



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.12.2021

PRONOUNCED ON: 21.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.Nos.3285, 3290 & 3291 of 2021 and

C.M.P.Nos.18658, 18697 & 18699 of 2021

M/s.Kwality Spinning Mills Pvt Ltd.,

Rep by its Managing Director,

M.Sathappan Ravi,

Udumalpet Road,

Solapalayam Village,

Pollachi - 642 003.

Coimbatore District.

... Appellant in all CMAs.

Versus

1.M.Sangeetha

2.R.Sudha

3.M/s.Amuthasurabhi Hotel,

Rep by its Managing Partner,

R.Manoj Kumar,

S/o.Late Rengasamy Raja,

Having Office at:

S.F.No.25/2, Solapalayam Village,

Udumalpet Main Road,

Pollachi - 642 003

Coimbatore District.

...Respondents in all CMAs.

Civil Miscellaneous Appeals are filed under Order 43 Rule 1 of CPC, against the order dated 14.09.2021 made in I.A.Nos.6, 3 & 2 of 2021 in O.S.No.120 of 2021 on the file of the V Additional District Judge, Coimbatore.

For Appellant in all CMAs : Mrs.Chitra Sampath
(Senior Advocate)

For Mr.T.S.Baskaran

For Respondents in all CMAs : Mr.Lakshmi Narayanan

For Mr.I.Abrar Mohamed Abdullah



COMMON JUDGMENT

The revision petitioner suffered an order of dismissal dated 14.09.2021 made in I.A.Nos.6, 3 & 2 of 2021 in O.S.No.120 of 2021 on the file of the V Additional District Judge, Coimbatore. This has given rise to the filing of the present Civil Miscellaneous Appeals.

2. The revision petitioner, as plaintiff, has filed the suit in O.S.No.120 of 2021 before the Trial Court praying to set aside and cancel the cart track Agreement dated 04.11.2019, registered as document No.10033/2020, on the file of the Sub Registrar, Pollachi, on the ground that such Cart Track Agreement was executed by undue influence, fraud and misrepresentation. The plaintiff also sought for a declaration to declare that the plaintiff alone are entitled to use the suit cart track, for a permanent injunction, restraining the defendants from using the suit cart track and for mandatory injunction, directing the defendants to remove and demolish the obstruction in the suit cart track.

3. According to the plaintiff, they are a Company incorporated under the Companies Act and carrying on Textile business in Pollachi. The 3rd defendant in the suit is a Restaurant attached to a Marriage Hall owned by a Partnership Firm called Amuthasurabhi Hotel managed by one Manoj Kumar. The 1st defendant is the wife of Manoj Kumar. The 2nd defendant is the daughter of Manoj Kumar. The 3rd defendant/restaurant represented by Mr. Manoj Kumar approached the plaintiff to purchase a part of the land owned by the plaintiff situated at NH83, Pollachi to Udumalai Road. Since, there is a Mill on the rear side (Southern side), the Plaintiff formed a private road even in the year 1958 for ingress and egress to reach the Mill. The 3rd defendant has also established a kitchen on the Southern extreme side of the land. After deliberation, a portion of the property measuring 1.0425 acres along with 13,000 sq.ft building was purchased by the 1st and 2nd defendants vide Sale Deed dated 05.11.2018 for a sum of Rs.3 crores. Even though the Sale Consideration was Rs.3.75 crores, the defendants 1 and 2 induced the plaintiff to record the Sale Consideration as Rs.2 crores in the sale deed. The plaintiff reluctantly agreed to do so on the advice of their Auditor. It is the case of the plaintiff that the defendants 1 and 2 have treated the balance Sale Consideration of Rs.1.75 crores as premium paid towards purchase of the lands. However, the entire amount of Rs.3.75 crores received by the plaintiff had been recorded in the Income Tax records. Pursuant to this sale transaction, the defendants 1 and 2 insisted the plaintiff to part with the right of the ingress



and egress over the North to South private road to reach the kitchen established by them. The defendants 1 and 2 also offered a sum of Rs.40 lakhs for using the road. Thereafter, the defendants 1 and 2 instigated the plaintiff to execute the suit Cart Track Agreement. The plaintiff was under immense pressure from the defendants 1 and 2 and executed such an agreement on 04.11.2019 as per which, the plaintiff has not transferred his right, title and interest over the cart track but only provided ingress and egress thereof.

