporated with the main object of purchasing/acquiring land and constructing/erecting buildings and to carry on real estate business. There are other objects apart from the said main object. To fulfil the said objective, the 1st defendant company had entered into registered development agreements-cum-general powers of attorney with the owners of properties for construction of apartments and sale of residential flats. Seven registered development agreements-cum-GPAs, the details of which are furnished, are entered into for the aforementioned purpose. Subsequent thereto, there were disputes and misunderstandings between the Promoter Directors of the 1st defendant company and the owners of the properties. Thereafter some of the Directors have resigned from the 1st defendant company. Thus, and in view of the serious disputes, though development agreements were executed in the year 2008 no permissions were obtained for constructions and no construction activity had commenced. The plaintiff and the 2nd defendant were appointed as Directors with effect from 26.04.2012. The plaintiff took the steps to resolve the disputes with the owners of the properties who had executed development agreements. Ultimately, he could resolve the disputes with the owners pursuant to several meetings which were convened. Pursuant to such resolution of disputes, memoranda of understandings were entered into between the owners of properties on one hand and the 1st defendant company on the other. The said memoranda of understandings are in the custody of the 1st defendant company. The 2nd defendant is managing the affairs of the 1st defendant company. Due to the timely intervention of the plaintiff and his active involvement, all the disputes were resolved and settled and misunderstandings were cleared successfully. The 1st defendant company, therefore, could obtain permission for construction of residential apartments from the authorities concerned and accordingly, constructions were commenced during the year 2012. The 2nd defendant having expressed his interest to supervise the construction activity that was undertaken by the 1st defendant company had from time to time requested the plaintiff and the 3rd defendant to permit him to supervise and administer the construction activities. Since the 2nd defendant was showing keen interest, the plaintiff did not raise any objection. Later, there was good response from the buyers who had come forward to purchase the flats. On seeing the response the 2nd defendant had developed an evil eye and had clandestinely started entering into agreements with the prospective buyers, without notice and knowledge of the plaintiff. The 2nd defendant had entered into several such agreements to sell various flats of his choice fixing sale prices without consultation with the plaintiff and other Directors. The plaintiff was under a *bona fide* impression that the 2nd defendant will not indulge in execution of illegal sale agreements without his knowledge. As per the understanding amongst the Directors, the sale price of apartments/flats has to be fixed at a meeting of the Directors before the flats are put up for sale. No such meeting was held. However, the 2nd defendant had executed several agreements by fixing the sale prices for the flats without the knowledge of the plaintiff and without informing the plaintiff about the prices fixed for the flats; and, he had thereafter misappropriated the amounts for his personal gain and thus played fraud on the 1st defendant company. Further the 2nd defendant had inducted the defendants 4 to 7 as Directors of the 1st defendant company with effect from 20.12.2012 without the knowledge of the plaintiff and the other Directors. The 4th defendant had resigned on 22.05.2012. Nonetheless, he was again appointed on 20.12.2012, as a Director. The appointment of the said Directors i.e., the appointment of said defendants 4 to 7 is illegal and invalid as their appointments were made without conducting a general body meeting as contemplated under the provisions of the Companies Act. The plaintiff as a shareholder has invested huge money in the 1st defendant company. The 2nd defendant being Director had executed various sale deeds in respect of flats/apartments in favour of 3rd parties by collecting huge money without any power or authority. Therefore, the sale deeds are not valid and binding on the plaintiff. The 2nd defendant did not call for any general body meeting since 2012 and is proceeding with the business activities according to his whims and fancies. In all, 59 sale deeds were executed with an intention to cause loss to the plaintiff who is having a minority share in the 1st defendant company. The plaintiff reserves his right to challenge the sale deeds executed by the 2nd defendant in favour of third party purchasers. The suit is filed for declaration that the appointment of defendants 4 to 7 as Directors of the 1st defendant company is illegal and invalid and consequently to set aside their appointments since the same are contrary to the provisions of the Companies Act. The application for temporary injunction is filed to restrain all the defendants from creating 3rd party interests in the flats constructed over Ac.4.04 guntas of land, which is the suit schedule property.

