

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 18th DAY OF DECEMBER 2017

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.A. No.1187 of 2017

in

O.A. No.466 of 2015

in

C.S. No.353 of 2015

Mrs.Kamala Muthiah,
W/o.late M.Ct.Muthiah,
'Bedford House', Old No.5,
New No.9, Raja Annamalai Road,
Purasawalkam, Chennai-600 084. ... Applicant/Plaintiff
(in O.A. No.466 of 2015)

-Versus-

1. Mrs.Arati Meenakshi @
Arati Meenakshi Muthiah,
2. Mr.Tarun Ghai,
1 & 2 are residing at
Saikripa Apartments, 4th Floor,
No.5, Sundaram Salai,
Greenways Road, R.A.Puram,
Chennai-600 028.
3. Nandini Valli,
D/o.Late M.Ct.Muthiah,
No.11/2, Dr.Alagappa Road,
Purasawalkam,Chennai-600084.... Respondents/Defendants
(in O.A. No.466 of 2015)

O.A. No.1187 of 2017:-

Mrs.Kamala Muthiah,
W/o.late M.Ct.Muthiah,
'Bedford House', Old No.5,
New No.9, Raja Annamalai Road,
Purasawalkam, Chennai-600 084. ... Applicant/Plaintiff

-Versus-

1. Mrs.Arti Meenakshi @
Arti Meenakshi Muthiah,
2. Mr.Tarun Ghai,
1 & 2 are residing at
Saikripa Apartments, 4th Floor,
No.5, Sundaram Salai,
Greenways Road, R.A.Puram,
Chennai-600 028.
3. Nandini Valli,
D/o.Late M.Ct.Muthiah,
No.11/2, Dr.Alagappa Road,
Purasawalkam,
Chennai-600084....Respondents 1 to 3/Defendants 1 to 3
4. M/s.Nakoda Foundation &
Development Pvt. Ltd.,
rep. by its Director,
Mr.Gatraj Jain,
No.97, Narayana Mudali Street,
Chennai-600 079... Respondent 4/Proposed 4th defendant
5. M/s.Surakshit Traders Pvt. Ltd.,
rep. by its Director,
Mr.Vikram Kumar,
No.97, Narayana Mudali Street,
Chennai-600 079... Respondent 5/Proposed 5th defendant

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the respondents/defendants, their men, agents, servants or any other person or persons claiming under or through them from interfering with the applicant/plaintiff's peaceful possession and enjoyment of the 'Bedford House' situate at Door No.9, Old No.5, Raja Annamalai Road, Purasawalkam, Chennai-600 084, morefully described in the schedule items 1 to 5 appended to the Judge's Summons, including water and sewerage connections, power supply cable laid in the premises, corporation water supply sump, water supply, bore well etc. and/or altering the physical features of the said property, pending disposal of the application for impleading.

These original applications coming on this day before this court for hearing the court made the following order:-

This application has been filed, by the Plaintiff in CS.No.353 of 2015.

2. CS.No.353 of 2015, has been filed by the Plaintiff, Kamala Muthiah, wife of late M.Ct.Muthiah, against the three Defendants, namely, her 1st daughter, Arti Meenakshi @ Arti Meenakshi Muthiah, her son in law, Taruj Ghai and her second daughter, Nandini Valli.

3. The said suit has been filed for declaration that the two settlement deeds, both registered on 11.5.2012 in Document No.1853 of 2012, with respect to D- Schedule properties and Document No.1854 of 2014, with respect to C-Schedule properties, in the Office of the Sub Registrar, Purasawalkam, are illegal and invalid and not binding on the Plaintiff and also for permanent injunction, restraining the Defendants or anybody acting under them, from interfering with the peaceful possession and enjoyment of the Plaintiff and also for permanent injunction, restraining the Defendants 1 and 2, from encumbering or alienating or developing the suit properties and for mandatory injunction against the Defendants 1 and 2 to remove the offending superstructures, which have been erected in the items (1) to (5) of the A-Schedule property.

4. A-Schedule property is consisting of items (1) to

(5), all with respect to the land and building in Door No.9, Raja Annamalai Road, Purasawalkam, Chennai-84, known as 'Bedford House', measuring to a total extent of 21 grounds and 1789 sq.ft. as per the document and 21 grounds and 2232 sq.ft. as per the actual measurement. C-Schedule and D-Schedule properties are also part of the entire 21 grounds and 1789/2232 sq.ft of land and building.

