

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.165 of 2018
and
C.M.P.Nos.2031 and 2032 of 2018

Mr.S.Dorairaj .. Appellant/Petitioner/
4th Respondent

Vs.

1.Mr.A.Manova
2.V.John Wesley ... Respondents/Respondents/
Plaintiff

(R2 is suo-motu impleaded
vide court order dated 02.03.18
made in C.M.A.No.165/2018(NKKJ))

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1
(r) of C.P.C., against the Fair and Decretal orders passed in
I.A.No.194 of 2017 in O.S.No.2 of 2012 by the Additional
District Judge-II, Thiruvallur at Poonamallee on 05.01.2018 by
dismissing the above I.A.

For Appellant : Mr.C.Umashankar

For Respondents : Mr.N.V.N.Margandeyan [For R1]
Mr.M.Saravana Kumar [For R2]

JUDGMENT

There exists a property measuring 7,085 sq.ft., in
S.F.No:14/19, New Survey No.14/19A1 and 14/19-2A in No.87 of
Mannur Village, which originally belonged to a certain
V.Christiebel and her brother V.John Wesley. They executed a
registered power of attorney in favour of one J.Bilal Ahamed.
Mr.J.Bilal Ahamed, in exercise of his power obtained the said
Power of Attorney said to have been entered into two successive
sale agreements whose details are as below:

a) An unregistered sale agreement dated 10.02.2011 in
favour of S.Dorairaj, the fourth defendant and appellant
herein.

b) A registered sale agreement dated 02.03.2011 in favour of one A.Manova, the plaintiff in the suit and the first respondent here.

1.2. In the following month, to be precise on 08.04.2011, V.Christiebel and her brother V.John Wesley cancelled the Power of Attorney that they had executed in favour of Mr.J.Bilal Ahamed. On the same day, they executed another deed of Power of Attorney, this time constituting a certain P.Sathish, said to be the nephew of S.Dorairaj, as their Power of Attorney. Mr.P.Sathish would now execute a registered sale agreement in favour of S.Dorairaj.

1.3. Within few days thereafter, V.Christiebel would execute a release deed in favour of her brother V.John Wesley, relinquishing her half right over the aforesaid property, but only to cancel it later on 11.12.2012.

1.4. Between the dates of this release deed and its cancellation, V.John Wesley himself had executed four sale deeds directly. The fifth one was executed by Sathish, the 2nd power of attorney holder of Christiebel and John Wesley. After the execution of these sale deeds, John Wesley would cancel the Power of Attorney granted to Sathish, and would now constitute another A.S.Mathivanan as his power of attorney for a piece of land measuring 1,260 sq.ft., alone.

1.5. This is the setting in which Manova, who had obtained the registered sale agreement in his favour from the first power of attorney of the vendors, namely Mr.J.Bilal Ahamed, instituted a suit for specific performance. In that suit, V.Christiebel, V.John Wesley and their power of attorney Mr.J.Bilal Ahamed were respectively arrayed as defendants 1 to 3. Dorairaj who had obtained as many as five sale deeds covering substantial extent of the entire property, was arrayed as 4th defendant.

1.6. Some five years after the suit was laid, Dorairaj moved the trial court with an application for injunction against Manova that the former's possession of the suit property shall not be disturbed. The trial court dismissed this application, essentially on the ground that the application itself was filed some five years after the suit was laid and the suit is also ripe for trial. This order is under challenge in this appeal.

2.1. The learned counsel for the appellant would submit that :

- He has validly purchased the property under five sale deeds and has got right to immediate possession and in the context of the suit for specific performance, the plaintiff's right to possession is depend upon the outcome of the suit he has laid.

- The first relief in the suit itself is one for delivery of possession which implies that A.Manova admits that he is not in possession.
- That too his possession has come only at the time when Dorairaj filed his petition.

2.2. It is not always mandatory that when a suit is laid with a threat to ones right, it must immediately follow the suit, since the party is required to approach the Court for remedy only when threat perception on his right is felt.

