

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 11TH DAY OF APRIL 2017

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM.

O.A.No.367 of 2017
in
A.NOS.2179&2180 OF 2017
in
C.S.No.266 of 2017

Mr.A.Mohandoss,
Son of Mr.S.Antony,
No.19-A,Thiruvengadapuram Main Road,
Choolaimedu, Chennai 600 094. ... Applicant/Plaintiff
(in all applications)

Vs

Mr.P.Vikash Kumar,
Son of (late) P.Parsan Chand,
No.368,MPS Salai, Thiruthani-631 209.
Tiruvallur District. ...Respondent/ Defendant
(in all applications)

O.A.No.367 of 2017

Original Application praying that this Hon'ble Court be pleased to grant an Order of Ad. Interim Injunction restraining the Respondent/Defendant from alienating the suit property, bearing Door No.19-a, Thiruvengadapuram Main Road, Choolaimedu, Chennai-600 094, Comprised in Old Survey No.17/4, Town Survey No.64, Block No.16, Puliyur Village Egmore-Nungambakkam Taluk, Chennai, more fully described in the Schedule herein, in any manner, to any third party,Pending disposal of the above Suit.

A.No. 2179 of 2017

Application praying that this Hon'ble Court be pleased to Stay of all further proceedings in the Eviction petitions in R.C.O.P.Nos.1317 and 1318 of 2015, pending on the file of the XIII Small Causes Court, Chennai, pending disposal of all above Suit.

A.NO.2180 of 2017

Application praying that this Hon'ble Court be pleased to permit the Applicant/Plaintiff to deposit the sum of Rs.12,67,954/- (Rupees Twelve Lakhs Sixty Seven Thousand Nine Hundred and Fifty Four Only, Balance sale Consideration in the Hon'ble Court, to the Credit of the present suit.

This Original application along with application coming on this day before this court for hearing the court made the following order:

Pending the suit for specific performance, the plaintiff has filed the following applications,

a) the Original Application in O.A.No.367 of 2017 has been filed, to grant an Order of Ad. Interim Injunction restraining the respondent / defendant from alienating the suit property, bearing Door No.19-A, Thiruvengadapuram Main Road, Choolaimedu, Chennai - 600 094, comprised in Old Survey No.14/4, Town Survey No.64, Block No.16, Puliyur

Village, Egmore-Nungambakkam Taluk, Chennai, more fully described in the Schedule herein, in any manner, to any third party.

b) the Application in A.No.2179 of 2017 has been filed, to stay of all further proceedings in the Eviction Petitions in R.C.O.P. Nos.1317 and 1318 of 2015, pending on the file of the XIII Small Causes Court, Chennai.

c) the Application in A.No.2180 of 2017 has been filed, to deposit the sum of Rs.12,67,954 (Rupees twelve lakhs sixty seven thousand nine hundred and fifty four only) balance sale consideration in this Court, to the credit of the present suit.

2. The case of the applicant is that suit property was originally owned by one P.Parsan Chand and the applicant was inducted as a tenant in the month of September 2003 on a monthly rent of Rs.11,550/-. Subsequently, the applicant and the original owner P.Parsan Chand entered into an agreement of sale on 05.09.2007, whereby the applicant had agreed to purchase the property for a total sale consideration of Rs.25,21,954/- and on the date of agreement, the applicant paid Rs.3,25,000/- towards advance amount.

3. The further case of the applicant is that after he was inducted as a tenant, he was permitted to renovate the building and the amount spent on renovation of Rs.8,34,000/- and the rental advance amount of Rs.95,000/- was agreed to be treated as advance for the sale

consideration. Hence, the applicant has paid a total amount of Rs.12,54,000/- pursuant to the agreement.

4. The applicant claims that he was ready and willing to perform his part of obligation under the agreement, but, the original owner was postponing the execution of the sale deed for some reason or other. It is further stated that as per the instruction of the original owner, the applicant was paying monthly rent regularly by issuing blank cheques till the month of January 2015.

5. The applicant would further state that he was not aware of the demise of the original owner and in the month of February 2015, he received letter from the respondent, who is the son of the original owner, calling upon the applicant to vacate the suit property, for which he sent reply dated 03.03.2015. Thereafter, the respondent filed Petitions in R.C.O.P.Nos.1317 and 1318 of 2015 seeking eviction on three grounds. The petitioner filed interim applications questioning the maintainability of the eviction petition and to try the issue as preliminary issue on ground that there was no jural relationship between them, in view of the agreement of sale. The interim applications were dismissed and the same was confirmed by this Court in C.R.P.(PD)Nos.708 and 709 of 2017. Hence, the present suit.

6. Mr.B.K.Sreenivasan, learned counsel for the applicant would submit that there is no delay or laches in filing the suit, though the sale agreement was executed on

05.09.2007 and since the applicant is in possession of the property in pursuance of the sale agreement, the Eviction Petitions are not maintainable in law and that the respondent, who claims to be absolute owner of the property, is attempting to sell the property to the third parties. In view of the above facts, the applicant is entitled for interim orders in these applications.

7. It is seen that the suit has been filed based on the agreement of sale dated 05.09.2007. Though the applicant is alleged to have paid a sum of Rs.12,54,000/- towards the advance, out of sale consideration of Rs.25,21,954/-, he claims to have paid monthly rents of Rs.11,550/- till January 2015. It is not in dispute that the respondent issued a letter in the month of February 2015 requesting the applicant to vacate the suit property claiming absolute title. It is also not in dispute that in the year 2015, the respondent initiated eviction proceedings against the applicant. When the maintainability of Eviction Petition came up before this Court in C.R.P.(PD) Nos.708 and 709 of 2017, this Court rejected the contention of the applicant observing that the issue will be decided by the Rent Controller in the main Eviction Petition. It is also seen that this Court issued direction to the Rent Controller to dispose of the Eviction Petitions on merits of the case within a period of three months from the date of receipt of a copy of this order.

8. Indisputably the present suit is instituted after

lapse of 10 years of the alleged agreement and also after the demise of the original owner, with whom the applicant claims to have entered into the agreement. Further had the applicant paid Rs.12,54,000/- in pursuance of the agreement, he could not have paid rents as alleged by him till January 2015. Admittedly, trial in the RCOP is already commenced, so this Court issued directions to complete trial in a time frame holding that the question raised by the applicant would be decided after trial. The respondent has categorically taken the stand that agreement of sale is a forged one. Keeping in mind the date of agreement of sale, the stand taken by the respondent that the agreement of sale and the direction issued by this Court in C.R.P. (PD) Nos.708 and 709 of 2017, I am of the considered opinion that the applicant is not entitled for any orders in the applications. I do not find any merit in the applications. In fine, all the applications are dismissed.

Sd/.M.K.K.S.
11.04.2017

//Certified to be a true copy//

Dated this the day of 2017.

EM/20.04.2017

COURT OFFICER

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