Reserved on : 16.09.2022

Pronounced on : 28.09.2022

A.No.3301 of 2022
in
C.S.No.280 of 2008

G. CHANDRASEKHARAN, J.

This application is filed for rejecting the plaint in C.S.No.280 of 2008 under Order VII Rule 11 (a) and (d) of CPC.

2. Learned counsel for the applicant submitted that the applicant is a 8th defendant in the suit. Respondents 1 to 4 filed a suit for specific performance against respondents 5 to 8. Respondents 5 to 8 were the absolute owners of the suit property inherited from one P.Govinda Kutty Menon. Govinda Kutty Menon died intestate on 16.04.1992 leaving his wife, 5th respondent, his son 6th respondent and minor grand children 7th and 8th respondents. S.K.A.Abdul Kader, the husband of first respondent and respondents 5 to 8 entered into a sale agreement in respect of suit property on 22.03.2005 for a sale consideration of Rs.1,50,00,000/-. Respondents 1 to 4 were put in possession of the ground floor of the suit property. As per

the terms of the agreement, fifth respondent has to obtain permission from the competent Court for the sale of minors' share in the property. 7th and 8th minor respondents have 3/32 share each in the property. 5th respondent has 18/32 share and 6th respondent has 8/32 share in the property. 5th respondent filed O.P.No.566 of 2005 under Section 29(a) of the Guardian and Wards Act for appointing herself as guardian for minors 7th and 8th respondents and permission to sell their share.

2(i). This Court appointed an Advocate Commissioner to determine the value of the suit property and the Advocate Commissioner valued the suit property at Rs.2,39,61,387/-. The petition was dismissed by this Court directing the 5th respondent to enter into a fresh agreement with the respondents 1 to 4 for a sale consideration of Rs.2,39,61,387/-. Respondents 1 to 4 filed A.No.2232 of 2007 against the order for impleading them in O.P.No.566 of 2005 and filed A.No.4124 of 2007 to modify the order. The applications were dismissed on 30.07.2007 giving liberty to the respondents 1 to 4 to file third party appeal against the order in O.P.No.566 of 2005. Respondents 1 to 4 filed appeal in OSA.No.220/2007 against the order passed in A.No.2232 of 2007 and OSA.No.232 of 2007 against the order passed in O.P.No.566 of 2005. The Division Bench of this Court by a common order in OSA.Nos.220 and 232 of 2007 modified the order passed in O.P.No.566 of 2005 by confining the order to the share of minors, 7th and 8th respondents.

2(ii). The suit is filed for specific performance. The tenant occupying the remaining floors, namely 11th respondent expressed his willingness to purchase the suit property. Respondents 1 to 4 gave a Letter of Consent dated 12.04.2017 to receive a sum of Rs.2,15,00,000/- for an amicable settlement towards the advance of Rs.54,50,000/- and compensation. They also agreed to quit and deliver possession on or before 30.04.2017. Pursuant to the settlement, the suit property was sold to 11th respondent by respondents 5 to 8. Applicant advanced a home loan of Rs.9,30,000/- to the 11th respondent and a mortgage was executed in Document No.888 of 2017. This applicant was impleaded in the suit as per the order passed in Application No.9536 of 2018. There is no cause of action against the applicant. The agreement has become unenforceable for the reason that 5th respondent was not able to secure the permission of the Court for selling share of minors 7th and 8th respondents. Without the permission of the Court as required under Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956, the sale agreement could not be enforced and thus, the suit is prohibited by law. Applicant is a secured creditor and he is entitled to proceed under Sarfaesi Act against the 11th respondent. There is absolutely no cause of action to proceed against this applicant and therefore, the plaint has to be rejected.

3. In reply, the learned counsel for the respondents 1 to 4 submitted that applicant is a financial institution who extended financial assistance to the 11th respondent for the purchase of the suit property in violation of the injunction order passed in O.A.No.308 of 2008 in C.S.No.280 of 2008 on 18.03.2008. Respondents 5 to 8 had been convicted by this Court in Contempt Petition No.1641 of 2017 on 02.12.2020 for selling the property to the 11th respondent in violation of the injunction order dated 18.03.2008. This application has been filed at the instance of respondents 5 to 8 to save them from contempt proceedings.

