IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 1st DAY OF JULY 2016

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.A.No.465 of 2016
in
C.S.No.325 of 2016

M/s.Sri Hari Enterprises Inida Pvt Limited
Represented by its Director C.Sekar
having its registered office at
No.9.Thirumoorthy Nagar
Nungambakkam
Chennai-600 014.

... Plaintiff

-Versus-

1.Ranganayaki
W/o.K.Venkatrathinam
aged about 73 years
34/10,Lakshmi Talkies Road
Shenoy Nagar,Chennai-600 030.

2.L.R.Ravi prasad
S/o.Late L.D.Raghavan
aged about 50 years
34/10,Lakshmi Talkies Road
Shenoy Nagar,Chennai-600 030.

... Defendants

O.A.NO.465 OF 2016

M/s.Sri Hari Enterprises Inida Pvt Limited
Represented by its Director C.Sekar
having its registered office at
No.9.Thirumoorthy Nagar
Nungambakkam
Chennai-600 014.

... Applicant

-Versus-

1.Ranganayaki
W/o.K.Venkatrathinam
aged about 73 years
34/10,Lakshmi Talkies Road
Shenoy Nagar,Chennai-600 030.

2.L.R.Ravi prasad
S/o.Late L.D.Raghavan
aged about 50 years
34/10,Lakshmi Talkies Road
Shenoy Nagar,Chennai-600 030.

... Respondents

This Original Application praying that this Hon'ble Court be pleased to grant an ad-interim Injunction restraining the Respondent,his agents,assigns agents representatives,servants,men or other person claiming through or under him from in any manner interfering,dealing with or creating encumbrance the Schedule mentioned property thereby or with the Plaintiff's right and interest in terms of the MOU dated 09.02.2013 pending disposal of the suit.

This Original Application coming on this day before this court for hearing court made the following order:

The applicant has filed the suit, seeking a judgment and decree for perpetual injunction, restraining the defendants, their agents, assigns, agents, representatives, servants, men or other person claiming through or under them, from in any manner interfering, dealing with or creating encumbrance the schedule mentioned property in terms of the Memorandum of Understanding dated 09.02.2013.

2. Pending the suit, this original application has been filed by the applicant/plaintiff, for an order of ad-interim injunction restraining the respondents/defendants, their agents, assigns, agents, representatives, servants, men or other person claiming through or under them from in any manner interfering, dealing with or creating encumbrance the schedule mentioned property in terms of the Memorandum of Understanding dated 09.02.2013, pending disposal of the suit.

3. When the matter came up for admission on 16.06.2016, this Court passed an order recording the submission made on behalf of the respondents that the respondents will not create any third party interest till the next date of hearing.

4. Heard Mr.Prabakaran, learned counsel representing the learned counsel for the applicant and Mr.P.R.Raman, learned counsel for the respondents.

5. Before considering the respective submissions made on either side, it is necessary to go into the facts involved in this case:-

(i) Admittedly, the respondents are the owners of the suit property. Though they owned an extent of 21 acres, by mistake or otherwise, it has been notified as 21.35 cents, in the Memorandum of Understanding entered into between the applicant on one hand and the respondents on other hand. Be that as it may, there was a Memorandum of Understanding entered into between the parties on 09.02.2013, which might be for larger extent of more than 21 acres.

(ii) Under the Memorandum of Understanding, the applicant, being the second part of the parties, has to pay a sum of Rs.375,00,00,000/- within 20 days from the date of execution. Thereafter, a registered sale deed will have to be executed. The applicant further agreed to pay the balance sale consideration of Rs.125,00,00,000/- within the period of sixty days from the date of execution of the sale agreement. Thus, the total sale consideration is Rs.500,00,00,000/-.

(iii) The Memorandum of Understanding further proceeds to state that on receipt of payment of Rs.375 Crores from the applicant, the respondents shall handover all the available original title deeds along with corresponding revenue records of the property in question to the applicant, which infact, shall be handed over to the bank representing the applicant.

(iv) In the Memorandum of Understanding, it has also been stated that it is the responsibility of the applicant to take necessary steps to vacate and remove all encroachers in S.No.148 measuring 1.13 acres as mentioned in its Schedule. Thus, it is clear that the encroachment is specific in S.No.148 measuring to an extent of 1.13 acres.

(v) Further clause of the Memorandum of Understanding says that on the failure of the applicant to complete the transaction within the time stipulated therein, the same shall *ipso facto* stand determined. Consequently, the applicant shall pay 5% of the total sale amount to the respondents. If the payment of Rs.375 Crores has been paid by the applicant to the respondents, the liquidated damages shall be deducted from the said amount and the balance amount shall be transferred to the account from which the said amount has been paid by the applicant.

6. The execution of the Memorandum of Understanding dated 09.02.2013 along with the covenants, is not in dispute.

7. Learned counsel appearing for the applicant submits that the Memorandum of Understanding has to be considered as a whole. In other words, the clauses relating to payment of Rs.375 Crores, subsequent registration of sale agreement and the payment of remaining sale consideration, are to be seen, in the context of evicting the encroachers in S.No.148 to an extent of 1.13 acres. Therefore, the question of payment of part amount of Rs.375 Crores and the subsequent actions would follow the eviction. Since the eviction is yet to be carried out in full, there is no necessity to file a suit for specific performance. In fact, the eviction is being carried out by making payment to various encroachers.

8. Learned counsel appearing for the applicant

further submits that the Memorandum of Understanding has to be treated as an agreement for sale. In that event, Section 53-A of the Transfer of Property Act will have to be pressed into service. As there is no consideration, Section 17 of the Registration Act will not apply to the case on hand. Therefore, the equities are in favour of the applicant.