4.2 The case of the 2nd defendant as stated in his counter affidavit filed on his behalf and on behalf of the 1st defendant company, in brief, is as follows: - 'The 1st defendant is the owner of the property covered by survey nos.48 and 49 having entered into a development agreement for development of the property for construction of apartments. Necessary steps were taken and permissions for constructions of the buildings were obtained. The 1st defendant company has paid requisite fee and charges to HMDA and other departments concerned. The constructions were started and the development work has taken place as per the terms of the development agreements. The owners of the property and the 2nd defendant have no disputes with the 1st defendant company and its Directors and no memoranda of understandings as alleged by the plaintiff, were executed. The 1st defendant company was incorporated with the main object of purchasing lands and carrying on real estate business. The 1st defendant company had entered into various registered development agreements-cum-GPAs for construction and sale of residential flats. The contrary allegations in the affidavit of the plaintiff are false. There were no disputes between the 1st defendant company and the land owners. Therefore, the question of plaintiff taking steps to resolve disputes and successfully resolving the disputes did not arise. As per the decision of the Board of Directors the 2nd defendant had supervised the work of construction. The appointment of defendants 4 to 7 was made as per law. Form 32 was filed before the Registrar of Companies in accordance with the provisions of the Companies Act and the Registrar of Companies had accepted the said appointments. The plaintiff has no *locus standi* to question the said appointments. The memorandum of articles of association clearly shows that the defendant no.6 was the Promoter Director and he is continuing as Director since the incorporation of the company. Therefore, the allegation that the defendant no.6 was reappointed is not correct. The plaintiff is not a shareholder and he did not invest any amount in the 1st defendant company. No evidence was produced in regard to the said claim. The allegations that this defendant had illegally sold flats by collecting huge amounts from the purchasers are all false. The defendants have executed the sale deeds in favour of the proposed purchasers as per the terms of agreements of sale and the 2nd defendant was authorised by the Directors to so execute the sale deeds. The sale deeds are true, valid and binding on the 1st defendant company. Since the agreements were already executed, the purchasers are necessary and proper parties to the suit. The suit is bad for their non joinder. Since no relief is sought in the suit in respect of the sale deeds and the sale agreements executed by the 1st defendant company in favour of the purchasers, the temporary injunction cannot be granted. There is no *prima facie* case and balance of convenience in favour of the plaintiff. If any injunction is granted, the 1st defendant company would suffer serious and irreparable loss. The issue concerns a dispute between the Directors *inter se* and in case of oppression and mismanagement as alleged, the aggrieved party shall approach the Company Law Board and the Civil Court has no jurisdiction to entertain the suit and grant any reliefs. The allegations of fraud, mismanagement etcetera are all false. The 1st defendant company has filed Income tax returns for the years 2012-13 and 2013-14. As per the said returns, the plaintiff is not holding any shares. According to the annual returns filed before the Registrar of Companies, it is evident that annual general body meetings were held on 12.09.2011, 28.09.2012 and 28.09.2013. If the company fails to complete the construction within the agreed period, the defendants would be liable to pay damages to the owners at the rate of Rs.4/- per square foot. Therefore, if injunction is granted, the proposed purchasers/agreement holders will stop the payments and ultimately the construction work would come to a stand still and the company of the defendants would be made liable to pay damages. Hence, the petition may be dismissed.'

4.3 The counter of the 2nd defendant was adopted by the other defendants.

4.4 During the course of enquiry, no oral evidence was adduced on either side. Exhibits P1 to P10 were marked on the side of the plaintiff.

4.5 On merits, the Court below had dismissed the application of the plaintiff. Aggrieved of the said orders, the plaintiff is before this Court.

