

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 20TH DAY OF OCTOBER 2017

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

O.A. No.712 of 2017

IN

C.S.No.583 of 2011

David Arul
S/o. Mr.Michael Arul,
Come down to Chennai
Presently residing at 749, Second Avenue
San Fransisco, California 94118
and residing at
348, Pantheon Road,
Egmore, Chennai - 600 008. ... Plaintiff

Vs

1. Michael Arul
S/o. F.V.Arul
Mill Bank A-1,
No.7, Boat Club Road, Chennai - 600 092
and carrying on business at
New No.121, Old No.347, Pantheon Road,
Egmore, Chennai - 600 008.

2. M/s.Temple Financial Consultants Private Limited
Rep.by its Managing Director
Ashok Arthur Jaipal
Having office at
New No.121, Old No.347, Pantheon Road,
Egmore, Chennai - 600 008.

3. Advent Computer Services Ltd.,
Rep.by its Managing Director
Michael Arul
having office at New No.121,
Old No.347, Pantheon Road,
Egmore, Chennai - 600 008.

4. Tecways India Pvt. Ltd.,
Rep., by its Chief Executive Officer
Suzanne Grace
having office at

New No.121, Old No.347, Pantheon Road,
Egmore, Chennai - 600 008.

... Defendants

O.A.No.712 of 2017:

David Arul
S/o. Mr.Michael Arul,
Presently residing at 749, Second Avenue
San Fransisco, California 94118
and residing at
348, Pantheon Road,
Egmore, Chennai - 600 008. ... Applicant/Plaintiff

Vs

1. Michael Arul
S/o. F.V.Arul
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No.7, Boat Club Road, Chennai - 600 092
and carrying on business at
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Suzanne Gerl
having office at
New No.121, Old No.347, Pantheon Road,
Egmore, Chennai - 600 008.

... Respondents/Defendants 1 to 4

5. Mr.G.Thyagarajan
Plot No.921, 66th Street,
11th Sector, K.K.Nagar,
Chennai - 600 078.

... 5th Respondent/
Proposed 5th Defendant

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the 5th respondent/Proposed 5th Defendant from entering into or disturbing the peaceful possession of the plaintiff in the suit property and from alienating, encumbering, dealing or in any manner, creating third party interests or attempting mutate the revenue records of the suit property into his name pending disposal of the application to implead the 5th respondent/Proposed 5th Defendant in the suit.

Schedule

Houses and Ground Old Door No.31/A-1, New Door No.347, Present Door No.121, Pantheon Road, Egmore, Chennai, part of Re-Survey No.1623, measuring about 8 Grounds 2177 sq.ft bounded on the

North by : New Door No. 346, Present Door No.119, Pantheon Road

South by : New Door No.348, Present Door No.123, Pantheon Road

East by : Door No.4/2, Ethiraj Salai

West by : Pantheon Road

situated within the Sub Registration District of Periamet and Registration District of Chennai Central.

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

O.A. No. 712 of 2017 has been filed by the plaintiff in C.S. No. 583 of 2011 seeking an order of interim injunction restraining the 5th respondent/proposed 5th defendant from entering into or disturbing the peaceful possession of the plaintiff in the suit property and from alienating,

encumbering, dealing or in any manner, creating third party interests or attempting to mutate the revenue records of the suit property into his name, pending disposal of the application to implead him as 5th defendant in the suit.

2. C.S.No.583 of 2011 had been filed by David Arul, against his father Michael Arul (1st defendant) and three tenants (2nd to 4th defendants) of the suit property.

3. The suit property is house and land in old door no. 31/A-1, new door no. 347, present door no. 121, Pantheon Road, Egmore, Chennai, measuring about 8 grounds and 2177 sq.ft.

4. The plaintiff's paternal grandparents were F.V. Arul, who retired as Inspector General of Police, Tamil Nadu and Mrs. Mabel Arul. F.V. Arul died on 15.06.2006. Mrs. Mabel Arul died on 29.12.2008.

5. Mrs. Mabel Arul was the original owner of the suit property.

6. The relationship between the plaintiff and the 1st defendant was strained.

7. The plaintiff had been living in USA from April 2000, on employment. According to him, he is also currently residing in USA.

8. The plaintiff's grandmother executed two registered documents in relation to the suit property, which directly affected the interests of both the plaintiff and the 1st defendant.

9. The 1st document is a Settlement Deed, dated 22.10.2008. The suit property was settled in favour of the plaintiff, subject to life interest to reside by the plaintiff's grandmother and thereafter by the 1st defendant. This was registered as Document No. 2108 of 2008, in the Office of the Sub Registrar, Periamet.

