

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

O.S.A.No.111/2018 & CMP.No.7108/2018

Dr. T.Sivakumar

.. Appellant

Vs

1.Dr.Arunmozhi

2.T.Bhuvaneswari

.. Respondents

Prayer:- Original Side Appeal filed under Order XXXVI Rule 1 O.S.Rules read with Clause 15 of the Letters Patent against the order dated 13.02.2017 in Application No.756/2016 in CS.No.604/2016 on the file of this Court.

Prayer in Appln.No.756 of 2016: Praying to grant as order of interim injunction restraining the 1st respondent, her man, agent or any other person(S) Claiming right through her from and in any manner dispossessing the plaintiff from the suit B-schedule property more fully detailed in the application schedule hereunder pending disposal of the suit.

Prayer in C.S.604 of 2016: Praying to pass a Judgment and decree in favour of the plaintiff and against in defendant;

a) for partition of the suit A-Schedule property into three equal shares and thereby allot one share (1/3rd) to the plaintiff with separate possession;

b) For permanent Injunction restraining the 1st defendant, her man, agents or any other person claiming right through her from and in any manner dispossessing the plaintiff from the suit B-schedule property;

c) for permanent Injunction restraining the 1st defendant, her agent or any other person claiming right through her from and in any manner creating any kind of document of encumbrance or alienation or settlement in respect of the suit A-schedule property;

d) Declare that the Settlement Deed, dated 28.6.2010, vide Doc.No.2247/10 registered with SRO-Anna Nagar as null and void and legally unenforceable.

For Appellant : Mrs.Chitra Sampath, Sr. Counsel
for Mr.T.S.Baskaran

For Respondent : Mr.R.Thiyagarajan

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The plaintiff in CS.No.604/2016 and the applicant in Application No.756/2016 is the appellant herein.

2 The appellant/plaintiff filed CS.No.604/2016 against the respondents 1 and 2 herein, praying for the judgment and decree for partition and separate possession of 1/3rd share in the Suit "A" Schedule Property, bearing Old No.8, New No.29, Anna Nagar East, comprised in Plot No.382, R.S.No.1 [Part] of Mullam Village, Chennai-102 and for permanent injunction, restraining the 1st defendant, her men or agents or any other person claiming right through her from and in any manner dispossessing the appellant/plaintiff from the Suit B-Schedule property and also for permanent injunction, from creating any document of encumbrance over the said Suit A-Schedule property and to declare the registered Settlement Deed dated 28.06.2010 vide Doc.No.2247/2010 as null and void and legally unenforceable.

3 The appellant/plaintiff, pending disposal of the suit, took out an application in Application No.755/2016 seeking for an order of ad-interim injunction restraining the 1st respondent / 1st defendant from creating any kind of encumbrance over the Suit A-Schedule property and Application No.756/2016 praying for an order of ad-interim injunction restraining the 1st respondent / 1st defendant from in any manner dispossessing the appellant/plaintiff from the Suit B-Schedule property.

4 The learned Single Judge, vide impugned order dated 13.02.2017, has dismissed the Application No.756/2016 and challenging the legality of the same, the present Original Side Appeal is filed.

5 It is the claim of the appellant/plaintiff that he is the son of [late] Dr.C.Thirugnanasambandam and the 1st respondent is his sister and the 2nd respondent herein is his mother. The suit property was owned and possessed by his father by way of allotment by the Tamil Nadu Housing Board as a vacant site and thereafter, he has put up a superstructure. The appellant/plaintiff/applicant would further aver that he married one Kalaiselvi, who is also a Doctor in the year 1980 and both of them, owing to their employment, had temporarily shifted their residence and lived away from the Suit A-Schedule property and the 1st respondent is employed as Associate Professor in the Madras Medical College and her husband is the Senior Orthopedic Surgeon in Railway Hospital

at Perambur, Chennai and for convenience to their work place and to assist her parents, the 1st respondent and her husband shifted their residence to Suit A-Schedule property and however, keeping in mind not to give any room for differences of opinion, the parents of the appellant/plaintiff as well as the 1st respondent herein, put the 1st respondent in the Ground Floor and they stayed in the first floor and mezzanine floor so as to enable them to have their son and his family also with them. It is further averred that the appellant/plaintiff's son is also a doctor and is employed in Bedford, London and his daughter who is an Engineering Graduate, is married and settled at Ambattur. During the year 2008, the appellant/plaintiff was cheated by known persons under the pretext of business deals and he had lost several crores and got into the vicious web of "Kandu Vaddi" [Exorbitant Interest] group and could not come out of their clutches, despite discharging principal amount and he faced threats to pay huge interest dues and therefore, the appellant/plaintiff went abroad and now is employed at Muscat in Oman for the past six years and living there as if he is living in exile, leaving his wife Dr.Kalaiselvi in the possession of the Suit B-Schedule property along with his parents. The wife of the appellant/plaintiff also used to attend the civil cases filed against the appellant/plaintiff and she also used to take care of the parents of the appellant/plaintiff.

