IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.08.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

O.A.No.160 of 2021
in
C.S.No.98 of 2021

A.Abdul Malick, S/o Abdul Khader .. Applicant/plaintiff

Vs.

M.Balakrishnan, S/o V.S.Moorthy .. Respondent/defendant

Judge's Summons issued under Order XIV Rule 8 of the Original Side Rules of this Court and under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (CPC) and this application is filed to pass an order of interim injunction restraining the defendant, his men or agents, from, in any manner, disturbing the peaceful possession and enjoyment of the suit property by the plaintiff in the above suit in C.S.No.98 of 2021.

Schedule of property

Schedule-A

All the piece and parcel of vacant land bearing Plot No.52, Door No.1, IXth Main Road, Dhandeeswarar Nagar of Velachery Village, Mambalam-Guindy Taluk, Chennai-600 042, bounded on:

North by : 30 feet layout road now known as X Cross Street

South by : Plot No.51, Dhandeeswara Nagar;

East by : Plot No.51, Dhandeeswara Nagar;

West by : 30 feet Road, now known as Dhandeeswara Nagar IXth Main Road,

situate in previous Survey No.224 (part) New Survey No.224/1B, measuring

East to West 45 feet

North to South 80 feet

measuring 3600 Sq.Ft. of land situate in Registration Sub-District of Velachery and the Registration District of Chennai South, Chennai Corporation Division No.153 Zone 10.

Schedule-B (property conveyed):

999 Sq.Ft. of UDS land out of 3600 Sq.Ft. of vacant land in the 'A' schedule property together with 1550 Sq.Ft. super built up area in the Ground Floor, bearing Flat No.1/2, Plot No.52 Door No.1, IXth Main Road, Dhandeeswarar Nagar of Velachery Village, Mambalam-Guindy Taluk, Chennai District, Chennai-600 042, together with covered car parking measuring about 150 Sq.Ft. and to cancel the sale deed dated 08.10.2015 bearing Doc.No.6609 of 2015 on the file of the Sub-Registrar, Velachery.

For applicant : Mr.M.Premkumar

For respondent : Mr.P.Ayyamperumal

ORDER

The applicant is the plaintiff and the respondent herein is the defendant in the suit.

2. The said suit has been filed for the following reliefs:

(a) to cancel the sale deed, dated 08.10.2015 registered as Document No.6609 of 2015 on the file of the Sub-Registrar, Velachery, executed by the plaintiff in favour of the defendant;

(b) for permanent injunction restraining the defendant, his men or agents from in any manner disturbing the peaceful possession of the plaintiff in the suit property, and

(c) for costs of the suit.

3. According to the applicant/plaintiff, he is the absolute owner of the property measuring an extent of 999 Sq.Ft. UDS land out of 3,600 Sq.Ft. consisting of a residential Flat No.1/2, having plinth area of 1,550 Sq.Ft. built up area, building named as "AL-RAYYAN", bearing Plot No.52, Door

No.1, 9th Main Road, Plot No.52, Dhandeeswaram Nagar, 137, Velachery Village, Chennai-600 042, registered as Document No.1805 of 2009 in the Office of the Sub-Registrar, Velachery. The said property was gifted to the applicant through a Settlement Deed executed by the applicant's younger brother A.Gulam Razzak, represented by Mrs.Aysha Ammal on 15.06.2009. Thereafter, the petitioner is in possession and enjoyment of the property.

4. The applicant further states that he lived and worked in Malaysia between 2000 and January 7, 2021 and now he is in India staying with his family in the said property. During 2015, the applicant's brother was in urgent need of money for his gold ornament business activities and therefore, he approached the respondent/defendant, who was known to him through a mutual friend, to lend money, and accordingly, as agreed by the defendant to lend money to the applicant's brother, he gave an amount of MYR 1,000,000 (Malaysian Ringgit) on 04.02.2015, approximately equivalent to Rs.1 crore and 75 lakhs (INR) during 2015. The applicant's brother was paying interest @ 4% per month for the amount borrowed, regularly by cash in hand to the respondent/defendant. Later, the

respondent/defendant insisted that, some collateral security may be given for the borrowed amount.