4. The grievance of the plaintiff is that after execution of the suit cart track Agreement, the defendants 1 and 2 applied for change of Patta in their name with the Tahsildar and claimed ownership over the suit cart track. It is the contention of the plaintiff that the defendants 1 and 2 can at the best use the cart track only as a right to ingress and egress for taking the vehicle through this road and for people to walk through this land to reach the kitchen and the Suit cart track Agreement will not provide any title to the defendants 1 and 2 over the land. On the other hand, on the strength of the suit cart track Agreement, the defendants 1 and 2 have constructed steps and ramp in the new cart track contrary to the terms of agreement. Notwithstanding the same, the defendants 1 and 2 have also filed a vexatious suit in O.S.No.793/2020. As the defendants 1 and 2 have acted detrimental to the interest of the plaintiff over the property namely suit cart track, they have filed a present suit.

5. On notice, the defendants 1 and 2 have filed their written statement repudiating the plaint averments by specifically stating that the suit cart track Agreement was executed with the consent and expressed willingness on the part of the plaintiff and there is no coercion of undue influence whatsoever, as alleged by the plaintiff. The construction of ramp and stairs abetting the suit property is due to easement of necessity and the defendants does not prohibit or prevent, by use of cart track, the plaintiff or their men in any manner. As the plaintiff attempted to prevent the defendants from using the suit cart track they were constrained to file O.S No.793/2020 and the suit filed by them is not vexatious as claimed by the plaintiff. Further, the defendants 1 and 2 have also filed another suit in O.S.No.31/2021, before the District Munsif Court, Pollachi, for permanent injunction in respect of the very same suit cart track. The defendants have every right to ingress and egress in the suit cart track based on the Agreement dated 04.11.2019, which cannot be prevented by the plaintiff. The right of the defendants flows from the suit Cart Track Agreement consciously executed by the plaintiff for a valid sale consideration. Therefore, the defendants prayed for dismissal of



the suit as devoid of merits.

6. Pending suit, the plaintiff has filed three applications namely I.A.Nos.2, 3 & 6 of 2021, praying for Interim Injunctions as well as mandatory injunction. The applications for interim injunctions have been contested by the defendants 1 and 2. Even in the applications for interim injunction, documents were marked by both sides. The plaintiff marked Exs.P1 to P28 and the respondent/defendant marked Exs.R1 to R3. Ex.C1 is the Report of the Advocate Commissioner, appointed by the Trial Court. On appreciation of the oral and documentary evidence, the Trial Court refused to grant the equitable relief of injunction by stating that the relief of mandatory injunction can be granted only after trial in the suit. Such relief cannot be granted pending suit. In order to obtain injunction, the plaintiff has to make out a prima facie case and the balance of convenience has to be in their favour. However, in the present case, the plaintiff has not made out a prima facie case. Even though, it is vehemently contended by the plaintiff that the suit cart track Agreement has been executed by force, coercion and misrepresentation, the fact remains that it was a registered document. The plaintiff has also admitted having received a sum of Rs.40 lakhs as sale Consideration for executing the suit cart track Agreement. Further, it is the definite case of the defendants 1 and 2 that they have purchased a portion of the property from the plaintiff and for effectively asserting a right over the suit property, the suit cart track has become necessary for their ingress and egress. It is nothing but an easement of necessity which the plaintiff/land owner must provide. However, even for execution of the suit cart track Agreement, the defendants 1 and 2 have paid a sum of Rs.40 lakhs. The Trial Court, therefore, opined that whether or not the suit cart track Agreement was executed out of fraud or misrepresentation can be gone into only at the time of trial. Pending suit, the defendants cannot be enjoined from using the suit cart track or a direction could be given to them to remove the stairs put up by them in the suit property to reach the kitchen established by them. The Trial Court therefore, dismissed all the applications filed by the plaintiff with an observation that the claim of the plaintiff has to be examined only at the time of trial in the suit.

7. Aggrieved by the order of refusal passed by the Trial Court, the plaintiff has come forward with these Civil Miscellaneous Appeals.