5. The Plaintiff had executed two statement deeds both dated 11.5.2012 and registered as Document Nos.1853 and 1854 of 012, in favour of the 3rd Defendant and the 1st Defendant, who are her daughters, with respect to the D-Schedule and C-Schedule properties respectively. However, disputes arose among the parties, more particularly, between the Plaintiff and the 1st Defendant. In view such disputes, the suit came to be filed.

6. I am deliberately not going into the allegations made in the plaint, since the suit has not yet been taken up for trial.

7. Pending the suit, the Plaintiff has filed OA.Nos.466, 467 and 468 of 2015, seeking an order of interim injunction, restraining the Respondents/ Defendants from interfering with the Plaintiff's peaceful possession and enjoyment and restraining them, from alienating or encumbering the suit properties and for mandatory injunction, directing them to remove the offending superstructures, which

had been erected by them. All the three applications are pending consideration of this court.

8. The Plaintiff has also filed A.No.3024 of 2015, seeking appointment of an Advocate Commissioner to inspect and note down the physical features of the entire property. An Advocate Commissioner had been appointed and reports had also been filed.

9. In the meanwhile, the 1st and 2nd Defendants, had sold the property, which is the subject matter of the settlement deeds, which the Plaintiff claims as null and void, to the proposed parties/ 4th and 5th Respondents, namely, M/s.Nakoda Foundation and Development Private Limited, represented by its Director, Gatraj Jain and M/s.Surakshit Traders Private Limited, represented by its Director, Vikram Kumar, by the registered sale deed 19.6.2017, bearing Document No.2494 of 2017, in the Office of the Sub Registrar, Purasawalkam. They had sold a total area of 11 grounds and 1116 sq.ft. In these circumstances, the Plaintiff had moved applications, in A.Nos.7815, 7816, 7817 and 7818 of 2017, to implead the said purchasers as party Respondents in all the three original applications, namely, OA.No.466, 467 and 468 of 2015 and also parties Defendants in CS.No.353 of 2015.

10. Simultaneously, the Plaintiff has also filed the present application in OA.No.1187 of 2017, seeking an order of interim injunction, restraining the Respondents/

Defendants or anybody acting under them from interfering with the Plaintiff's possession and enjoyment of the property called as 'Bedford House', at Door No.9, Raja Annamalai Road, Purasawalkam, Chennai-84, including water and sewerage connections, power supply cable laid in the premises, Corporation water supply sump, water supply, bore well etc. and/or altering the physical features of the said property, pending disposal of the applications for impleading.

11. In the affidavits filed in support of the said original applications, the Plaintiff has stated that the 1st and 2nd Respondents were attempting to deal with the property in favour of third party purchasers. As a matter of fact, the said apprehension became true and the 1st and 2nd Respondents/ Defendants had actually alienated the property at Door No.9/2, Old Door No.9, previous Door No.5, then Door No.3, Raja Annamalai Road, Purasawalkam, Chennai-84, in favour of the proposed 4th and 5th Respondents/ Defendants, by a registered sale deed dated 19.6.2017, registered as Document No.2494 of 2017 in the Office of the Sub Registrar, Purasawalkam.

12. It has been further stated that the total sale consideration was Rs.28 crores. It has been further stated that this property was measuring to an extent of 11 grounds and 1116 sq.ft., which is the C- Schedule property in the plaint and which is the subject matter of the suit. It has

been claimed that the proposed purchasers are not bona fide purchasers. It has been stated that the Applicant/ Plaintiff had not pursued the suit since it was referred for mediation and she was under the bona fide impression that since mediation talks were going on, it would not be advisable to precipitate the matter. However, the 1st and 2nd Respondents had sold the property and it has been further stated that unless an order of injunction is granted, the Applicant/ Plaintiff would be seriously prejudiced. It has been further stated that the property is Bungalow type house with aesthetic and serene atmosphere. It has been further stated that unless an order of interim injunction is granted, the purchasers would disturb the peaceful possession of the Applicant/ Plaintiff, who is an old aged lady.

13. Separate counter affidavits has been filed on behalf of the 4th and 5th Respondents. In the counter affidavits, the 4th and 5th Respondents had purchased the property from the 1st and 2nd Respondents, by a registered sale deed dated 19.6.2017 and registered as Document No.2494 of 2017, in the Office of the Sub Registrar, Purasawalkam. They have further stated that they have taken possession of the property. They have stated that they were not aware about anything about the dispute between the Applicant/ Plaintiff and the 1st and 2nd Respondents. However, in the counter affidavits, they have given the details of various suits,

which are pending between the parties.