10. The 2nd document is a Cancellation Deed dated 28.10.2008, registered as Document No. 2140 of 2008, again in the Office of the Sub Registrar, Periamet. This cancelled the Settlement Deed referred to above.

11. Execution of the two documents, death of Mrs. Mabel Arul and simmering distrust between the plaintiff and the 1st defendant led to the institution of the suit, primarily seeking that the Deed of Cancellation is non-est, void and not binding on the plaintiff and that the clause in the Settlement Deed restricting dealing with the property is binding on the 1st defendant, and also that the arrangements between the 1st defendants and the 2nd, 3rd and 4th defendants are not binding on the plaintiff and also

right to reside in the suit property.

12. Written Statements have been filed.

13. It would be inappropriate on the part of this Court to delve further, since contentious issues have to be decided on the basis of evidence.

14. The suit had been filed in the year 2011, and has been meandering along, stuttering in its path during trial.

15. At this juncture, deeply affecting the balance between the parties, the 1st defendant executed a Sale Deed, dated 05.07.2017 and registered as Document No. 2011 of 2017 in the Office of the Sub Registrar, Periamet, conveying the suit property to the 5th respondent/proposed 5th defendant.

16. Viewed from the eyes of the litigating parties, possession became a crucial aspect.

17. Claiming to be in possession and apprehending threat of dispossession in view of the conveyance of the suit property to the 5th respondent/proposed 5th defendant, the plaintiff filed the present application in O.A. No. 712 of 2017 for the relief mentioned in para 1 above.

18. In the affidavit filed in support of the application, the plaintiff stated that he had appointed a security to monitor the suit property continuously and to protect his interests. He had also issued a public notice

in The Hindu and Daily Thanthi on 25.12.2016, informing about the suit and cautioning the general public from dealing with the 1st defendant.

19. He specifically averred that he came to know from the security that the 1st defendant entered the suit property on 08.07.2017 at 2.00 a.m. along with several other individuals. The plaintiff strengthened the existing security.

20. He also filed a police complaint on 08.07.2017 in F2, Egmore Police Station and CSR No. 763 of 2017 was issued. During enquiry, the 1st defendant informed that he had sold the property to G. Thyagarajan, the 5th respondent/proposed 5th defendant.

21. The plaintiff has assailed the Sale Deed. Among reasons stated by him was that the right of the 1st defendant to deal with the property was under consideration of this Court and consequently, the 1st defendant had no right to convey the property and also that the consideration was wholly inadequate which indicated that the entire transaction was sham and nominal.

22. Under such circumstances, the present application was filed seeking an order of interim injunction against the 5th respondent/proposed 5th defendant.

23. Along with the application, the copy of the Sale

Deed dated 05.07.2017 was filed. Copies of Security Service Agreements between the plaintiff and Guardforce Protection Service Ltd., for providing security to the suit property from 25.06.2011 onwards were also filed. Copies of police complaints given by the plaintiff on 08.07.2017, 15.07.2017 and 20.07.2017, and also copies of photographs evidencing the plaintiff to be in the suit property, dated 18.07.2017, 19.07.2017, 20.07.2017, 21.07.2017, 22.07.2017, 23.07.2017 and 24.07.2017 were also filed.

24. On consideration of the documents filed, this Court, on 25.07.2017, had granted an interim injunction restraining the 5th respondent/proposed 5th defendant from interfering with the plaintiff's possession.

25. This Court had also appointed T. Balamurugan, Advocate as advocate Commissioner and directed that warrant should be issued expeditiously to enable the Advocate Commissioner to visit the suit property at 06.00 p.m., on the same day, 25.07.2017, after giving notices to the learned counsel appearing for the contesting parties and file a report before the Court.

26. It must also be mentioned that the Counsel on record for the 1st defendant made a representation on the same day in the afternoon before Court that a number of police had assembled at the suit property.

16.08.2017.

28. In the report, the Advocate Commissioner claimed that when he visited the suit property along with the learned counsel for the plaintiff and the 1st defendant, he noticed 6 police personnel deployed outside the property. There were also 3 patrol vehicles. There was a name board "David Arul, No.347, Pantheon Road", affixed on the compound wall. The outer door was opened by a person who identified himself as David Arul, the plaintiff. He sent around the entire building, the rooms of which were opened by the plaintiff. He also took photographs on his mobile phone and he filed the copies along with the report.

29. The 1st defendant filed his objections to the report. Separately, the learned counsel for the 1st defendant also filed his objections.

