

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

O.S.A.No.140 of 2013
and M.P.No.1 of 2013

P.T. Rajesh

appellant

vs

1. Samsundar Raj

2. The Official Liquidator,
First Line Beach Road,
Chennai – 600 001
(Liquidator of M/s Perfect Benefit Fund Limited)

Respondents

Appeal filed Under Order XXXVI Rule 9 of the Original Side Rules
read with Clause 15 of Letters Patent against the order dated
26.04.2012 passed in C.A.No.617 of 2011 in C.P.No.126 of 2008.

For Appellants : Mr.Prabhu Mukunth Arunkumar

For R.1 : Mr.J. Nithianandam

For R.2 : Mr.S.R. Sundar

JUDGMENT

[Judgment of the court was delivered by **S.NAGAMUTHU, J.**]

This Original Side Appeal has been filed challenging the order of the learned Single Judge made in Company Application No.617 of 2011 in Company petition No.126 of 2008.

2. Company Petition No.126 of 2008 is for liquidation of the Company known as M/s Perfect Benefit Fund Limited. In Company Application No.617 of 2011, the first respondent herein, sought for de-sealing the property concerned, which was sealed by Liquidator during liquidation proceedings. The first respondent claimed that he purchased flat "C" from the promoter and he was all along possession of the same. But the petitioner claimed that he purchased flat "F" much prior to the alleged purchase made by the first respondent. Thus, according to the petitioner, the first respondent has got no right whatsoever as he was never in possession of the property.

3. The learned Single Judge, on going through the records, found that there was a dispute in respect of the identity of the

property. Though the appellant claims that he is the owner of the Flat "F" and though the first respondent claims that he is the owner of Flat "C", there is no clear indication to identify these properties and instead, both the parties identified one and the same property, one claiming as Flat "F" and another claiming as Flat "C".

4. From all these facts the learned Single Judge found the issues in favour of the first respondent and ordered for de-sealing the flat and for handing over the same to the first respondent. Aggrieved over the same, the appellant is before this Court.

5. It is brought to our notice that one N. Gomathy filed Original Side Appeals in OSA Nos.284 to 286 of 2012 before this Court, challenging the same common order, which is impugned in this appeal also. The said Gomathy also claimed the same right over Flat "F". According to her, she had entered into an agreement to purchase Flat "F" from the Company. The First Bench of this Court, by order dated 29.08.2016 has passed the following order:

The undisputed position is that the property in question stands de-sealed and is in possession of the first respondent

with an interdict against him from dealing with the property. The appellant is claiming right in the property and thus, the learned Company Judge by the impugned order has rightly observed that the parties will have to work out their remedies by civil suit. This position is not disputed by the learned counsel for the appellant. The submission of the learned counsel for the appellant is that the de-sealing has been granted in a subsequent application, even though earlier an application claiming relief in respect of the property had been dismissed.

2. In our view, the fact remains that now the property has been de-sealed and is in possession of the first respondent for quite some time. If the appellant wants to assert any civil rights in respect of the property, she is undisputedly required to file the appropriate suit proceedings and therefore, nothing survives in these appeals.

3. At request of learned counsel for the appellant, we make it clear that the interdict against the property would

continue for a period of one (1) month from today without the same having in any manner an effect on the adjudication which has to take place in the suit or any interlocutory application in the suit.

4.Original Side Appeals stand dismissed in the aforesaid terms. No costs. Consequently, connected M.Ps. also stand dismissed.

6. Since as against the same order, which was challenged before the other Division Bench, the Division Bench has taken the view that the dispute is purely of civil in nature and parties have to work out their remedy before the Civil Court. We cannot take a different view and pass a contrary order. We fall in line with the same order.

7. We are also of the view that the dispute is of civil nature, more particularly, in respect of the identity of the flats, as to "F" or "C". It is for the parties to work out their remedy before the appropriate Forum. In such view of the matter, we find no merit at all in this appeal.

8. The learned counsel for the appellant pointed out that the

learned Single Judge granted three months time for the parties to work out the remedy and further directed that until then, the property shall not be encumbered in any manner by the respondents. The learned counsel for the appellant submitted that some more time may be granted for the appellant to approach the civil Court. We find justification in the said submission. So, we are inclined to grant some time.

9. In the result, the appeal is dismissed. The order of the learned Single is confirmed. However, time granted by the learned Single Judge for the appellant to work out his remedy before the Civil Court is extended by two months from today and in the meanwhile, the property shall not be encumbered in any manner by the respondents. No costs.

(S.N.J.,) (N.A.N.J.,)
04-01-2017

Index : Yes/no
Internet : Yes/no

sr

To

The Sub Assistant Registrar,
(Original Side),

High Court, Chennai.

S.NAGAMUTHU,J.
And
N. AUTHINATHAN,J.,

sr

O.S.A No.140 of 2013

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