



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Wednesday, the Twenty Third day of February Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE S.S.SUNDAR

CMP.NO.2712 OF 2022

IN SA.NO.130 OF 2022

ABDUL RAZACK

[PETITIONER]

Vs

S.M.ANWARDEEN

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant an order interim injunction restraining the Respondent herein from dealing with the subject property or creating any other encumbrance in any manner whatsoever, in O.S.No.20/2010 on the file of the Subordinate Court Nagapattinam (CMP.NO.2712/2022) pending disposal of the above SA.NO.130/2022.

Order : This Miscellaneous petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.K.SUKUMARAN, Advocate for the petitioner, the court made the following order:-

- (1) The above miscellaneous petition is to grant an order of interim injunction restraining the respondent herein/defendant from dealing with the subject property or creating any other encumbrance in any matter whatsoever, in OS.No.20/2010 on the file of the learned Sub Judge, Nagapattinam, pending disposal of the above Second Appeal.
- (2) The petitioner/appellant/plaintiff filed a suit in OS.No.20/2010 for specific performance. Though the Trial Court decreed the suit, the Lower Appellate Court reversed the findings of the Trial Court on the ground that the petitioner/appellant/plaintiff has not proved readiness and willingness to perform his part of the contract.
- (3) It is to be noted that the Lower Appellate Court found that the plea in defence that the Sale Agreement was executed only as a security for loan transaction cannot be accepted in view of Section 92 of CPC.



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- (4) While admitting the Second Appeal, this Court has framed not only the questions of law raised by the appellant, but also framed a question of law in favour of the defendant. Therefore, it is likely that in the appeal filed by the petitioner/appellant/plaintiff, this Court may also refuse to exercise its discretion if the Agreement is found to be one executed as security for loan transaction. Since the plaintiff/petitioner herein has lost the suit for specific performance, granting an order of injunction will cause serious prejudice to the other side.
- (5) The petitioner/appellant/plaintiff is also having protection under Section 52 of the Transfer of Property Act. Therefore, this Court is not inclined to grant any interim order and the petition can be dismissed.
- (6) However, in order to protect the interest of third party, if any alienation is indulged by the respondent/defendant, he shall mention about the pendency of the above Second Appeal so that anyone will know the nature of dispute and the lis that is pending before this Court.
- (7) In the result, the Civil Miscellaneous Petition is dismissed.

-sd/-

23/02/2022

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT JUDGE,
NAGAPATTINAM.

2 THE SUBORDINATE JUDGE,
NAGAPATTINAM.

COPY TO:

MR.S.M.ANWARDEEN
LATE S/O.S.MOHAMMAD SAMSUDEEN,
NO.41, KAILASANATHAR KOVIL STREET,
KARAIKAL, PUDUCHERRY.

C.C. to M/S.K.SUKUMARAN, Advocate SR.NO.1164/2022

Order
in
CMP.NO.2712 OF 2022
IN SA.NO.130 OF 2022

Date :23/02/2022

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PM(28/02/2022)