14. I have heard the arguments of Mr.R.Thiagarajan, the learned counsel for the Applicant/ Plaintiff and Mr.Jayesh & Dolia, the learned counsel for the Respondents 4th and 5th Respondents.

15. This is a clear case, where the 1st and 2nd Respondents, without any adherence to any code of conduct or Rule of Law, have deliberately and in open defiance to the court proceedings, had sold the property to the 4th and 5th Respondents.

16. Section 52 of the Transfer of Property Act is as follows:-

"52. Transfer of property pending suit relating thereto.—During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the

execution thereof by any law for the time being in force."

17. The 1st and 2nd Respondents have not obtained leave of the Court, before they had thought it fit to convey by way of a registered sale deed, the property, which is the subject matter of the litigation, to the 4th and 5th Respondents. The 1st and 2nd Respondents probably felt that they can deal with the property in any manner whatsoever and they would not be questioned from dealing with the property. The 4th and 5th Respondents also appear to be under the same impression. This court cannot countenance such an attitude.

18. When the settlement deeds executed by the Applicant/ Plaintiff in favour of the 1st and 2nd Respondents are being challenged by the Applicant/ Plaintiff herself and when there are various litigations pending, irrespective of the fact whether there is an order of injunction or not, the Rule of Law requires the 1st and 2nd Respondents to approach the Court to deal with the property or to alienate the property. The 4th and 5th Respondents might have purchased the property in question for valuable consideration, but they are not bona fide purchasers of the property, which is under litigation and they have only purchased the litigation. Consequently, the 4th and 5th Respondents cannot be permitted to enter into or occupy the property.

19. The learned counsel for the Applicant/ Plaintiff

has relied on the decision of this Court, reported in **2008 4 CTC 121 (Seven Hills Real Estate and another Vs. Zeebunnisa Begum)**, which judgement was further upheld by the Division Bench of this court in the decision reported in **2008 4 CTC 126 (Zeebunnisa Begum Vs. Seven Hills Real Estate and another)**, wherein the Division Bench of this court had clearly held that any alienation pendente lite would seriously prejudice and cause irreparable loss to the parties and doctrine of lis pendens will apply to any alienation, pending litigation.

20. In the present case, the 4th and 5th Respondents are perfectly aware of the litigation pending. This is evident by the fact that they have enumerated all the litigations in the counter affidavits. Consequently, without any hesitation, I hold that the 4th and 5th Respondents are only speculative purchasers and they cannot be permitted to deal with the property in question in any manner.

21. The learned counsel for the Applicant/ Plaintiff has also relied on the judgement of the Honourable Supreme Court reported in **Manu/SC/0912/2004 (Maharwal Khewaji Trust Vs. Baldev Doss)** wherein, the Honourable Supreme Court had held that this Court is justified in ordering status quo to be maintained.

22. In the present case, the fact that the 1st and 2nd Respondents had sold the property in question to the 4th and

5th Respondents forces this court to grant an order of interim injunction, as prayed for, as against the 4th and 5th Respondents.

23. In the result, this application is allowed. There shall be an order of interim injunction, as prayed for, against the Respondents/ Defendants, particularly, against the 4th and 5th Respondents, from in any manner, either directly or indirectly or more particularly, through the 1st and 2nd Respondents or anybody acting under them, restraining them from interfering with the Plaintiff's possession and enjoyment of the property, called as Bedford House, at Door No.9, Old No.5, Raja Annamalai Road, Purasawalkam, Chennai-84, more fully described in the Schedule Items (1) to(5), including water and sewerage connections, power supply cable laid in the premises, Corporation water supply sump, water supply, bore well etc. and/or altering the physical features of the said property, pending disposal of impleading applications.

24. In view of the defiant attitude of the 4th and 5th Respondents, I further hold that both the 4th and 5th Respondents must also be called upon to deposit a sum of Rs.10 lakhs, each, which is a very fractional sum of the total consideration, which they had paid, but which sum would certainly come to the aid of the Applicant/ Plaintiff as costs for the unnecessary interference with the judicial

process, caused by the act of alienating or purchasing the property without seeking the leave of the court. Accordingly, each one of the 4th and 5th Respondents are directed to deposit a sum of Rs.10,00,000/- each (Rupees ten lakhs only) on or before 21.12.2017. The Applicant/ Plaintiff is permitted to move necessary application if there is any violation of the orders of this court, including this order of injunction and the order of deposit of the amount as stated above.

Sd/-C.V.K.J

18.12.2017

//Certified to be a true copy//

Dated this the day of 2018

JJ 8/1/18

COURT OFFICER

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