

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.259 of 2017
and
CMP No.16993 of 2017

Dr.D.Desikacharulu (Deceased)

1.Dr.D.Jayashree
2.D.SriKrishna
3.D.Sri Ranga ... Appellants/Plaintiffs

vs.

1.Raja Holdings Financiers and Merchant

2.Raja (alias) Venugopal

3.Velappan

4.Narendra Lohia

5.G.Kalpana

6.Karnataka Bank Limited
Rep. by its Chief Manager,
No.68, 2nd Main Road,
United India Colony
Kodambakkam, Chennai - 600 024.

7.Ravi

8.Venkataramani

9.B.R.Sreekanth ... Respondents/Defendants

Original Side Appeal filed under Order 36 Rule 11 of
O.S.Rules r/w Clause 15 of the Letters Patent to set aside the
order dated 07.09.2017 passed in O.A.No.473 of 2014 in
C.S.No.395 of 2014.

O.A.No.473 of 2014 : Original Application praying that this
Hon'ble Court be pleased to grant an order of temporary
injunction restraining the 1st and 5th Respondents or their
men from interfering with the Applicants right to negotiate,

deal, sell, enter into sale agreements and execute sale deeds with any third party as an owner in respect of the Applicants suit property, pending disposal of the above suit.

For Appellants : Mr.N.Nithyaesh Natraj for
M/s.Nithyaesh & Vaibhav

For Respondents : Mr.ARL.Sundaresan
Senior Counsel for
Mr.R.Thiagarajan for RR 1, 2 and 5

J U D G M E N T

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. Issue notice. Mr.R.Thiagarajan, accepts notice on behalf of respondent No.1, 2 and 5.

2. Mr.N.Nithyaesh Natraj, who appears for the appellants, and Mr.AR.L.Sundaresan, learned Senior Advocate, instructed by Mr.R.Thiagarajan, who appears for respondent No.1, 2 and 5, submit that the appeal can be taken up for hearing and final disposal.

3. Learned counsels for the parties before us, submit that, since, they are the contesting parties, notice need not be issued to the remaining respondents.

3.1. The said statement of the learned counsels is taken on record.

3.2. Accordingly, the appeal is taken up for hearing and disposal.

4. However, after some arguments, the learned counsels for the parties, i.e., the appellants and the contesting respondents i.e., respondent Nos.1, 2 and 5, submitted that the captioned appeal can be disposed of on the following agreed terms:-

i) The appellants will deposit a sum of Rs.15 Crores (Rupees Fifteen Crores only), towards principal, on or before 01.12.2017, to the credit of the suit.

ii) The appellants will also deposit a further sum of Rs.7 Crores (Rupees Seven Crores only), towards interest on or before 01.01.2018, to the credit of the suit.

iii) The appellants will not alienate or create any third party interest in the suit property, pending disposal of the suit.

iv) In case, the appellants fail to discharge the obligations reflected in Clauses (i) & (ii) above, respondent Nos.1, 2 and 5, will have the right to sell the suit property. This, though, will not prevent the appellants from redeeming the mortgage.

v) If the appellants fulfill the obligations reflected in Clauses (i) and (ii) above, respondent Nos.1,2 and 5 will not sell, transfer or alienate or, create third party interest in the suit property, pending disposal of the suit.

4.1. The said terms of agreement are taken on record by us.

5. To be noted, the suit property stand mortgaged with respondents Nos.1, 2 and 5. Given the precarious position, the parties are put in financially, the suit, according to us, needs to be expedited. The suit was instituted in 2014. It is still at the stage of completion of proceedings.

6. Accordingly, we direct that those defendant(s) in the suit, who have not filed their written statement(s) will do the needful, within a period of two weeks from today. Replication, if any, need be filed within 10 days thereafter.

7. The matter will be placed before the learned single Judge on 24.10.2017 for framing of issues. Upon issues being framed, if, the parties agree, the learned single Judge will refer the matter to the learned Master for recording of evidence.

7.1 The learned Master will endeavour to have the evidence recorded within six (6) weeks. The learned counsels for parties in the suit will not apply for any adjournments before the learned Master, unless a grave and unavoidable situation emerges. In case, an adjournment is to be granted, it will be granted for the shortest possible time.

7.2 The learned single Judge will endeavour to conclude the suit on or before 31.01.2018.

8. The appellants, in the meanwhile, will have the right to interface with prospective buyers and remain in possession, subject to them discharging their obligations as provided in clause (i) and (ii) above.

9. We make it clear that the aforesaid agreement arrived at between the appellants and the contesting parties is a proteam measure, which in no way would prejudice the rights and contentions of the parties in the pending suit.

10. In case, moneys are deposited by the appellants, in terms of clause (i) and (ii) above, the Registry will invest the same in an interest bearing fixed deposit created with a nationalised bank.

11. To be noted, the appellant No.3 is present in Court and represented by his Counsel, Mr.Nithyaesh Natraj

11.1. Further more, we may also note that the respondent No.2, who is the partner of the respondent No.1, is also, present in Court.

11.2 The learned counsels for the parties have obtained instructions from these individuals insofar as the aforesaid interim arrangement is concerned.

11.3 The parties and their counsels, who are before us, have, accordingly, appended their signatures, to the order sheet in affirmation of agreement arrived at between them.

12. The impugned order of the learned single Judge is modified to the aforesaid extent. The appeal is disposed of, in the aforementioned terms. Resultantly, pending application shall also stand closed. There shall, however, be no order as to costs.

Sd/-
(D.Sri Krishna)
Appellant No.3

Sd/-
(Raja (alias) Venugopal)
Respondent No.2

Sd/-
Counsel for the Appellant

Sd/-
Counsel for the Respondent

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

svki

To

The Sub Assistant Registrar(OS),
High Court, Madras 104.

+1cc to Mr.R.Thiagarajan, Advocate, S.R.No.69766

+2cc's to M/s.Nithyaesh & Vaibhav, Advocate,
S.R.No.75921 (27.10.2017)

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RSK(CO)
CA(23/10/2017)