

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 24TH DAY OF MARCH 2017

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

A.No.293 of 2017
in
C.S.No.322 of 2016

C.S.No.322 of 2016

T.Ramachandran,
S/o.Late I.Thondaradipodi,
15/7 Nattu Muthu Street,
v.Teynampet, Chennai-18.

...Plaintiff

Vs

1.L.Sukumar,
S/o.Late L.Munusamy,
New No.6, Old No.22,
Srinivasa Pillai Street,
Seven Wells, Chennai 600 001.

2.N.Adhimoolam,
S/o.Narayanan,
24 A Olakalapadi,
Kolamanzanur Olakalapadi,
Thiruvannamalai-606 707.

3.T.Jaganathan,
S/o.Late I.Thondaradipodi,
15/7 Nattu Muthu Street,
v.Teynampet, Chennai-18.

4.The Sub Registrar,
Periyamet,
Chennai-600 003.

5.The Sub Registrar,
Sowcarpet,
12, Davidson Street,
Broadway, Chennai-600 001.

...defendants

A.No.293 of 2017

T.Ramachandran,
S/o.Late I.Thondaradipodi,
15/7 Nattu Muthu Street,
v.Teynampet, Chennai-18.

...Applicant/Plaintiff

-Vs-

L.Sukumar,
S/o.Late L.Munusamy,
New No.6, Old No.22,
Srinivasa Pillai Street,
Seven Wells, Chennai 600 001.

...Respondent/1st Defendant

Application praying that this Hon'ble Court be pleased to an order permitting the Applicant/Plaintiff to fence and to protect the suit property at Old No.7, New No.11 and Old No.8, New No.13, Samy Reddy Street, Egmore, Chennai-600 008 which is morefully described in the schedule till the disposal of the suit be not passed.

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

Pending suit filed for declaration declaring the sale deed dated 27.12.2013 as null and void, mandatory injunction and for consequential permanent injunction, the plaintiff in this application seeks permission to fence and protect the suit property.

2. The case of the applicant is that he became owner of the property by virtue of partition deed dated 07.10.2008, registered as Document No.2133 of 2008 in SRO, Periamet. He did not execute a Power of Attorney, dated 23.10.2009, but his brother Jaganathan, taking advantage of his depressed state of mind, colluded with other defendants and created the Power of Attorney and based on the Power of Attorney, the second defendant sold the property to the

first defendant on 27.12.2013. Since the Power of Attorney forged and fabricated, the first defendant cannot claim any title over the suit property.

3. Mr.K.V.Ananthakrushnan, learned counsel for the applicant would submit that the applicant had been in possession and enjoyment of the property, but taking advantage of the sale deed executed based on a forged Power of Attorney, the first defendant filed a suit in O.S.No.3757 of 2015, on the file of VI Assistant City Civil Court, Chennai. He also filed two applications, one for interim injunction and another application for permission to demolish the building. The learned trial Judge granted an order of interim injunction and in another application directed the first defendant to maintain the property as it is. Challenging the orders, both the plaintiff and the first defendant herein preferred two Civil Miscellaneous Appeals. During pendency of appeals, the first defendant herein attempted to demolish the building.

4. The learned counsel would further submit that in O.A.No.458 of 2016, this Court directed the first defendant to maintain status-quo. But, in violation of the order, he demolished the building. It is further contended that the first defendant cannot claim any title over the property, unless, he succeeds in his suit and the property should be protected by erecting fencing.

5. Per contra Mr.Sathish Parasaran, learned Senior Counsel for the respondent would submit that the applicant joining with his brother, the third defendant-Jaganathan is attempting to cheat the first defendant. It is further submitted that the first defendant purchased the suit property for a sale consideration of Rs.2,25,00,000/- [Rupees Two Crores and Twenty Five Lakhs only], which were paid through cheques and cash and unless the sale deed is

set-aside in the suit, the applicant herein cannot claim any right over the property.

6. It is further submitted that the respondent herein has not violated the order of this Court, since the demolition was made prior to the order of status-quo; that the applicant is trying to ride on in two horses. The applicant has stated that when he was in depressed mind, the Power of Attorney was executed and takes a u-turn, contending that his signature has been forged in the Power of Attorney and that in the application filed in O.S.No.3757 of 2015, the learned Judge has granted interim injunction in favour of the first respondent, holding that he has been in possession and enjoyment of the property. Challenging the finding, the applicant has filed an appeal and the appeal is still pending. By filing this application, the applicant attempts to take possession from the first respondent.

7. Heard the learned counsel on either side and perused the records.

8. It is not in dispute that in the suit O.S.N.3757 of 2015, the learned VI Assistant Judge, City Civil Court, has granted interim injunction in favour of the respondent/first defendant by observing that he has been in possession and enjoyment of the property. Admittedly, the appeal preferred against the order is still pending. Further, the respondent / first defendant claims that he has paid Rs.2,25,00,000/- [Rupees Two Crores and Twenty Five Lakhs only] towards sale consideration by way of cheques and cash and has been in possession of the property. It is also seen that in O.A.No.458 of 2016, which was filed for interim injunction, this Court on 27.06.2016, granted an order of status-quo.

9. In view of the above facts, at this juncture, the applicant cannot be permitted to fence the suit property. I do not find any merit in the application. In fine, the application is dismissed.

Sd/.M.K.K.S.J
24.03.2017

//Certified to be a true copy//

Dated this the day of 2017.

MD/27.03.2017

COURT OFFICER

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