

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 3RD DAY OF APRIL 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.A. No.793 of 2017

in

C.S. No.603 of 2017

Mrs.HEMA BINDHU,
Wife of Mr.G.Mohan,
No.124 A,
Pillaiyar Koil Street,
Jafferkhanpet,
Chennai - 600 083.

.. Plaintiff / Applicant

Vs.

1.Mrs.P.MALA,
Wife of late Ponnan,

2.P.MANJULA,
Daughter of late Ponnan,

3.P.RANJITHA,
Daughter of late Ponnan,
all are residing at 29/9,
Pillaiyar Koil Street,
Jafferkhanpet,
Chennai - 600 083.

.. Defendants / Respondents

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the Respondents / defendants from any way selling, conveying, mortgaging or creating

charge over the schedule mentioned property to any third parties till the disposal of the above suit.

This Original Application coming on this day before this court for hearing, the court made the following order:

This application has been filed by the Plaintiff, seeking interim injunction, restraining the Respondents/ Defendants from in any manner, selling, conveying, mortgaging or creating charge over the suit property to any third party.

2. The suit property is a house and ground premises at Plot No.25, Ramasamy Street, Jaffer Khanpet, Kodambakkam Village, Chennai-83, measuring 600 sq.ft. (555 sq.ft) out of 2700 sq.ft. with a cement sheet building with joint right in the well.

3. The suit had been filed for a direction against the Defendants to execute the sale deed in favour of the Plaintiff in respect of the above said suit property pursuant to the sale agreement dated, 9.2.2013 and for other reliefs.

4. The Plaintiff, Hema Bindhu, had filed the suit against, P.Mala, wife of late Ponnan, and her two daughters, P.Manjula and P.Ranjitha. It has been stated that the suit property was the subject matter of dispute between the 1st Defendant and her brothers, R.Kabali and R.Velu. The disputes also spilled over to the Police Station. At that time, the husband of the Plaintiff helped the 1st Defendant to resolve the problems with her brothers. It has been further stated that there was also a Will, dated 12.12.1995, registered as Document No. 227 of 1995, in the Office of the Sub Registrar, Kodambakkam, executed by one Panchali Ammal and the husband of the Plaintiff was requested to pay expenses for getting

Letters of Administration from this Court. He paid stamp duty and other expenses from his pocket. Letters of Administration was granted in OP.No.340 of 2015. Thereafter, the Defendants also sought assistance to repay a family loan and some urgent hand loan. They further assured that they are the absolute owners of the suit property. They offered to sell the suit property to the Plaintiff for a total consideration of Rs.45 lakhs. An advance of Rs.60,000/- was paid by cash. An agreement of sale was entered into on 9.2.2013. It has been further stated that the Defendants sought time to vacate the suit property. The Plaintiff claimed that she was always ready and willing to purchase the property. The Plaintiff also claimed that she is ready to pay the balance sale consideration of Rs.44,40,000/-. Claiming that the Defendants are refusing to execute the sale deed in spite of exchange of notices, the suit has been filed, seeking the above reliefs.

5. In the suit, the Plaintiff has filed the above application, seeking interim injunction, restraining the Respondents/ Defendants from dealing with the property, as stated above.

6. The Defendants had actually filed a caveat and they also filed a counter. In the counter affidavit, sworn by the 2nd Defendant on behalf of the other Defendants, the fact that the agreement of sale was entered into by them was denied. It was claimed that the agreement was never signed. It has been claimed that the agreement of sale was fraudulently prepared. It has been further stated that the husband of the Plaintiff, Mohan took the 1st Defendant to the Office of the Advocate, where signatures in various blank papers were obtained to prepare for Letters of Administration.

Since the matter was dragged on, they had sent a registered letter to the Advocates and sought a copy of the order. A letter was also addressed, asking them to give change of vakalat. However, the Advocates refused to give change of vakalat or the copy of the order, regarding probate of the Will. Thereafter, the deponent of the affidavit filed an A.No.4648 of 2017 in OP.No.340 of 2015, to get the copy of the order. Permission was granted by the Court. It was at that time that a notice was suddenly received as if an agreement of sale had been entered into on 9.2.2013. A reply was sent on 21.2.2017. A complaint was also lodged before the R10 Manager Nagar Police Station, on 30.1.2017. Since the Police did not take any action, the 1st Defendant filed Cr.OP.No.18112 of 2017 for a direction to register a case. This Court had also ordered a direction by order dated 4.9.2017 against the said Police Station to register a First Information Report. After receiving the notice from the Plaintiff, a caveat had also been filed. A FIR had also been filed against the Plaintiff and her husband in Cr.No.183 of 2017 under Sections 465, 468, 471 and 506(i) of IPC and investigation is under progress. Once again, it was denied that the agreement of sale was signed by the three Defendants. It was, therefore, claimed that the application should be dismissed.

