

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (PD) Nos.1238 of 2016
and
C.M.P.No.21398 of 2017 and C.M.P.No.6754 of 2016
and
Civil Revision Petition (PD) No.1216 of 2016
and
C.M.P.Nos.6673 of 2016 and 6674 of 2016

1.Rajkishore Bhagwatsaran
 2.Mrs.Nisha Rajkishore ... Petitioners in C.R.P.(PD)No.1238 of 2016

..Vs..

M/s.Maxworth Home Ltd.,
 Represented by its
 Authorised Signatory,
 No.50, Maxworth Nagar,
 Sunnambu Kolathur,
 Chennai - 600 017. ... Respondent in C.R.P.(PD)No.1238 of 2016

M/s.Maxworth Home Ltd.,
 Represented by its
 Authorised Signatory,
 No.50, Maxworth Nagar,
 Sunnambu Kolathur,
 Chennai - 600 017. ... Petitioner in C.R.P.(PD)No.1216 of 2016

..Vs..

1.Rajkishore Bhagwatsaran
 2.Mrs.Nisha Rajkishore ... Respondents in C.R.P.(PD)No.1216 of 2016

Prayer in C.R.P.(PD)No.1238 of 2016: This Civil Revision Petition has filed under Article 227 of Constitution of India, to set aside the fair and decretal order passed in C.M.A.No.4 of 2015 on the file of the Principal District Court, Kancheepuram at Chengalpattu, dated 29.02.2016, partly affirming the fair and decretal order dated 27.01.2014 in I.A.No.1050 of 2013 in O.S.No.146 of 2012 passed by the Hon'ble Sub-Court, Tambaram.

Prayer in C.R.P.(PD)No.1216 of 2016: This Civil Revision Petitions has filed under Article 227 of Constitution of India, against the judgment and decree of learned Principal District Court, Chengalpet, dated 29.02.2016 in C.M.A.No.4 of 2015 which was filed against the orders passed in I.A.No.1050 of 2013 in O.S.No.146 of 2012 on the file of learned Subordinate Court, Tambaram.

For Petitioner : Mr.S.Parthasarathy,
Senior Advocate in C.R.P(PD)No.1216 of 2016
For Respondents :Mrs.Hema Sampath
Senior counsel in C.R.P.(PD)No.1216 of 2016
For petitioners : Mrs.Hema Sampath
Senior counsel in C.R.P.(PD)No.1238 of 2016
For Respondent : Mr.S.Parthasarathy,
Senior Counsel in C.R.P.(PD)No.1238 of 2016

COMMON ORDER

For the sake of convenience, parties in both the C.R.Ps are referred to as parties in C.R.P.No.1238 of 2016. The respondent has filed a suit in O.S.No.146 of 2012 against the petitioners to direct the defendant 1 and 2 to receive the amount that is arrived and fixed by this Court as the amount

refundable to the defendants 1 and 2/petitioners and to execute and register a re-conveyance/sale deed in favour of the plaintiff within a specified time and in the event of any default in executing such re-conveyance deed/sale deed, to direct the registry of this Hon'ble Court to execute the said re-conveyance/sale deed in favour of plaintiff, on behalf of the defendants 1 and 2, in respect of the suit schedule property and to grant an order of permanent injunction against the petitioners.

2. According to the plaintiff/respondent, the sale deed Doc.No.1824 of 1997 was registered in favour of the first and second defendants on 09.06.1997. On 10.06.1997, the respondent has entered into an agreement for Development and construction with the defendants 1 and 2. The plaintiff/respondent has purchased the suit property from defendants 1 and 2 by a registered sale deed in Doc.No.7672 of 2011, dated 2.12.2011. The respondent has filed the suit in O.S.No.146 of 2012 for the aforesaid prayer.

3. In the aforesaid suit, the plaintiff/respondent has filed an application in I.A.No.448 of 2012 and also re-numbered as I.A.No.543 of 2012 for interim injunction restraining the petitioner from interfering with the possession of the property and also appoint an Advocate Commissioner to ascertain the status of the property. The said order was passed on 13.05.2012. Then, an Advocate

Commissioner has inspected the suit property and submitted his report and status-quo order was extended on 18.10.2012 for the limited period. The plaintiff/respondent has filed an application in I.A.No.1204 of 2012 to extend the status-quo orders. At the instance of the petitioner, the plaint was returned on 20.06.2013 in I.A.No.1019 of 2012 for payment of proper Court fee.

