

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.A.Nos.791 & 792 of 2019

T.Francis Nelson

... applicant

Vs.

J.Amalraj

... respondent

Prayer in O.A.No.791 of 2019: Judges summons filed under Order XIV Rule 8 of OS Rules read with Section 9 (2) (c) of the Arbitration and Conciliation Act, 1996 to pass an order of injunction restraining the respondent or his men, agent(s), nominees(s), legal representative(s) or any one claiming through him from directly or indirectly from creating any kind of encumbrance in order to effect the title of the schedule mentioned property in any manner including, interfering in the possession of the petitioner and not to change / alter the nature of the schedule mentioned property till the disposal of Arbitration proceedings as contemplated under the terms of the agreement for development dated 07.01.2019.

Prayer in O.A.No.792 of 2019: Judges summons filed under Order XIV Rule 8 of OS Rules read with Section 9 (2) (c) of the Arbitration and Conciliation Act, 1996 to pass an order of interim injunction restraining the respondent or his men, agent(s), nominees(s), legal representative(s) or any one claiming through him from directly or indirectly from creating any sort of encumbrance and also from interfering in the peaceful possession and enjoyment of the schedule mentioned property by the petitioner.

For Applicant : Mr.M.Vijay

For Respondent : Mr.J.Kannan

ORDER

The applicant has filed the above applications for the following reliefs:

(a) To restrain the respondent or his men, agent(s) etc., from creating any kind of encumbrance in order to affect the title of the schedule mentioned property in any manner in the possession of the petitioner and not to alienate the suit schedule property till the disposal of the arbitration proceedings.

(b) To restrain the respondent or his men, agent(s) etc., from creating any sort of encumbrance and also from interfering in the peaceful possession and enjoyment of the schedule mentioned property.

The applications have been moved on the following facts:

2. It is the case of the applicant that he has engaged in the business of developing plots and also facilitating the land owners to clear pending litigation and provide these lands to the builders for construction and other purposes. For these purpose, the applicant would enter into Joint Venture Agreement with the land owners.

3. It is the case of the applicant that in the course of his business the respondent herein who was a proprietor of M/s.Karpagam Packaging Industries, approached him with an offer for a Joint Development agreement of his lands morefully described in the schedule to the Judges summons measuring about 12 grounds. After negotiations, they had entered into Development Agreement dated 07.01.2019 and a sum of Rs.20,00,000/- was paid as security advance.

4. The applicant's case is that the property in question has been bequeathed to the respondent by late Pushpharaj, vide registered Last Will and Testament dated 24.01.2001. The said Pushpharaj had died on 28.01.2018 and the respondent had inherited the property. The deceased Pushpharaj had mortgaged the property with the State Bank of India, Ekkattuthangal Branch by deposit of title deeds and there were other litigation pending in respect of the schedule property. Therefore, the main purpose for entering into agreement was to settle the litigation and to procure patta and other revenue records and sell the property either in parts or the entire extent after demolishing the existing buildings.

5. The applicant would submit that the price agreed was a sum of Rs.80,00,000/- per ground. It is the further case of the applicant that the respondent had failed to adhere to his obligations contained in the agreement of sale and despite the request by the applicant to provide the original documents for procuring the patta, the respondent had failed to comply with the request. This constrained the applicant to issue a legal

notice dated 25.08.2019. However, the respondent has failed to perform his part of the obligation.

6. It is the case of the applicant that the Development agreement contained an arbitral clause and therefore the applicant has approached this Court for interim orders by invoking provisions of Section 9 of the Arbitration and Conciliation Act.

7. The respondent on entering appearance has filed a counter inter alia contending that he has not entered into any Development Agreement with the applicant and that his signature found therein is a rank forgery. He would also contend that immediately on receiving the notice from the applicant on 27.08.2019, a reply had been issued by the respondent on 29.08.2019, clearly and categorically denying the agreement.

8. The respondent would contend that the notice of the applicant was dated 25.08.2019 and the applicant had filed these applications within two days there from. The respondent would further submit that after

receiving the papers in the above matter and going through the Development Agreement dated 07.01.2019, he came to know about the rank forgery since the signature found therein is forged signature. The agreement is a forged one since no prudent person would sell the property worth several crores for a paltry sum of Rs.80,00,000/- per ground. In fact as per the market value the schedule property would fetch nearly a sum of Rs.9.60 Crores. The agreement is fabricated is clearly evident from the fact that the fabricated agreement would state that possession should be handed over to the applicant on or before 31.03.2019. However, in the affidavit filed in support of the application, the applicant has contended that the possession was handed over on the very same day as the agreement.

