

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N. SESHASAYEE

CMA.No.1223 of 2017

and

CMP.Nos.6201 of 2017 and 1995 of 2018

M. Murugammal

.. Appellant

Vs.

1. C. Sathyamurthy

2. R. Muthukumar

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (d) of CPC against the fair and decreetal order dated 21.10.2016 passed in I.A. No.118 of 2015 in O.S. No.42 of 2015 on the file of the Additional District Court, Hosur.

For Appellant

: Mr. P. Mani

For Respondents

: Mr. C. Ravichandran for R1

Mr.M.R.Radhakrishnan for R2

JUDGMENT

The appellant herein is the 1st defendant-vendor in O.S.No.42 of 2015 on the file of the Additional District Court, Hosur, a suit for specific performance filed by the first respondent. The first respondent has filed I.A. No.118 of 2015, seeking an order of ad-interim injunction against the appellant herein restraining her from alienating the property pendente lite. This is the order, which is under challenge.

2. The learned counsel for the appellant submitted that an agreement to sell does not create any interest over the property and that the same could not be used to freeze his power of alienation which the appellant has over the property. However, he added that to the extent he is made aware, the appellant has no intention to alienate the property.

3. Per contra, learned counsel for the first respondent submitted that after issuance of suit notice, the appellant had created an encumbrance over the suit property by mortgaging the property. Attitude such as this would be detrimental to the

interest of the first respondent since the suit for specific performance is already instituted. Secondly, if alienation is not prevented, it may throw open a situation where third party interest could be created which may unnecessarily complicate what in essence is a straight forward litigation.

4. If the contention of the appellant is scanned carefully it discloses two conflicting aspects: First, it seeks justification on the aspect that an agreement to sell does not create any interest in an immovable property, that the right of alienation is incidental to ownership, and necessarily, a purchaser under a mere agreement of sale is not clothed with the right to freeze an owner's right of alienation or right to encumber the property. And, the second, a concession of sort that he had no present intention to alienate the property. This court is concerned with the former, even though the latter part operates as a self-inflicted injunction.

5. The subject matter of a suit for specific performance is the contract between the parties, and this has to be distinguished from the subject matter of the suit which the contract represents. It is hence, Courts generally refrain from deciding the title of the vendor over the subject matter of the litigation except in those situations falling under Sec.12 of the Specific Relief Act, but focuses on the right of the parties to seek specific enforcement of the the contract. Here, the contentions of the appellant/defendant/vendor in this case is founded on her right or title over the subject matter of the contract, but what the first respondent/plaintiff/purchaser claims is the right that the contract has given him. There are, therefore two rights, one which the owner of the property has over the subject matter of the contract namely the immovable property, and the other which the plaintiff has in the very litigation which his contract supports. These two rights are distinct and they need not reside in the same person always.

6.1 A plaintiff's right to enforce a contract for the sale immovable property, though may not immediately affect the title to the same, yet it does create a right to sue, whose consequence grants the plaintiff a right to divest the title from the defendant. This interest of the plaintiff in the suit is therefore substantial, and hence it is necessary for the Court to appreciate if the plaintiff has a strong prima facie case which the contract can support.

6.2 Secondly, if this interest of the plaintiff in the suit is not recognised, then it grants a license to the defendant to commit breach of contract at will during the pendency of the suit. This will be dangerous, as it would lead to the creation of pendente lite third party rights which in turn would expose bonafide and innocent purchasers to the perils of the

litigation to which they themselves are not parties. Now, it transcends beyond the right of the plaintiff and operate in the domain where the Courts will be anxious to preserve a certain status quo for the conducive administration of justice. It is therefore, necessary to ensure that the Courts are not presented with a fait accompli that the contract has already been breached even when the suit is pending decision, and that property has been sold to third parties. In circumstances such as these, the balance of convenience which the Court is required to weigh before granting the order of interim injunction must aim to ensure that the balance between the conflicting rights on which parties litigate is not disturbed vastly during the duration of the litigation. See Zebunnisa Begum Vs Seven Hills Real Estate [2008(4) CTC 126] [See Mrs. Vasundara Bhalla and others Vs Haridas Bhagat & Company, (AIR 1995 Madras 172), where this Court has decided to the contra, but that case was set to a different setting where the thrust was on plaintiffs claim of possession on Sec.53-A of the Transfer of Property Act.

7. If the submissions made in this case are spread on a plane of above discussion, this Court finds that the facts necessary to pass an order of interim injunction of the kind now impugned are loaded heavily against the appellant. To conclude, this appeal is liable to be dismissed. However, inasmuch as the suit itself is ready for the commencement of trial, this Court directs the trial court to dispose of this matter within four months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

avr

To:

1. The Additional District Court,
Hosur.

+1 CC to Mr.P. Mani, Advocate sr 51506.

+1 CC to Dr.C. Ravichandran, Advocate sr 50857.

+1 CC to Mr.M.R. Radhakrishnan, Advocate sr 50858.

CMA.No.1223 of 2017

VBA (CO)

SP(04/10/2018)