3. The learned counsel for the 1st respondent/plaintiff in the suit is that :

- 1) V.John Wesley himself had preferred a complaint on 02.04.2013 before the Police alleging that Dorairaj had coerced him to execute the sale deed.
- 2) The suit property comprises of land and building and that the buildings are in actual physical occupation of the tenants thereof. While some of the tenants pay the monthly rent to the plaintiff, others have approached the Rent Controller for depositing the rent under Section 8 of the Rent Control Act. This would imply that Dorairaj is not in actual physical possession in order he could justify a threat perception over on his right.

4. Reacting to the said submission of the learned counsel for the 1st respondent, the learned counsel for the appellant would submit that the plaintiff has since cancelled the sale agreement in his favour, that he has obtained the advance amount he had paid and that a receipt too has been executed by him and the same is available on the file of the trial court. This fact was strongly refuted by the learned counsel for the 1st respondent on the ground that the said receipt is a piece of fabrication.

5. The facts narrated on either side to which are concurred substantially by both would disclose that this property display a strong propensity for trouble-shooting: One property, one set of original owners, three Power of Attorneys, two agreements in favour of Dorairaj and one agreement in favour of A.Manova, followed by five sale deeds which the original owners appear to dispute them. Each one of these facts may have to be considered only during trial of the case. Even drawing a strong prima-facie case for considering the prayer of the appellant for grant of an order of interim injunction at this stage, is like a deriving of complex formula in physics. Therefore, this Court decides not to pass any orders on merit but directs that status quo be preserved and further directs that the trial court expedited the trial and complete the process within a period of three months from the date of receipt of a copy of this order.

6. With the above direction, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssn

To:
The Additional District Judge-II,
Thiruvallur at Poonamallee.

+1 cc to Mr.N.V.N.Margendayan Advocate sr35291

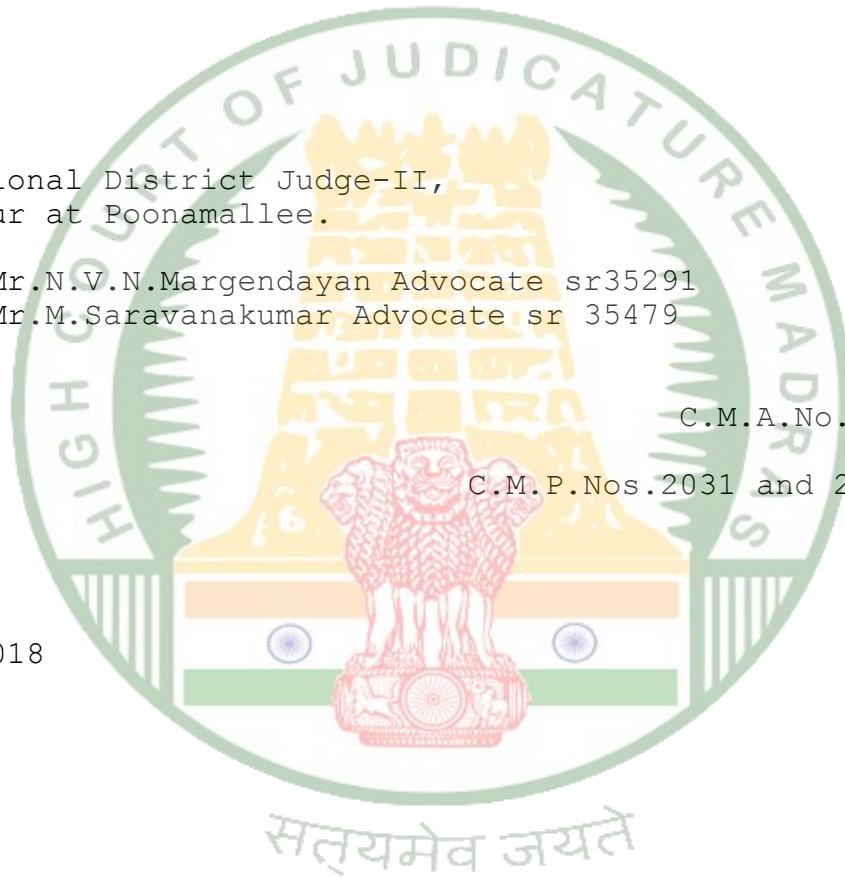
+1 cc to Mr.M.Saravanakumar Advocate sr 35479

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