9. The respondent had also taken out an application for sending the signature found in the Development Agreement for comparison with the admitted signature of the respondent in two tax invoices in A.No.566 of 2020. When the application had come up, the learned counsel for the applicant has stated that he has no objection to the said application being

ordered and that the comparison should be with the acknowledgment cards received from the respondent in the instant case. He was also directed to produce two acknowledgment cards and Mr.K.C.Vinodh was appointed as the Advocate Commissioner.

10. The Advocate Commissioner would thereupon report to the Court that the original Development Agreement had not been handed over. The applicant would then contend that he is not in possession of the original documents, since the same has been retained by the respondent and the same is mentioned in the agreement of sale.

11. The learned counsel for the respondent has stoutly denied the same and would contend that the very agreement and the very recital is a fabricated one and it is rather strange that the applicant had not retained a copy of the Development Agreement if such an agreement was executed. He would further contend that the applicant has not made out any case for the grant of interim orders.

12. Heard the learned counsels and perused the papers.

13. The applicant has come forward with the above applications on the basis of the Development Agreement dated 07.01.2019. In the affidavit filed in support of the injunction application, there is absolutely no averments that the respondent is attempting to alienate the property or alter its physical features. It is rather strange that the applicant who claims to be a developer has not made two copies of the Development agreement, one for himself and one for the respondent. Even in the legal notice dated 25.08.2019, the applicant has not called upon the respondent to produce the original though he had demanded production of the original Will and other documents. When the very execution of the agreement is in doubt, there cannot be an order of injunction passed on the basis of these applications. Further, there are no averments to support the applications. In the result, the applications are dismissed.

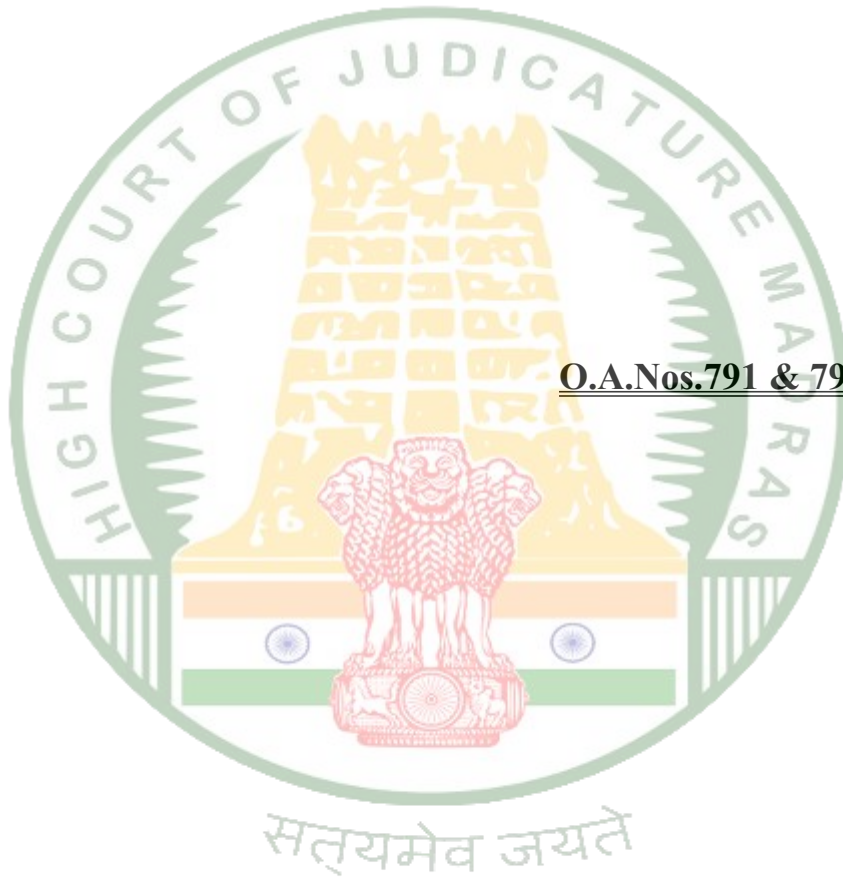
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