30. In the objections, the learned Counsel for the 1st defendant stated that the Advocate Commissioner had not filed all the photographs and the videos taken. He further stated that the name board, the locks and keys were new. The Commissioner did not report that the stock of the 2nd and 3rd defendants were also present.

31. In the objections, the 1st defendant stated that the plaintiff had got possession with the help of the

<https://hcservices.ecourts.gov.in/hcservices/> police. He further stated that the 2nd to 4th defendants

were carrying on business in the suit property. He claimed that they had sought 30 days' time to vacate and hand over possession to the 5th respondent/proposed 5th defendant. He claimed that the plaintiff had altered the physical features and had put up a gate next to the existing gate and had also put up a brick wall.

32. The 1st defendant also filed his counter to the application. In the counter, it had been stated that he was in possession of the suit property and had inducted the 2nd, 3rd and 4th defendants as tenants. He denied that the plaintiff had arranged security to manage the suit property. He stated that one of the tenants is actually providing security to the suit property. He stated that he was the absolute owner of the suit property and further stated that his sale to the 5th respondent/proposed 5th defendant was always subject to the suit. He relied on the written statement filed by him to assert that he was in possession and that the plaintiff was not in possession. He claimed that the 2nd to 4th defendants are unable to enter the suit property. He stated that the plaintiff had taken possession with the help of the police.

33. The 1st defendant also filed an affidavit that he had handed over possession to the 5th respondent/proposed

force against him restraining him from dealing with the property. He expressed regret for not obtaining leave before alienating the suit property.

34. The 3rd defendant filed a counter and stated that they are a listed company and has its registered office in the suit property. It is involved in supply of Information Technology Services to customers in India and overseas. It was stated that the 1st defendant informed that he had decided to sell the suit property and consequently, the 3rd defendant agreed to vacate the premises. They had sought 30 days' time to vacate from the date of the sale deed, 05.07.2017, It was further stated that the plaintiff took possession around 2.00 p.m., on 25.07.2017 with the help of unknown persons.

35. The 4th defendant also filed their counter and stated that they were carrying on business for several years. The 1st defendant had informed that he had decided to sell the property and the 4th defendant requested 30 days' time to vacate the premises. After sale on 05.07.2017, the 5th defendant granted the time sought. It had been stated that the plaintiff took forceful possession at around 2.00 p.m., on 25.07.2017.

36. The 5th respondent/proposed 5th defendant also filed

his counter. He stated that he had purchased the suit

property from the 1st defendant by a registered Sale Deed dated 05.07.2017. He claimed that the 1st defendant handed over physical possession. He had granted the defendants 30 days' time to vacate and hand over possession. He claimed that he paid the entire consideration of Rs.10 crores by cheque to the 1st defendant. He further stated that he had filed O.S. No. 3712 of 2017 in the City Civil Court, Chennai against Mrs. Jennifer Arul, who is the estranged wife of the 1st defendant and mother of the plaintiff and had also obtained an order of interim injunction in I.A. No. 9149 of 2017. He claimed that the plaintiff was never in possession of the suit property. He was in possession of the adjacent property bearing door no. 348, Pantheon Road. He stated that the plaintiff took possession on 25.07.2017 after obtaining the order of injunction. He denied that the plaintiff had appointed security personnel to monitor the suit property. He denied that the sale consideration was inadequate. He claimed that police complaints were given at the instance of the mother of the plaintiff. He further claimed that the plaintiff had changed the physical features of the suit property. He had installed his name board. Tin sheets for a height of 15 ft. had been put up all around the suit property. He claimed that the Advocate Commissioner had filed a biased report. He claimed that the application should be

dismissed.

37. The 5th respondent/proposed 5th defendant also filed a copy of a letter said to have been issued on 05.07.2017 to the 3rd and 4th defendants granting them 30 days' time to vacate the premises.

38. The plaintiff filed a further affidavit, under directions of this Court to answer allegations regarding taking of possession subsequent to grant of interim order. He claimed that the 2nd and 4th defendants had been set exparte and the 3rd defendant had not filed the written statement. He claimed that their sudden interest is motivated. He further claimed that the 1st defendant was not in possession, which would be evident from the recitals in the Sale Deed. He therefore stated that none of the defendants were in possession, and that he continued to be in possession. He claimed that the suit property was never used as a residence by the 1st defendant. The tenancies were created and were sham and nominal. He claimed that his right of access had never been disputed. He had arranged for security from June 2011. He claimed to be in lawful possession. He claimed that the police complaints and photographs filed by him evidenced his possession.