5. It is further stated by the applicant in the affidavit filed in support of the application that the applicant's brother who had gifted the said property to the applicant, requested the applicant to execute a mortgage deed in favour of the respondent/defendant as a security for the loan taken by him. Accordingly, the said property was mortgaged as security for the loan amount availed by the applicant's brother. The applicant reposed faith upon the respondent/defendant and his brother and hence, the applicant had signed the instrument prepared by the respondent/defendant without reading the contents of the same. The respondent/defendant obtained signatures in the blank stamped papers and in green sheets. Since the applicant's brother was helped by the respondent/defendant by lending money when he was in urgent need of money, the same was taken undue advantage of by the respondent and got the sale deed executed in his favour as security, instead of executing the mortgage deed, by committing fraud. The applicant had, at that point of

time, no other choice but to believe the respondent/defendant's words.

6. It is also stated by the applicant/plaintiff that he came to know that the deed executed between the applicant and the respondent/defendant, was one of sale and not mortgage, through the receipt of the undated letter and a letter dated 10.08.2020 sent by the respondent. Subsequently, the respondent/defendant's representative Veeraraghavan had shown a copy of the sale deed to the applicant, thereupon, the applicant got the certified copy of the sale deed from the Sub-Registrar Officer on 23.02.2021 and learnt about the contents of the sale deed. According to the applicant, the sale deed is not supported by consideration, but it is only a security in respect of the borrowed amount by the applicant's brother. The sale deed does not contain the mode of payment or the date of payment, which goes to show that it is executed as a security and not a completed sale.

7. The applicant's brother, in order to close the loan transaction, sold one of his properties to one Lim Chien Yin @ Lin Jieying for a total sale consideration of 2900000 Singapore Dollars on 23.03.2017. Out of the

sale proceeds, the applicant's brother's wife Najumunisa credited an amount of 345,223.90 Singapore Dollars, equivalent to Rs.1 crore and 65 lakhs INR, towards satisfaction of the borrowed principal loan amount to the account of the respondent/defendant and an amount of Rs.10 lakhs alone was pending re-payment out of the principal loan amount borrowed. Hence, the applicant's brother was paying interest @ 18% per annum, i.e. Rs.15,000/- per month for the balance amount of Rs.10,00,000/- to be payable to the respondent/defendant.

8. It is the further stand of the applicant in the affidavit that the possession and enjoyment of the said property is with the applicant till date without any interference from any party, and that the property's value had got appreciated multiple times than as it existed in the year 2015 and as on date, the property is worth Rs.3 crores. The defendant reverted his stand by writing two letters, one undated and another dated 10.08.2020 stating to vacate and hand over the possession of the said property to the respondent/defendant as if he is the owner, and for the said letters, the applicant gave reply notice, dated 18.08.2020 through his counsel. From the

said undated letter of the respondent/defendant, the applicant came to know that the rental agreement, dated 01.09.2017 had been referred to therein, which was not entered into by the applicant, and the same is forged.

9. The applicant further averred in the affidavit that no transaction has been entered into with the respondent and the applicant is neither a borrower nor creditor. It is the stand of the applicant that he had not received even a single pie from the respondent/defendant. The respondent/defendant is a Malaysian citizen and has no right to buy or sell the property in India without prior permission and approval of the RBI. The Rules as laid down by the Reserve Bank of India (RBI) and under the Foreign Exchange Regulation Act, 1973 (FERA) had not been followed. Further, as per Rule 4 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, a person of Indian origin and resident outside India, if he were to make a purchase of immovable property, the purchase price has to be made out of the funds received in India through normal banking channels by way of inward remittance from any place outside India or funds held in any non-resident

account maintained in accordance with the provisions of the Act and the Regulations made by the RBI.

10. According to the applicant/plaintiff, in the recitals of the sale deed, dated 08.10.2015, there is no mention about the mode of payment/passing of consideration of Rs.70,53,000/- and further, there is also no proof of payment of the same, and the same is against the Rules laid down by the RBI and under the Foreign Exchange Management Act, 1999 (FEMA). Thus, according to the applicant/plaintiff, it is clear that the sale deed is not supported by any consideration, and the sale deed in not a bona-fide one vesting any right upon the respondent/defendant in respect of the said property, but is only a mere form of security mortgage.