4.6 The facts leading to the filing of the present appeal and the pleaded cases of both the sides are already stated supra, in detail. At the time of enquiry, exhibits P1 to P10, which are concerned with the 1st defendant company and its incorporation, are only filed. The copies of the seven development agreements are not filed and exhibited. The copies of building plans sanctioned by the authorities concerned are not exhibited. Admittedly, the 2nd defendant is entrusted with the work of construction activity with powers of supervision and under his supervision the constructions were made. The only grievance of the plaintiff is that without the prices of the flats fixed in a meeting of the Board the 2nd defendant had alienated the flats at his whims and fancies by executing documents in favour of proposed purchasers and that he had without any authority inducted the defendants 4 to 7 as directors of the 1st defendant company. The further grievance of the plaintiff is that the 2nd defendant had misappropriated huge amounts collected form purchasers/prospective purchasers. What are the probable values of the flats sold and whether the sale prices mentioned in the documents executed are less, and if so, to what extents is not even pleaded in the affidavit. The share to which the plaintiff is entitled to is not even stated specifically. In fact the plaintiff had stated in this Suit that a right is reserved to question the 59 sale deeds which were executed by the 1st defendant company and that this suit is confined to the relief of declaration that the appointment of defendants 4 to 7 as Directors of the 1st defendant company is invalid. Thus, in this suit there is no main relief in regard to the sale deeds or sale documents said to have been executed by the 2nd defendant without any authority. As on to-day no valid proceeding is instituted challenging the sales/sale documents. On the other hand, the case of the 2nd defendant is that the 1st defendant company and the owners of the properties covered by survey numbers 48 and 49 had entered into a development agreements for development of the properties and for construction of apartments and that he had taken necessary steps for obtaining permission for construction of a building and that the company had paid requisite fee and charges to HMDA and the other departments concerned and that the company started constructions and that development had taken place as per the terms of development agreements and that the 2nd defendant and owners of the property have no disputes with the 1st defendant company and its Directors and that no memoranda of understandings were executed as alleged by the plaintiff and that the object of the company is only to purchase properties, develop and make constructions and do real estate business and that the defendants 4 to 7 are inducted as Directors as per law and that their induction was also accepted by the Registrar of Companies and that the 6th defendant is one of the Promoter Directors and is continuing from the beginning as such and that the Board of Directors of the Company have authorised the 2nd defendant to execute sale deeds and that the sale deeds/documents executed by him are binding on the company and that if at this stage any injunction is granted several purchasers under the agreements/documents would stop making further payments and that the same may result in the construction activity coming to a stand still and that such a situation would result in consequential loss and irreparable injury to the company and the other defendants and that the civil Court has no jurisdiction as the dispute said to have been raised in this suit is between the

Directors and the 1st defendant Company and that, therefore, the plaintiff has to approach the Company Law Board. In the affidavit filed in support of the petition, no details of the flats unsold are mentioned and there is also no mention as to how many flats were constructed and how many were sold under sale deeds and how many were sold under agreements and how many had remained unsold. In the circumstances stated, and more particularly in the light of the fact that the relief in the instant suit is confined to a declaration that the appointment of defendants 4 to 7 as Directors of the 1st defendant company is invalid and that no relief is claimed in this suit questioning the sale transactions, it cannot be said that the plaintiff has got a *prima facie* case. Further, if any injunction is granted not to execute any sale deeds or any other documents which are required to be executed by the Company in favour of the prospective purchasers under the transactions of sale or agreements of sale, naturally they would stop making payments/further payments and that would hinder the further construction activity and would cause loss not only to the proposed purchasers but also to the company and would lead to multiplicity of litigations. The share claimed by the plaintiff is denied by the defendants. Even according to the plaintiff, he was having only a minority share. Therefore, even going by his own pleading and assuming for a moment that he is entitled to such a share, yet there is no need to grant any injunction and stall the whole activity as compensation appears to be an adequate remedy in this case, in any view of the matter. Thus, this court after weighing the competing possibilities and probabilities is of the view that granting of injunction causes greater inconvenience and hardship to the 3rd party purchasers/prospective purchasers and the 1st defendant Company and the other defendants including the defendants who are admittedly the directors of the Company even as per the case pleaded by the plaintiff.

4.7 Having regard to the stated reasons, this Court is of the well considered view that the plaintiff could not make out valid and sufficient grounds and a *prima facie* case, which is *sine qua non* and hence, the plaintiff is not entitled to the temporary injunction prayed for.

4.8 Viewed thus, this Court finds that in the facts and circumstances of the case, the trial Court is justified in refusing to grant the temporary injunction and in dismissing the application of the plaintiff/appellant. The points are accordingly answered.

5. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous petitions, if any, pending in this CMA shall stand closed.

M. SEETHARAMA MURTI, J

06th July, 2015
Vjl