9. Learned counsel also submits that Section 38 of the Specific Relief Act provides for perpetual injunction in such a case. As there is prima facie case, balance of convenience, coupled with likelihood of irreparable loss made out by the applicant, the order of interim injunction will have to be made absolute.

10. Per contra, learned counsel for the respondents submits that the averments made in the plaint would show that the applicant wants to treat the Memorandum of Understanding as an agreement for sale, which is impermissible and there can be no order adverse to the terms of the Memorandum of Understanding entered into between the parties. Further, it would only set out the intention of the parties to enter into an agreement. In

such a case, the suit will have to be dismissed as not maintainable. Even assuming the Memorandum of Understanding as an agreement, there is no possession involved. If it is a case of possession, Section 53-A of the Transfer of Property Act r/w Section 17 of the Registration Act would require it for compulsory registration. Further, if the Memorandum of Understanding is treated as an agreement, it would also require compulsory registration, pursuant to the ordinance, which came into effect on 01.12.2012, which is admittedly much prior to the Memorandum of Understanding dated 09.02.2013.

11. Learned counsel for the respondents further submits that there is a cloud over the document about the removal/eviction of encroachers. In all the documents, there is a correction with regard to the year of execution of the Memorandum of Understanding. The year 2016 has been uniformly corrected as 2013.

12. Learned counsel for the respondents also submits that there is absolutely no connection between the obligations to perform on the part of the applicant as against the proposed eviction. Further, the document speaks

about only 21.35 cents, which has also been reproduced in the plaint as well as in this application. In such circumstances, as per Section 38 r/w 41 of the Specific Relief Act, there is absolutely no equity in favour of the applicant against the true owners. Therefore, the application is liable to be dismissed.

13. I have considered the rival submissions made on either side and also perused the documents placed before this Court.

14. On its own showing, the document dated 09.02.2013 is only a Memorandum of Understanding. For better appreciation, the relevant clauses of the said Memorandum of Understanding are extracted hereunder:

> *"Whereas the parties of the second part will make a payment of Rs.375,00,00,000/- (Rupees Three hundred and seventy five crores only) within twenty days from the date of this understanding and further agree to enter into a registered sale agreement immediately after the expiry of the said twenty days i.e. on or before 1-3-2013 and agree to pay the balance sale consideration of Rs.125,00,00,000/- (Rupees one hundred and twenty five crores only) within the period of sixty days from the date of sale*

agreement between the parties of the first part and the parties of the second part;

Whereas in part performance of this understanding, the parties of the first part shall handover all the available original title deeds with corresponding revenue records of the above lands to the parties of the second part after the receipt of the payment of Rs.375 crores from the parties of the second part;

(All the records shall be handed over to the bank representing the parties of the second part)

Whereas it is the responsibility of the parties of the second part to take necessary steps to vacate and remove all encroachers in S.No.148 measuring 1.13 acres as mentioned in the schedule hereunder on his own costs;

Whereas in the event of the parties of the second part failing to complete the transaction within the time stipulated in this MOU, the same shall ipso facto stand determined and the parties of the second part shall pay 5% of the total sale amount first part. If the payment of Rs.375 crores has been paid by the parties of the second part to the parties of the first part, the liquidated damages shall be deducted from the said amount and the balanced amount shall be transferred to the account from which the said amount has been paid by the parties of *the second part.*

15. On a reading of the above, it is very clear that the Memorandum of Understanding clearly spells out the duties of the applicant. Admittedly, the applicant has not complied with the same. It is also clear that the performance of the applicant is not depending upon its proposed eviction of encroachment in S.No.148 to an extent of 1.13 acres.

16. The said Memorandum of Understanding is not an agreement. That is why, it has been specifically stated therein that after making part payment of Rs.375 Crores, a registered sale agreement will have to be executed between the parties. Further, it does not specifically say anything about possession having been handed over to the applicant. Even assuming it as an agreement, the question of protecting the possession does not arise, unless it comes under Section 53-A of the Transfer of Property Act, which requires registration as very much essential, to be used only a shield, but not sword. Therefore, it would suffice to state neither an agreement nor any registration taken place.

17. Even otherwise, there is no question of relying on the said document for collateral purpose. The definition of the word 'collateral' has been explained by the Apex court as well as by the High Court on more than one occasion, which means only for incidental purposes and the same cannot be used for the interpretation of the document per se. Prima facie, it appears that the submission made by the learned counsel for the applicant is incorrect with respect to unexplained correction made in the documents filed by the applicant, evidencing, vacating the premises in S.No.148. All the documents are typed verbatim. In the reference column of all the documents, there is a correction about the year of execution of the Memorandum of Understanding from 2016 to 2013.

18. If it is an agreement for sale, then Order 2 Rule 2 C.P.C will come into operation. However, no such permission is obtained by the applicant. This Court could see the prediction of the applicant, who does not want to pay heavy court fee in getting the larger relief. That is the reason, the applicant has filed the suit for perpetual injunction.

19. The reliance made under Section 38 of the Specific Relief Act cannot be accepted for the simple reason that it has to be read along with Section 41 of the said Act. Such relief is discretionary in nature, which can be granted in favour of the owners and not the agreement holder. Records also would reveal that no consideration has passed. More than three years have elapsed since the execution of the Memorandum of Understanding and there is no evidence of the applicant complying with its terms.

20. Thus, viewing from any angle, this Court does not find prima facie case, balance of convenience and likelihood of irreparable loss in favour of the applicant, as the law is well settled that in a case, the first two factors are made out, the third would still override, which is also not the situation in the case on hand.

21. Accordingly, this application is dismissed.

sd/.M.M.S.J
01.07.2016

//Certified to be a true copy//

Dated this the day of 2016.

S.s/05.07.2016 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.