6 The father of the appellant/plaintiff died intestate on 20.03.2016 and since he could not come from abroad, his son had performed the last rites and taking advantage of his absence, the 1st respondent has forcefully taken custody of her mother/2nd respondent herein to the ground floor and confined her in a room without access to anyone and the appellant/plaintiff could not come as he is facing problem from the creditors and also due to health problem.

7 It is the specific case of the appellant/plaintiff that on 26.05.2016, early morning, taking advantage of the absence of the wife of the appellant/plaintiff, the 1st respondent herein had suddenly locked the Suit B-Schedule property from outside and also cut the electricity supply and threatened her to vacate the said portion. On 10.06.2016, the 1st respondent along with her husband, with the aid of rowdy elements, barged into the Suit B-Schedule property and threatened the appellant/plaintiff and his wife with dire consequences. Adding salt to the wound, a false complaint was also registered in Cr.No.511/2016 against the appellant/plaintiff and his wife and their son for the alleged offences u/s.447 and 506[iii] IPC and the wife of the appellant/plaintiff has filed a petition for anticipatory bail in CrI.OP.No.12764/2016 and it was granted on 17.06.2016.

8 The appellant/plaintiff would further aver that taking advantage of his absence, the 1st respondent having taken custody of her mother/2nd respondent herein, had got the

Settlement Deed dated 28.06.2010 registered as Doc.No.2247/2010 on the file of the Sub Registrar, Anna Nagar, executed by her father, in her favour by playing fraud, compulsion and misrepresentation and no cognizance can be taken to the said document at all. Since he is the co-owner, he is entitled to be in possession of the Suit B-Schedule property and therefore, filed the said application.

9 Application No.755/2016 which was filed for ad-interim injunction restraining the 1st respondent from creating any encumbrance, was closed, in the light of the undertaking given by the learned counsel for the 1st respondent that the 1st respondent will not alienate or encumber the suit property till the disposal of the suit.

10 The 1st respondent has filed a common counter affidavit in both the applications and took a stand that her brother, the appellant/plaintiff herein, had set up a Nursing Home in the name and style "Mooalai Narambiyal Maruthuvamanai" and he bought several acres of lands and wanted to amaze wealth in quick succession and in that process, divested his profession as a Doctor and became a Real Estate Businessman. His wife, Dr.Kalaiselvi, started a Granite business in the year 1993 in the name and style as "Earth Link" and later on, changed the name as "Shiva Brindavan Granites", of which the appellant/plaintiff became a partner. It is further averred in the counter that the appellant/plaintiff had sustained enormous financial loss and was not able to manage the business and therefore, filed Insolvency Petition in IP.No.59/2009 on the file of the learned I Additional Subordinate Judge, Erode, as against 110 creditors and in the said proceedings, the husband of the 1st respondent herein was arrayed as 56th respondent and he had lent a sum of Rs.5,00,000/- and the 1st respondent was also arrayed as 57th respondent, who had also lent a sum of Rs.5,00,000/- to the appellant/plaintiff herein.

11 It is also stated in the counter that the wife of the appellant/plaintiff also filed HMOP No.3776/2009 on the file of the learned I Additional Judge, Family Court, Chennai on the ground of desertion and cruelty and she secured a decree for divorce and in the petition, she has given a different address. It is further averred that the father of the appellant/plaintiff and the 1st respondent passed away on 20.03.2016 after prolonged illness and fearing arrest at the instance of the creditors, the appellant/plaintiff left for Muscat and did not even come for performing the last rites and customary rituals and it was performed by the son of the appellant/plaintiff only. It is also pointed out by the 1st respondent in the counter affidavit that the wife of the appellant/plaintiff, in her petition for divorce has mentioned that her husband deserted her on 20.09.2005 and she was subjected to cruelty and there was no cohabitation and she also obtained an exparte-decree of divorce on 23.03.2010. The

counter also speaks about the lodging of the complaint against the appellant/plaintiff and his wife and she also took a stand that the Settlement Deed executed by her father is genuine and valid and the 1st respondent is the true and lawful owner of the premises and as such, the injunction as sought for by the appellant/plaintiff, cannot be granted.

12 The learned Judge, after taking note of the rival submissions, found that the registered Will executed by the father of the appellant/plaintiff and the 1st respondent dated 02.09.1992, bequeathing the property in favour of the 1st respondent after giving life time interest in favour of his wife, viz., the 2nd respondent herein and further found that the copy of the order in HMOP No.3776/2009 also disclosed the fact that the decree for divorce was granted in her favour on 23.03.2010 and the appellant/plaintiff in IP.No.59/2009, also had stated that he is residing at Door No.69, New No.11, EVN Street, Erode-9 and in the divorce petition, the address for service is mentioned as if the appellant/plaintiff is residing in Pushpagiri Medical College and Hospital, Thiruvalla, Kerala and that his wife, viz., Dr.Kalaiselvi, is residing at AB-11, Second Avenue, Anna Nagar, Chennai-40. The learned Single Judge further found that admittedly, the appellant/plaintiff is now residing at Musct and though his wife has claimed that she is in possession of the Suit B-Schedule property, there is no documentary evidence in support of her case and further found that the truth and validity of the Settlement Deed can be gone into only during trial and dismissed the said application vide impugned order dated 13.02.2017 and challenging the legality of the same, the present appeal is filed by the appellant/plaintiff.