11. It is the grievance of the applicant that the defendant had, in total violation of the standard procedures prescribed by law of the land, forced the applicant/plaintiff to execute the said sale deed in the colour of mortgage deed. It is also the averment of the applicant in the affidavit that the amount of sale consideration paid, as alleged in the recitals of the sale

deed recital, also needs to be paid through proper banking channel, whereas, the recital remains silent on that score. Thus, according to the applicant/plaintiff, the sale deed is sham and nominal and it is not intended to be acted upon. The applicant/plaintiff had not received Rs.70,53,000/- as sale consideration from the respondent/defendant at any date and never had any intention of selling the said property to the respondent/defendant.

12. It is further alleged by the applicant that the defendant intended to defraud the applicant for mere Rs.10 lakhs pending principal amount payable by the applicant's brother, but, his brother is even now insisting upon the respondent/defendant to receive the amount, thereby, close the transaction between them and also to close the sale deed, and the said sum was refused by the defendant to be received, resulting in the defendant illegally obtaining the property of the applicant. Even the respondent/defendant's representatives had taken assistance of the Police authorities and tried to forcibly evict the applicant from the said property and the respondent is capable of using men and money to grab the property by forcibly evicting the applicant through unlawful means. The defendant

has no right whatsoever in the said property and even attempted to grab the same and he has nothing to do with the said property. As the said sale deed, dated 08.10.2015 is sham and nominal, the respondent/defendant neither has any title, nor possession at any point of time. It is the principal stand of the applicant that he continues to be in possession of the said property and also protecting his possession.

13. Since the respondent/defendant and his men are attempting to interfere with the applicant's peaceful possession and enjoyment of the property and also purporting to enter into the same, which was also resisted by the applicant, in the interest of justice, so as to protect his possession, the applicant prays that interim injunction may be granted as prayed for in this application.

14. It is the claim of the applicant that he is in lawful possession and enjoyment of the said property as absolute owner continuously as on date. If the defendant is allowed to attempt to interfere with the property, the applicant/plaintiff would be prejudiced and put to irreparable injury, loss,

damage and hardship. It is also the claim of the applicant that he is having a strong prima-facie case and alleges that the balance of convenience is in his favour. It is the stand of the applicant that by granting interim injunction, absolutely, no prejudice would be caused to the defendant. Hence, for the reasons stated above, pending the present suit, the applicant/plaintiff has filed the present application for grant of interim injunction restraining the respondent/defendant from disturbing the peaceful possession and enjoyment of the property in question by the plaintiff.

15. The learned counsel appearing for the respondent/defendant objected for grant of interim injunction stating that the applicant/plaintiff had full knowledge of the execution of the sale deed, dated 08.10.2015 and his signature is also contained in the said sale deed. Only with a view to help the plaintiff, the defendant had entered into the lease agreement after the sale was effected. The applicant/plaintiff is occupying the property in question for more than 65 months without rent. He also objected to grant of interim injunction on the ground that the applicant/plaintiff and his brother colluded with each other by filing the present vexatious suit, which is not all

maintainable. If interim injunction is granted, it will cause great prejudice to the respondent/defendant and that the defendant would be put to irreparable loss and damage. Hence, he prayed that the present injunction application may be dismissed.

16. This Court considered the submissions made on either side and perused the materials placed on record.

17. From the above narrative of facts, is is crystal clear that the applicant/plaintiff has made out a prima-facie case for granting interim injunction in his favour. Further, this Court is of the view that the balance of convenience is also in his favour. If the interim injunction is not granted, the applicant will be seriously prejudiced and irreparable loss, injury and hardship would be caused to him.

18. Accordingly, there shall be an order of interim injunction as prayed for in this application, pending suit. This application is ordered accordingly. No costs.

19. List the suit for filing written statement on 27.09.2021.

25.08.2021

Speaking Order: Yes
cs

V.PARTHIBAN, J

cs

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