7. This Court heard the arguments of Mr. G.Perumal the learned counsel for the Applicant/ Plaintiff and Mr.C.Deivasigamani, the learned counsel for the Defendants.

8. The Plaintiff has filed an additional affidavit, wherein it has been stated that the 1st Defendant had executed a settlement deed, dated 12.9.2017, registered as Document No. 2474 of

2017, in the Office of the Sub Registrar, Ashok Nagar, in favour of the 2nd and 3rd Defendants. It had been therefore stated that a judicial notice should also be taken about the same. A copy of the settlement deed was also filed.

9. The learned counsel for the Defendants had also brought to the notice of this Court a copy of the Tamil Nadu Government Gazette Act, 29 of 2012, wherein Section 17 of the Registration Act had been amended and it has been stated that agreements are compulsorily registrable particularly when they relate to agreement for sale.

10. A perusal of the documents filed in Court reveals that the Plaintiff had filed only the xerox copy of the agreement of sale. Admissibility of the document will have to be decided only during the course of trial. But, however, this Court cannot pass any interim orders on the basis of the such agreement of sale. The Plaintiff has not even produced the original for consideration before this Court. It is also seen that the said agreement is not registered. As a matter of fact, the Defendants have very clearly stated that they have never executed any agreement of sale. On the other hand, they have stated that the 1st Defendant had approached the husband of the Plaintiff by name, Mohan for help in obtaining probate of the Will said to have been executed by one Panchali Ammal, dated 12.12.1995 and registered as Document No. 227 of 1995 in the Office of the Sub Registrar, Kodambakkam. Even a recital of the plaint shows that the said Mohan had directly interfered in the affairs of the 1st Defendant's family. He had assisted her to obtain probate. He had thereafter assisted her in obtaining loan. Naturally, he was in a

dominant position as against the Defendants.

11. It is the specific case of the Defendants that the said Mohan had taken the Defendants to the Office of an Advocate, where signatures were obtained in blank papers. The Defendants had also filed a police complaint against the said Mohan and they had also approached this Court and obtained orders to register a First Information Report against the Plaintiff and her husband. This was in Cr.OP.No.18112 of 2017 and this Court had also passed orders on 4.9.2017. Pursuant to the said order, MGR Nagar Police Station had registered a First Information Report in Cr.No.1839 of 2017 under Sections 465, 468, 471 and 506(i) of IPC. When the said agreement itself is under investigation, this Court cannot grant any relief. This would be direct interference affecting the course of criminal investigation.

12. As a matter of fact, the Defendants have consistently denied execution of the agreement of sale. With respect to the additional affidavit, it has to be mentioned that the 1st Defendant was the absolute owner of the property and she had every right to execute a settlement deed in favour of the 2nd and 3rd Defendants, who are her daughters. There is no order of interim injunction, restraining the Defendants from dealing with the property in the aforesaid manner. As a matter of fact, the agreement itself being under a cloud because it is not registered and because it is the subject matter of investigation by the Police, it would be highly inappropriate on the part of this Court to grant any relief based on the said agreement.

13. However, the Plaintiff's rights can always be

adjudicated during the time of trial. It is also seen that the Plaintiff has not sought any alternative relief. But, however, the Plaintiff has to prove the agreement in manner known to law. The agreement will have to stand the test of admissibility, relevancy and proof. In the counter, it has also been stated that one of the attesting witness, who is said to have affixed thumb impression, normally signs in Tamil. All these aspects lead this Court to refrain from passing any orders based on the agreement. I find no force in the arguments advanced on behalf of the Plaintiff.

14. In the result, this application is dismissed. No costs.

Sd./- C.V.K.J.

03.04.2018

//Certified to be true copy//

Dated at Madras this the th day of 2018.

COURT OFFICER (O.S.)

TPY/04.04.2018

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