4. By order dated 31.01.2013, the plaintiff/respondent has preferred a C.M.A.No.3 of 2013 and the same was allowed. Challenging the aforesaid order, the Revision Petitioner has preferred in C.R.P.(PD)No.527 of 2014 before this Court and subsequently, the aforesaid C.R.P was dismissed on 30.06.2014. In the meantime, the plaintiff/respondent has filed an application in I.A.No.1050 of 2013, to restrain the petitioner from illegal construction of subject property in the aforesaid suit. By an order dated 27.01.2014, the Court below allowed the application with the following directions:-

“ In the result, this petition is allowed and the respondents 1 and 2 /defendants 3 and 4 their men, agents, servants, nominee or anyone claiming under/through them are restrained from in any manner entering into plot No.144 comprised in S.No.399/6(Part) in No.153, Sunnambu Kolathur/97, Madipakkam II village morefully described in the petition schedule property and take up any developmental activities including to put any type of construction either temporary or permanent, pending disposal of the above suit, by an order of interim injunction”.

5. Challenging the aforesaid order, the defendants 1&2/petitioners herein have filed C.M.A.No.4 of 2015 before the Principal District Court, Chengalpattu.

6. In the aforesaid C.M.A, the Principal District Court partly allowed the appeal, by confirming the order of the trial Court, insofar as injunction granted, for putting up further construction and entering into sale agreement etc., in respect of suit properties.

7. Challenging the rejection portion of the order, the plaintiff/respondent has filed the C.R.P No.1216 of 2016 before this Court, the petitioners/defendants filed C.R.P.1238 of 2016, challenging against the order granting injunction against the petitioner for putting up further construction in the suit property.

8. By consent of both the parties, both the Civil Revision Petitions have been taken up for final disposal.

9. According to the learned Senior counsel Mr.S.Parthasarathy appearing for the petitioner would submit that the defendants 1 and 2 had purchased the property from their vendor on 09.06.1997. On 10.06.1997, an agreement for Development and construction entered into between the plaintiff and the

defendants 1 and 2. The plaintiff/respondent has not taken any legal action against the vendor of the defendants 1 & 2. Therefore, the petitioners have purchased the aforesaid property and constructed the building.

10. The written statement has been filed by the defendants, wherein the first and second defendants have specifically raised the plea that the aforesaid suit is barred by limitation, since, the agreement was entered between the parties in the year 1998 and the suit was filed in the year 2012. Hence, suit is barred by limitation.

11. According to the petitioners, they have completed 65% of the work, as per the report submitted by the Advocate Commissioner before this Court. The petitioners had invested a huge amount borrowed from Bank for the construction of the building and therefore, the petitioners have to repay the loan amount to the bank and the said construction is now incomplete stage and the same is idle, if the construction is completed, no prejudice would be caused to the respondent. The learned Senior counsel also submitted that, the petitioners undertake, in the event of the decree has been granted in favour of the respondent/plaintiff, the petitioners will not claim any equity of rights in respect of the construction put up by the petitioner in plot No.144, subject matter of the suit property. Further, the petitioners also undertake that the petitioners would

not alienate or create any encumbrance pending the suit in respect of the suit properties. Hence, order passed in C.M.A is liable to be set aside.

12. Per contra, the learned Senior counsel Mrs.Hema Sampath, appearing for the respondent has submitted that the respondent/plaintiff has entered into an agreement for development and construction with the defendants 1 & 2 in O.S.No.146 of 2012 on 10.06.1997. The defendants 1&2 have not paid the construction cost as per the schedule fixed in the agreement, inspite of the respondent/plaintiff made several communication sent to the defendants 1 & 2 during 1997/1998 and 1999 to pay the cost. Despite the letter sent to the defendants 1 & 2, they sold the suit property in favour of the petitioners/defendants 3&4. Pending the aforesaid suit, defendants 3 & 4/petitioners in C.R.P.No.1238 of 2016 had constructed the building. Therefore, the defendants 3 & 4/petitioners are not entitled for any equity and balance of convenience is also in favour of the respondent/plaintiff. Therefore, both the Courts below has rightly granted the injunction against the petitioners/defendants 3 & 4. Further, learned counsel for the respondent relied upon clause 18 of the agreement entered into between the parties. Therefore, in the interest of justice and balance of convenience is also in favour of the respondent/plaintiff, the order passed by the Court below does not warrant interference by this Court.

13. Heard the rival submissions made by the learned counsel for the parties and perused the materials available on record. The respondent has filed the suit in O.S.No.146 of 2012 for the aforesaid prayer, according to the respondent, they relying upon the clause 18 of the agreement.

14. On perusal of cause of action, it seems that the agreement was entered into between the parties on 10.06.1997 and the plaintiff has demanded payment of outstanding amount on 24.11.1997 and therefore, issued a notice on 01.08.2008 calling upon the first and second respondents/defendants to execute development and construction agreement on 11.08.2008, the defendants 1 and 2 replied to the notice issued by the plaintiff. Thereafter, the respondent has filed the suit in the year 2012 at the time of demolishing the suit property.

15. In the written statement, the revision petitioner has stated that prayer in the suit as well as the cause of action is barred by limitation.

16. The report of Advocate Commissioner would show that the petitioner has completed 65% of the construction in the suit property. The learned senior counsel also relying upon the judgement the Apex Court reported in (2008) 11

SCC Page No.1 (Mandali Ranganna and others Vs.T.Ramachandra and others) in paragraph Nos.21 and 22 has also held as follows:-

"21.While considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties".

