

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 19th DAY OF JULY 2017

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

A.2128 OF 2017

And

O.A. No.451 of 2017

in

C.S. No.399 of 2009

C.P.Radhakrishnan,
S/o.C.Parameswaran Asari,
Proprietor-Ambal Electricals,
No.100/231, T.T.K.Road,
Alwarpet, Chennai-18.

Residence at
No.4/16, Alwarpet 2nd Street,
Alwarpet,
Chennai-600 018.

... Applicant/Plaintiff

-Versus-

1. A.Vijayalakshmi, (Deceased)
W/o.Late Vishnumoorthy,
2. A.Meerabai,
D/o.Late Vishnumoorthy,
3. A.Nalini Bai,
D/o.Late Vishnumoorthy,
4. A.Sarvabouma,
D/o.Late Vishnumoorthy,
1 to 4 are at No.100/231,
T.T.K.Road, Alwarpet,

Chennai-18.

... Respondents/Defendants

O.A.No.451 of 2017

Original Application praying that this Hon'ble Court be
pleased to grant Interim injunction retraining respondents
2 to 4 their men, agents, servants, subordinate legal
representatives assigns or any body from alienating the

property or causing any kind of encumbrance in respect of the suit scheduled property in any manner whatsoever pending disposal of the main suit in C.S.No.399/2009 on the file of this Hon'ble Court by the Applicant/Plaintiff.

A.NO.2128 OF 2017:

Application praying that this Hon'ble Court be pleased TO PERMISSION TO FILE THE SAID ADDITIONAL DOCUMENTS 1 TO 7 ABOVE SUIT on the file of this Hon'ble Court by the Applicant/Plaintiff.

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

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This application is filed seeking permission of this Court to file additional documents during trial. This application has been filed by the plaintiff in the suit. The documents now sought to be filed are letters, return covers, legal notices and affidavit. Even though, in the description of the Judges summon, it has been mentioned that the copies were already marked as exhibits in RCOP proceedings and the documents are not filed at the time of filing the suit, since, this application is filed to receive the additional documents the same can be received subject to proof and relevancy and also subject to the objections, if any, made by the other side and the same shall be decided at the time of final disposal of the suit. Hence, this application is allowed.

2. Registry is directed to post the suit before the learned Additional Master-III on 27.07.2017 for recording of evidences on the side of the plaintiff and to continue the same on day today basis. The learned Master shall complete the recording of evidence. If adjournments are sought, three working days may be granted as adjournment between any two adjournments. After recording of evidence, post the suit before this Court.

A.No.451 of 2017

This application is filed by the applicant/plaintiff to grant interim injunction restraining the respondents 2 to 4 and their agents from alienating the suit property or causing any encumbrance in respect of the suit schedule property in any manner pending disposal of the suit.

2. It is the case of the applicant/plaintiff that he had entered into an agreement of sale and subsequent to the agreement, the suit property has been purchased.

3. The learned counsel for the applicant/plaintiff submitted that if any encumbrance are made and the construction of the property is altered, thereafter, on disposal of the suit, if any specific performance is granted the applicant/plaintiff may be left with a property which is altered from which he entered into agreement of

sale. At that time, this application was moved, this Court by an order dated 26.04.2017 has observed the following:-

" The learned counsel for the applicant submits that the respondents are attempting to alienate the suit property.

The suit is for specific performance. Even, if any alienation is made it will hit by lis pendens.

Status quo ante is to be maintained till 07.07.2017 "

4. The learned counsel for the respondent is also present. Accordingly, the learned counsel stated that the present applicant was originally a tenant and thereafter Rent Control proceedings for demolition and reconstruction was initiated. In the said proceedings, the respondent 2 to 4 herein had stated that they would not alienate the property. Consequent to the earlier order of this Court R2 to R4 cannot alienate the property pending disposal of the suit. There is yet another issue with respect to creating encumbrance. This has been pointed out and reiterated by the learned counsel for the applicant that encumbrance should not be permitted.

5. With respect to alienation of the suit property, Section 52 of the Transfer of Property Act, prohibits any party to the litigation from alienating or dealing with the

property, in any manner whatsoever, without the leave of the Court. The said provision is reiterated and it is binding on the parties to the suit. Property has to be retained, till the disposal of the suit. Consequently, even respondents 2 to 4 are restrained from alienating the property. If they create encumbrance in the nature of mortgaging the property, they have to inform the Court prior to mortgage, that they are mortgaging the property and give the details of the mortgage.

6. With such observation this application is closed.

Sd/-C.V.K.j

19.07.2017

//Certified to be a true copy//

Dated this the th day of 2017.

EM/02.08.2017

COURT OFFICER

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