13 Mrs.Chitra Sampath, learned Senior Counsel assisted by Mr.T.S.Baskaran, learned counsel appearing for the appellant/plaintiff has drawn the attention of this Court to the caveat filed by the 1st respondent and would submit that the 1st respondent took forceful possession of the Suit B-Schedule property and admittedly, the father of the appellant/plaintiff as well as the 1st respondent died intestate on 20.03.2016 and while he was alive, both of them were in possession of the respective Suit Schedule Properties and taking advantage of the absence of the appellant/plaintiff, forceful possession was taken by the 1st respondent and her husband and a false complaint also came to be lodged and the wife of the appellant/plaintiff has also obtained anticipatory bail and would further add that the registered Settlement Deed dated 28.06.2010 came into being by practicing fraud ; deceit and misrepresentation and since, as a co-owner, he is deemed to be in possession of the suit property and as such, the learned Judge till the disposal of the suit, ought to have protect his interest and prays for interference.

14 Per contra, Mr.R.Thiyagrajan, learned counsel appearing for the respondent would submit that unless the registered Settlement Deed dated 28.06.2010 is set aside in the manner known to law, the 1st respondent, after the life time of her mother-2nd respondent herein, is deemed to be the owner and admittedly, the appellant/plaintiff is not in India and fearing harassment and arrest at the hands of creditors, he left for Muscat and is residing there and his wife has also filed a petition for divorce and got an exparte decree for divorce and she is also living separately and would further add that the appellant/plaintiff in the affidavit filed in support of Application No.756/2016, has totally suppressed the filing of the Insolvency Petition as well as the divorce decree obtained by his wife and as such, the appellant/plaintiff is not entitled to any relief and prays for dismissal of the Appeal.

15 The Court has carefully considered the rival submissions and also perused the materials placed before it.

16 The primordial submission made by the learned counsel for the appellant/plaintiff is that in the caveat lodged by the 1st respondent, the address of the appellant/plaintiff is shown as that of the address mentioned in the Suit B-Schedule property and as such, he is in possession of the same. A perusal of the affidavit filed in support of Application No.756/2016 would disclose that admittedly, the appellant/plaintiff is in Muscat and in the counter affidavit of the 1st respondent, it is brought to the knowledge of this Court that the appellant/plaintiff had filed Insolvency Petition in IP.No.59/2009 on the file of the Court of I Additional Subordinate Judge, Erode, against 110 creditors wherein the 1st respondent and her husband are arrayed as 57th and 56th respondents respectively. The counter affidavit further reveal that the wife of the appellant/plaintiff, viz., Dr.Kalaiselvi, filed HMOP No.3776/2009 on the file of the learned I Additional Judge, Family Court, Chennai, praying for divorce on the ground of desertion and cruelty, wherein she has given her address as AB-11, Second Avenue, Anna Nagar, Chennai-40 and the address of the appellant/plaintiff is shown as if he is residing in Pushpagiri Medical College and Hospital, Thiruvalla, Kerala and she also obtained exparte decree on 23.03.2010. The said material fact has been totally suppressed in the plaint as well as in the affidavit filed in support of the Application in Appln.No.756/2016.

17 Be that as it may, the father of the appellant/plaintiff as well as the 1st respondent had executed a registered Settlement Deed dated 28.06.2010, granting lifetime interest in favour of his wife - 2nd respondent herein and vested remainder in favour of the 1st respondent, after the demise of her mother, to succeed to the said estate and unless and until the said document is set aside, the

appellant/plaintiff cannot claim that he is having right over the suit Schedule property. As already pointed out, the appellant/plaintiff is in Muscat for the past six years, even as per his own averment and that he has also suppressed the material facts relating to the filing of the Insolvency Petition and obtaining of ex parte divorce decree by his wife, viz., Dr.Kalaiselvi, in HMOP No.3776/2009 and as such, he is not entitled to any relief in this appeal.

18 In the result, the Original Side Appeal is dismissed, confirming the order passed in Application No.756/2016 dated 13.02.2017. This Court, taking into consideration, the relationship between the parties, is not inclined to award any cost. Consequently, the connected miscellaneous petition is also dismissed.

19 It is made clear that the findings/observations made in this appeal is purely for the disposal of the same and this Court had not touched upon the merits of the case of the appellant/plaintiff and the respondents/defendants and the issues have to be adjudicated on its' own merits based on the quality of the evidence being tendered.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

AP

Copy to: The Sub. Assistant Registrar,
Crl. Side, High Court, Madras.

+ 1 cc to M/s. T.S. Baskaran, Advocate Sr.27430

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