39. Heard arguments advanced by Mr. Sathish Parasaran,

learned senior counsel for the plaintiff, Mr. T.V.

Ramanujun, learned senior counsel for the 1st defendant and Mr. A. Palaniappan, learned counsel for the 5th respondent/proposed 5th defendant.

40. The trial in C.S.No. 583 of 2011 is underway. The plaintiff is in the witness box. His cross examination is to continue. It would be highly inappropriate on the part of this Court to examine the relative merits and demerits of the reliefs sought in the suit.

41. Suffice to point out that the right, title and interests over the suit property, claimed to have been obtained by the 1st defendant by virtue of the Cancellation Deed dated 28.10.2008 has been challenged by the plaintiff, who, in turn relies on the Settlement Deed dated 22.0.2008.

42. The 2nd, 3rd and 4th defendants, as tenants, or erstwhile tenants, whether in possession or not, would have to abide by the decision of the Court regarding the rival contentions put up by the plaintiff and the 1st defendant.

43. The 1st defendant had chosen to sell the suit property on 05.07.2017, for admittedly, inadequate consideration to the 5th respondent/proposed 5th defendant.

44. This sale has worsened the fractured relationship between father and son.

45. Leave of the Court was not obtained.

46. Consequently, the 5th respondent/proposed 5th

defendant would also have to abide the final decision of this Court in the suit. If the plaintiff succeeds in the suit, then according to the Settlement Deed dated 22.10.2008, the plaintiff's hands would be strengthened.

47. Possession has become a vital ingredient in the lis.

48. It is the contention of the plaintiff that he had possession, and that his possession was challenged subsequent to this sale by the 5th respondent/proposed 5th defendant, and he had therefore filed the present application seeking protection of possession.

49. The sale deed in favour of the 5th respondent/proposed 5th defendant makes interesting reading. It is also very revealing.

50. The 1st defendant is said to be "presently residing at Flat No. A1, Mill Bank, door No. 7, Boat Club Road, Raja Annamalai Puram, Chennai - 600 028.."

51. The original owner of the suit property was Mrs. Sugirtham Thomas, the maternal grandmother of the 1st defendant. She donated the same to her daughter Mrs. Mabel Arul who is the mother of the 1st defendant.

52. The 1st defendant has chosen to covenant that fact as "the property...was inherited by one Mrs. MABEL ARUL, from her mother Mrs. Sugirtham Thomas,..." Never has a mother been described as one...

53. It reveals extreme contempt for the family and the house.

54. The contempt is further revealed in the value placed on the suit property. It measures to an extent of 8 grounds and 2177 sq.ft., and there can be no denial of the fact that the sale consideration of Rs.10 crores is indeed inadequate to put it very mildly.

55. This further leads to the inference that the 5th respondent/proposed 5th defendant is only a speculative buyer.

56. But the 1st defendant had not mentioned about the pending litigation, in which both the vendor and purchaser mentioned in the Sale Deed are actively participating.

57. This leads to the further inference that the 1st defendant has lost title and possession over the suit property. It does not lie in his mouth to speak for and on behalf of the 2nd, 3rd and 4th defendants.

58. In so far as the 5th respondent/proposed 5th defendant is concerned, he is an outsider to the family of

59. When scales are weighed, the balance shifts to the plaintiff, rather than to the 5th respondent/proposed 5th defendant.

60. The 5th respondent/proposed 5th defendant had not purchased the property for its full and true value. There is a clause in the Sale Deed that his right to be indemnified lies against his vendor, who is the 1st defendant. He has a right to be indemnified "against all claims, demands, damages, action at law and other proceedings in respect of the property..."

61. However, the 1st defendant, in his affidavit has stated that the Sale is subject to the pendency of the suit.

62. Consequently, when ownership of the 5th respondent/proposed 5th defendant is itself under a cloud, then he cannot claim right of possession.

63. The reason behind undervaluation of the property is evident. The vendor, 1st defendant can never convey clear title, since his own title is under scrutiny by this Court. It is for this reason that possession has been hotly contested, since it might open a gateway for the 5th respondent/proposed 5th defendant to subsequently claim title. However, it should be the other way around. One

of possession. But one can, as a matter of right, claim possession on the strength of ownership. In this case, clear title can never be conveyed by the 1st defendant since trial is underway. Hence, the 5th respondent/proposed 5th defendant and through him, the 1st defendant have placed a high value over possession. This cannot be permitted by the Court.

64. It has been the consistent charge by all the defendants that the plaintiff took possession subsequent to grant of order of injunction by this Court. That is an aspect to be established. Individual possession and dispossession has to be spoken to in witness box under oath, which is always subject to cross examination. This Court can only examine if there is a prima facie case. Deeper examination is permissible only when evidence, oral and documentary, is available.

