



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2022

C O R A M

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.NO.892 OF 2022

&

C.M.P.NO.6597 OF 2022

P.Kandasamy

... Appellant

-Vs.-

Balakrishnan

... Respondent

Prayer:

Civil Miscellaneous Appeal filed under Order 43 Rule (1) (r) of the Civil Procedure Code, against the fair and decretal order dated 07.03.2022 made in I.A.No.2 of 2022 in O.S.No.6 of 2022 on the file of the III Additional District Judge, Coimbatore and prays to set aside the same.

For Appellant : Mr.P.Saravana Sowmiyan

J U D G M E N T

Challenging the order of injunction granted by the learned III Additional District Judge, Coimbatore in I.A.No.2 of 2022 in O.S.No.6 of 2022, the defendant is before this Court.

2. The brief facts necessary for appreciating the issue on hand are herein below narrated:

The respondent/plaintiff had filed the suit O.S.No.6 of 2022 against the appellant herein for specific performance. It is the case of the respondent herein that he had entered into an un-registered Agreement of Sale dated 03.03.2014 with the appellant herein in respect of the suit schedule properties. The said agreement had been renewed on 14.08.2016. It is the case of the respondent that the appellant had fixed a sale consideration in a sum of Rs.30,00,000/- (Rupees thirty lakhs only), of which, a sum of Rs. 18,00,000/- (Rupees eighteen lakhs only) had been paid by the respondent on different dates. Despite expressing his readiness and willingness to go ahead with the transaction, it was the appellant, who was putting off



the same. Therefore, the respondent herein had issued a notice to the appellant, calling upon him to come and execute the sale deed after receiving the balance sale consideration. The respondent had also expressed his willingness to wait at the Sub Registrar's Office, if the appellant were to inform his arrival at Coimbatore. The appellant had returned the legal notice, despite being available at the place and the respondent suspecting a foul play, had filed objections before the Sub Registrar, Madukkarai within whose jurisdiction the suit schedule properties are available. Thereafter, the respondent had come forward with the above suit.

3. Along with the suit, an application in I.A.No.2 of 2022 was filed for an injunction against the appellant/defendant restraining him from encumbering the suit schedule properties. In the said application, the respondent/plaintiff reiterated the contents of the plaint and had stated that since the respondent apprehended that the appellant would attempt to alienate or encumber the suit properties, the respondent had come forward with the application for interim injunction.

4. The respondent had denied the very execution of the Agreement of Sale. The appellant had also stated that the properties in question were over a sum of Rs. 2.5 crores and that it is impossible for him to have agreed to sell the properties for just a sum of Rs.30 lakhs. The appellant would further submit that he was a Bank employee and his wife is a retired Professor of the Government Arts College, Namakkal. He would also submit that one of the sons-in-law is a Judicial Officer. That apart, both his daughters were married and well employed and the other son-in-law is working as an Assistant Professor in Bharathidhasan University. In these circumstances, there is no necessity for him to borrow or sell the properties. Therefore, he sought for dismissal of the said interlocutory application.

5. The III Additional District Judge, Coimbatore, after hearing the parties and perusing the records, had allowed the said application and granted an order of temporary injunction, till the disposal of the suit. It is aggrieved by this order that the appellant is before this Court.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. A perusal of the order passed by the learned III Additional District Judge, Coimbatore would show that the appellant herein had attempted to transfer the suit schedule property by way of Settlement Deed in favour of his daughters, that too, when the suit for specific performance is pending.



Since the Sub Registrar, Madukkarai was not ready to execute the Settlement Deed on the basis of a certified copy, the appellant had filed a Writ Petition in W.P.No.19226 of 2021 before this Court for a direction to the Sub Registrar, Madukkarai to register the Settlement Deed with the certified copy of the parent deed. This Court had directed the Sub Registrar, Madukkarai to conduct an enquiry and consider, if any objections are made, and pass orders thereon.

8. At that juncture, the respondent/plaintiff had submitted detailed objections alleging that the appellant had approached him for financial assistance, for which, an Agreement of Sale had been entered into between the appellant and the respondent in respect of the very same suit schedule properties. Without executing the Sale Deed, the appellant was attempting to transfer the property and therefore, the respondent/plaintiff had filed the suit for specific performance and it is pending the suit that the appellant had attempted to execute the Settlement Deed. The respondent had moved a Writ Petition in W.P.No.396 of 2022 for a certiorarified mandamus to call for the records of the order passed by the Sub Registrar, Madukkarai dated 27.12.2021 and to reject the document presented by the appellant on the basis of the respondent's representation dated 27.12.2021. The said Writ Petition was also dismissed with a direction that all documents in respect of the suit properties were to be furnished before the Sub Registrar during the enquiry.

9. Therefore, it is crystal clear that even when the suit is pending, an attempt has been made by the appellant/defendant to create third party interests. Although any transaction done during the pendency of a lis would be hit by lis pendens, however, taking into account the attempt that has been made by the appellant to over come the absence of the original documents by substituting it with the certified copies, a prima facie case for grant of interim injunction has been made out by the respondent/plaintiff. Therefore, I see no reason to interfere with the order passed by the learned III Additional District Judge, Coimbatore. Accordingly, Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srn



To

1. The III Additional District Judge, Coimbatore.

2. The Section Officer, V.R.Section,
High Court of Madras, Chennai.

+1cc to Mr.P.Saravana Sowmiyan, Advocate, S.R.No.26623

C.M.A.No.892 of 2022
&
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GP (CO)
PM/11/05/2022