

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 28th DAY OF FEBRUARY 2018

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A. No.915 of 2018

in

C.S. No.399 of 2009

C.P.Radhakrishnan,
S/o.C.Parameswaran Asari,
Proprietor-Ambal Electricals,
No.100/231, T.T.K.Road,
Alwarpet, Chennai-18.

Residence at No.4/16,
Alwarpet 2nd Street,
Alwarpet, Chennai 600018.

... Applicant/Plaintiff
(in O.A.No.451 of 2017 &
A.No.915 of 2018)

-Versus-

1. A.Vijayalakshmi,
W/o.Late Vishnumoorthy,
2. A.Meerabai,
D/o.Late Vishnumoorthy,
3. A.Nalini Bai,
D/o.Late Vishnumoorthy,
4. A.Sarvabouma,
D/o.Late Vishnumoorthy,
1 to 4 are at No.100/231,
T.T.K.Road, Alwarpet,
Chennai-18.

... Respondents/Defendants
(in O.A.No.451 of 2017 &
A.No.915 of 2018)

Application praying that this Hon'ble Court be
pleased to punish the Respondents the willfully
disobedience of order in O.A.No.451 of 2017 in
C.S.No.399/2009 dated 19.07.2017 on the file of this
Hon'ble Court by Applicant/Applicant/Plaintiff.

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 in C.S.No.399 of 2009 seeking to punish the respondents for willfully disobeying the order dated 19.07.2017 in OA.No.451 of 2017.

2. According to the affidavit filed in support of this application, by the order dated 19.07.2017, this Court had granted an injunction restraining the respondents from either alienating the property or causing any encumbrance in respect of the suit schedule property and to maintain the status quo regarding the property.

3. The deponent further alleges that the respondents have demolished the constructions in the property and they are putting up new construction, which according to him would amount to willful disobedience of the order passed on 19.07.2017 in OA.No.451 of 2017.

4. I have heard Mr.G.Murugendran, learned counsel for the applicant and Mr.P.B.Balaji, learned counsel for the respondents.

5. Mr.P.B.Balaji would submit that they have not alienated the property they are only improving the property by putting up construction. The order dated 19.07.2017 does not prohibit the respondents from putting up further constructions. The order dated 19.07.2017 reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/> "4. The learned counsel for the respondent is also present. Accordingly,

the learned counsel stated that the present applicant was originally a tenant and thereafter Rent Control proceedings for demolition and reconstruction was initiated. In the said proceedings, the respondents 2 to 4 herein had stated that they would not alienate the property. Consequent to the earlier order of this Court R2 to R4 cannot alienate the property pending disposal of the suit. There is yet another issue with respect to creating encumbrance. This has been pointed out and reiterated by the learned counsel for the applicant that encumbrance should not be permitted.

5. With respect to alienation of the suit property, Section 52 of the Transfer of Property Act, prohibits any party to the litigation from alienating or dealing with the property, in any manner whatsoever, without the leave of the Court. The said provision is reiterated and it is binding on the parties to the suit. **Property has to be retained, till the disposal of the suit.** Consequently, even respondents 2 to 4 are restrained from alienating the property. If they create encumbrance in the nature of mortgaging the property, they have to inform the Court prior to mortgage, that they are mortgaging the property and give the details of the mortgage."

applicant would submit that there is a prohibition restraining the respondents from putting up any construction over the property. Hence, this application has been filed seeking to punish the respondents for willful disobedience of the order of this Court.

7. It is for the applicant to show that there had been willful disobedience of the order. A reading of the above order, in my opinion, shows that there is no injunction restraining the respondents from putting up constructions in the property. Prayer in the application is only for injunction restraining the respondent from alienating the property or causing any kind of encumbrance in respect of the suit schedule property in any manner, whatsoever, pending disposal of the suit.

8. Mr.P.B.Balaji, learned counsel for the respondents has clearly stated that they have not alienated the property.

9. Mr.G.Murugendran, learned counsel appearing for the applicant would also concede that there is no alienation except creation of the mortgage on 28.11.2017.

10. Insofar as the creation of the mortgage is concerned, the above extracted portion of the order would show that infact this Court had permitted the respondents to mortgage the property after giving prior intimation to the Court.

11. It is also brought to my notice that an affidavit stating that the respondents proposed mortgage of property in favour of State Bank of India has been filed on 24.11.2017 in this Court and thereafter, the mortgage was created on 28.11.2017.

12. In view of the above, I do not think a case for punishing the respondents for willful disobedience of the order dated 19.07.2017 has been made out. Hence, this application is dismissed. It is however made clear that the respondents shall not claim any equities or any right over any new constructions put up by them. If the plaintiff succeeds in the suit the respondents are bound to execute the sale deed in respect of the property as it stands on that date including the improvements made by the respondents pending suit.

13. The Registry is directed to list the suit before the learned Additional Master - III for further evidence on 15.03.2018.

Sd/.R.S.M.J

28.02.2018

//Certified to be a true copy//

Dated this the th day of 2018.

KY/26.09.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

WEB COPY