3(i). The Division Bench of this Court had only modified the order passed in O.P.No.566 of 2005. In fact, there was no prohibition for the parties to settle the price of the minors' share as valued by the Advocate Commissioner. As per this order, the respondents 1 to 4 are ready to pay the enhanced share to the minor respondents at Rs.44,92,764/- from the original amount of Rs.28,l2,500/-. In this regard a lawyer's notice dated 16.01.2008 had been sent to the respondents 5 to 8. In a sale deed dated 12.04.2017, 5th respondent was shown as major but in reality, he was minor on 12.04.2017. Therefore, sale deed dated 12.04.2017 is not valid. Immediately, on coming to know about the sale in favour of the 11th respondent and that applicant had financed the amount for the sale in favour of the 11th respondent it had been impleaded. Therefore, there is cause of action available against the applicant for impleading it as a defendant for the binding adjudication of issue between the parties. This suit is not barred by any law or for that matter any of the grounds under Order VII Rule 11 CPC. Therefore, this application is liable to be rejected.

4. Considered the rival submissions and perused the records.

5. It is seen from the pleadings and materials produced in this case that there is absolutely no dispute with regard to the sale agreement dated 22.03.2005 executed by Mrs.Vijayalakshmi, G.Suresh, minor Nivedha Ramesh and minor Krishnan. Minors are being represented by Vijayalakshmi on one part and S.K.A.Abdul Kader on the other part. Vijayalakshmi and others are vendors and S.K.A.Abdul Kader is the purchaser. The sale consideration was fixed at Rs.1,50,00,000/-. A sum Rs.50,000/- was paid on 16.09.2004 and another sum Rs.54,50,000/- was paid for settling the auction purchaser Mr.B.Murugeswaran, when the property was brought on sale by M/s.Park Town Benefit Fund Limited from whom respondents 5 to 8 obtained a loan. This is a specific clause in the agreement that the first vendor namely Vijayalakshmi should obtain permission from the competent Court for the sale of minors' share in the property. Accordingly, she filed O.P.No.566 of 2005 and an order was passed in O.P., on 05.01.2007 stating that the value of the property as per the Advocate Commissioner's Report was Rs.2,39,61,387/-. That being the case, the sale consideration offered at Rs.1,50,00,000/- is not an adequate

sale consideration. In this view of the matter, the permission was rejected. However, an option was given to the intending purchaser to purchase the property for Rs.2,39,61,387/- by entering the fresh agreement and obtaining appropriate orders from Court.

6. Against this order, the original agreement holder S.K.A.Abdul Kader filed OSA.Nos.220 and 230 of 2007. The Division Bench of this Court finding that the injunction order was passed in respect of the property in its entirety is not correct and modified the order of the learned Single Judge and confined the order only with reference to 6/32 share of the minors. It was also made clear that this order would not preclude the parties to settle the price of minors' share, as valued by the Advocate Commissioner and as suggested by N.R.Chandran, learned Senior Counsel for the applicant. When the appeal was ultimately dismissed, in effect, the finding of the learned Single Judge that minors' should be given right price was confirmed.

7. Therefore, this Court finds that if the respondents 1 to 4 are prepared to pay the right price to the minors' share 7th and 8th respondents share, there is no prohibition for granting permission to sell their share. The sale agreement also involves the share of respondents 5 and 6 who are the major sharers. Assuming that the minors share cannot be sold, the respondents 1 to 4 can always insist the specific performance of the contract against the share of respondents 5 and 6. Thus, this Court finds that there is absolutely no legal bar to proceed with the suit for specific performance.

8. As rightly pointed out by the learned counsel for the respondents that the suit was filed in the year 2008. There was an order of injunction restraining the respondents from alienating the suit property was passed in O.A.No.308 of 2008 on 18.03.2008. Despite that the suit property was sold by respondents 1 to 4 to the 11th respondent. Even, as per the averments made by the applicant that the consent letter dated 12.04.2017 was issued on the understanding that the amount of Rs.2,15,00,000/- would be paid on or before 30.04.2017. It appears that

this amount was not paid and therefore, this consent will have no force in law and this cannot be used against the respondents 1 to 4 to claim that they consented for sale in favour of 11th respondent. The sale has been taken place in favour of 11th respondent, financed by the applicant, when the injunction not to alienate was in force. This applicant was impleded as defendant and the order of impleadment has not been challenged by way of appeal. Applicant's right to proceed against the 11th respondent on the basis of mortgage is an independent right subject to the outcome of this suit.

9. For all the reasons stated above, this Court finds that respondents 1 to 4 have necessary cause of action against the applicant and the suit is not barred by any law or for that matter any of the grounds laid under Order VII Rule 11 CPC. This petition is filed to prolong the proceedings and therefore, this application is dismissed with costs of the respondents 1 to 4.

28.09.2022

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G. CHANDRASEKHARAN, J.

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Predelivery Order in
A.No.3301 of 2022 in
C.S.No.280 of 2008

28.09.2022