"22.Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is very valuable one. We are not, however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the Courts is imperative. Contentions raised by the parties must be determined objectively.

and also relied another decision reported in in (2009) 11 SCC 229 (Kishorsinh Ratansinh Jadeja Vs.Maruti Corporation and others) has held as follows:-

"40.On the other hand, if the owners of the property remain restrained from developing the same, it is they who will suffer severe prejudice, as they will be deprived of the benefit of the user of their land during the said period. The balance of convenience and inconvenience is against the grant of such an injunction. The success of the suit for specific performance filed by respondent 1 depends to a large extent on tenuous proof of genuineness of the agreement sought to be enforced after 19 years, despite the finding of the trial Court that the suit was not barred by limitation".

"41. The question of conduct of respondent 1 also becomes relevant, inasmuch as, having slept over its right for more than 19 years, it will be inequitable on its prayer to restrain the owners of the property from dealing with the same, having particular regard to the fact that a large portion of the land has already been conveyed to as many

as 280 purchasers who are in the process of erecting constructions thereupon.”

17. In the light of the facts and circumstances of the case, this Court is inclined to pass order as follows:-

(a) The respondents shall not create any third party rights by alienating or encumbering or inducted, in respect of suit property, now being undertaken, without express permission from the trial Court.

(b) In case, it is ultimately found in the suit that the property does not belong to the Revision Petitioner, the Revision Petitioner shall not be entitled to claim any equity in respect of the construction, which is now being made and that they will remove the entire construction at their own costs.

18. The Revision Petitioner has filed undertaking affidavit to that effect. Recording the undertaking affidavit filed by the petitioner, the order passed by the Court below in I.A.No.1050 of 2013 in O.S.No.146 of 2012 is set aside. Accordingly, C.R.P.No.1238 of 2016 is allowed. However, it is made clear that the petitioner would not alienate or encumber the suit property, pending the suit.

D.KRISHNAKUMAR, J.,

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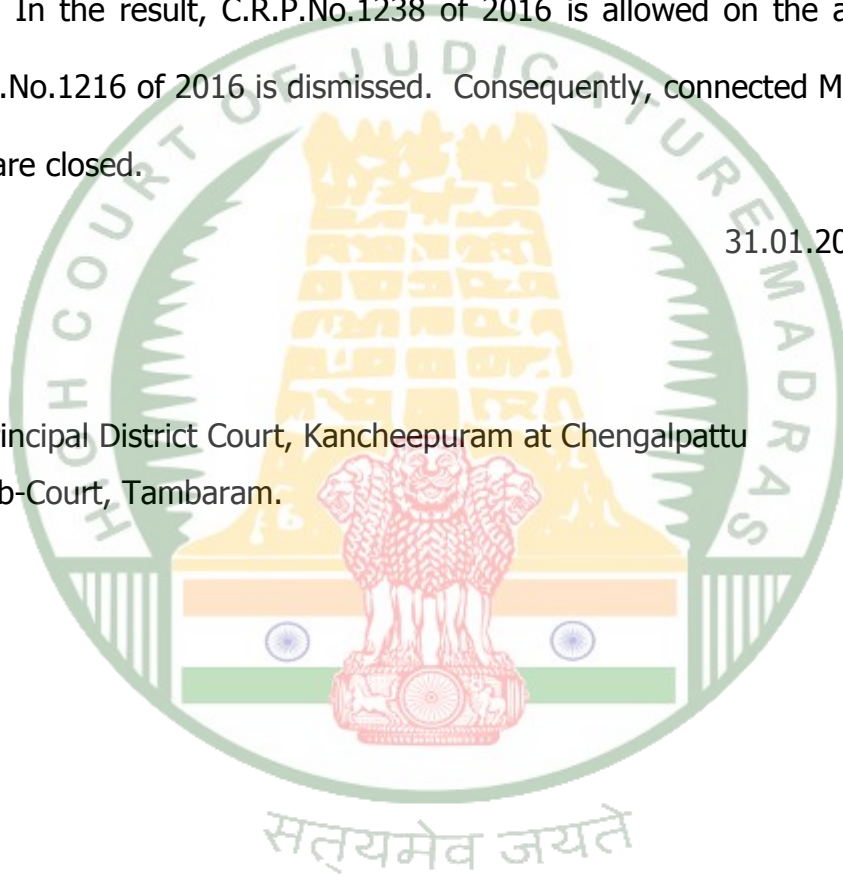
19. In the result, C.R.P.No.1238 of 2016 is allowed on the above terms and C.R.P.No.1216 of 2016 is dismissed. Consequently, connected Miscellaneous Petitions are closed.

31.01.2018

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To

1. The Principal District Court, Kancheepuram at Chengalpattu
2. The Sub-Court, Tambaram.

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