65. The 1st defendant has voluntarily surrendered title, and he cannot claim right of possession. The 2nd to 4th defendants have not participated in the proceedings consistently, and have surfaced only to support the 5th respondent/proposed 5th defendant.

66. The title of the 5th respondent/proposed 5th defendant is subject to the outcome of the analysis adduced trial in the suit. He cannot claim possession as of right.

67. As between the 5th respondent/proposed 5th defendant and the plaintiff, the loss that would be suffered by the plaintiff, if he succeeds in the suit, and finds that there is no property available to be claimed, far outweighs the loss that would be suffered by the 5th respondent/proposed 5th defendant, if he is asked to await the outcome of the trial. The property would still be available. The 5th respondent/proposed 5th defendant has paid inadequate consideration probably to act as a buffer in the future. At any rate, the recitals in the Sale Deed give him a right of action for indemnity against the 1st defendant. He is protected to that extent.

68. The charge that police had played a major role in facilitating possession by the plaintiff, is to be an issue to be determined after evidence, however, only if the parties feel that it is to be decided.

69. Possession, as a fact, has to be decided only on the basis of evidence.

70. Prima facie, the plaintiff has produced agreements between himself and a security service agency to show that he had control over the suit property. He has produced photographs. The evidence has to be scrutinized, but at this stage, while deciding grant or denial of interim

<https://hcservices.ecourts.gov.in/hcservices/> swings the pendulum to his side. The 1st

defendant has voluntarily abandoned ownership and possession. To reiterate, the plaintiff stands on a surer footing than the 5th respondent/proposed 5th defendant, who has obviously purchased the property aware of the risks inherent in it. One of the risks is possession, and having voluntarily entered into an ongoing litigation, he has to wait till the litigation ends.

71. Learned senior counsel for the 1st defendant stated that the Court should step in and restore possession to the 1st defendant, since the plaintiff is charged with taking possession with the help of the police.

72. The 1st defendant has voluntarily abandoned ownership and possession. Whether the plaintiff took possession with the help of the police is a matter to be decided on analysis of evidence adduced. I am afraid that all parties must await trial to be concluded.

73. It is admitted by the Defendants, including the 5th Respondent/ 5th Defendant that the Plaintiff is today in possession. If restitution is to be ordered since it is alleged that he had obtained possession surreptitiously, restitution cannot be granted to the 1st Defendant since he had voluntarily abandoned the suit property by conveying the same to the 5th Respondent/ proposed 5th Defendant. As already held, the 5th Respondent/ proposed 5th Defendant is a speculative purchaser. He cannot be granted possession

at this stage of the proceedings when the title of the property is an issue to be determined between the Plaintiff and the 1st Defendant. It is also seen that the Plaintiff has himself claimed that he is employed in the US from the year 2000. Since the parties to the litigation have to be individually considered, I hold that in the interest of justice, the possession of the entire suit property has to be handed over to a Commissioner, who can retain possession on behalf of the court till conclusion of trial or final adjudication of the title of the suit property and the expenses of managing the property by the Commissioner must be borne by the Plaintiff.

74. Therefore, Mr.G.Saravanan, retired District Judge, (Cell No.8300144500), is appointed as the Commissioner to retain effective possession of the property by taking possession of the keys of the outer door, all the inner doors and rooms and also provide private security to prevent encroachment and intrusions. The Plaintiff shall pay a remuneration of Rs.30,000/- (Rupees thirty thousand only) per month to the Commissioner and also bear the incidental expenses and charges, like, security charges and payment of electricity charges and property tax charges. The Commissioner shall continue to retain possession till final adjudication of the title of the property. The

Commissioner by 31.10.2017. The possession of the Commissioner has to commence from 1.11.2017

75. This order is also passed in exercise of powers provided under Order 7 Rule 7 of CPC where the court can always grant a relief which it thinks is just. No party can be aggrieved by a Commissioner retaining possession since the said possession shall be only on trust and shall be handed over to the party who succeeds in the litigation. The Plaintiff shall also maintain accounts of the remuneration paid to the Commissioner and the amounts paid to the security agencies and the statutory taxes paid, and which shall be appropriately considered at the time of final adjudication of the suit.

76. With the above observations, O.A. No. 712 of 2017 is closed. However, any party to the litigation may approach the court for any further orders if deemed necessary. No costs.

sd/-C.V.K.J

WEB COPY

20.10.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/28.11.2017

COURT OFFICER

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