8. Mrs.Chitra Sampath, learned senior counsel appearing for the appellant would mainly contend that injunction is a discretionary relief and the Trial Court ought to have granted such relief in favour of the plaintiff, who has established a



prima facie case in their favour. The Trial Court ought to have granted mandatory injunction, directing the defendants to remove the ramps and stairs put up in the suit cart track in violation of the terms of the Agreement. When it is established by the plaintiff that there is a breach of the terms and conditions of the agreement whereby, the right of the plaintiff was sought to be infringed, the Trial Court ought to have granted an injunction and the refusal on the part of the Trial Court in granting injunction would result in multiplicity of proceedings besides it would infringe the right and interest of the plaintiff, who is the lawful owner of the suit land. Merely because, a right of ingress and egress was granted to the defendants it will not confer them ownership over the suit cart track. The Trial Court misdirected itself in coming to the conclusion that the respondents can park their vehicles in the suit property or do anything they desire, when such amenities were not provided in the suit cart track agreement. The trial court, without taking note of the fact that there was no such amenities granted to the respondents 1 and 2 in the suit agreement, has refused to grant an injunction. The ramp as well as the steps constructed by encroaching the suit cart track is clearly established by Ex.C1, Report of the Advocate Commissioner, which was lost sight of by the trial court. The Trial Court did not consider the fact that the plaintiff being the owner of the land is entitled to carry on work such as laying on under ground pipe lines, electrical cables, etc., which cannot be prevented by the respondents 1 and 2. The learned Additional District Judge, refused to grant an injunction by travelling beyond the scope of the suit agreement which has prejudiced the plaintiff. The learned senior counsel therefore prayed for setting aside the order of the learned Trial Judge.

9. Per Contra, Mr.Lakshmi Narayanan, learned counsel appearing for Mr.Ibrar Mohammed Abdullah, learned counsel for the respondents would submit that when a discretion has been exercised by the Trial Court based on oral and documentary evidence, unless such discretion has been improperly exercised, the Appellate Court cannot slightly interfere with the same. The Trial Court in this case has rightly held that mandatory injunction is a relief which can be granted only after trial in the suit and such relief cannot be granted during the pendency of the suit. If mandatory injunction is granted and the steps or stairs put up by the defendants 1 and 2 is directed to be demolished during the pendency of the suit, it would amount to pretrial and in such event, the defendants 1 and 2 will be highly prejudiced. The Trial Court has rightly taken note of the fact that the suit cart track Agreement has been registered and the plaintiff also admitted having received the consideration thereof. In such event, merely because the plaintiff contends



that the suit cart track Agreement has been executed due to misrepresentation or coercion, it will not be a ground for grant of injunction against the defendants from using the suit cart track for their ingress and egress. In any event, the plaintiff has to establish the right only during the course of trial in the suit. The Trial Court has rightly refused to grant interim injunction in favour of the plaintiff and it calls no interference by this Court. In support of his contention, the learned counsel for the respondents placed reliance on the decision of the Hon'ble Supreme Court in [Mohd.Mehtab Khan and Others versus Khushnuma Ibrahim Khan and Others] reported in 2013 (9) SCC 221 and contended that when the reasons assigned by the Trial Court for refusal of injunction is a plausible view, the Appellate Court should not substitute such decision and arrive at a different conclusion. As long as the view of the Trial Court was a possible view, the Appellate Court should not ordinarily interfere with such decision of the Trial Court.

10. Heard the learned senior counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed on record.

11. The learned counsel for the appellant would contend that as per the agreement between them, the respondents do not have right to park the vehicles and only have right to ingress and egress and the respondents are causing nuisance to the appellant from enjoying their own property. The learned counsel would further contend that the respondents are causing trouble to the appellant by parking the vehicle in front of their entrance depriving the vehicle of the appellant to be parked.

12. Per contra, the learned counsel for the respondents would contend that the allegations made by the appellant are false and having paid huge amount, the respondents are also entitled to enjoy the property. It is contended that it is the appellant, who is causing inconvenience to the respondents.

13. This Court does not want to go deep into the merits of the contentions of both sides with respect to the agreement entered into between them as it is a matter for trial. This Court having considered the submissions made by the learned counsel for parties, is only inclined to direct both the parties not to cause any hindrance in the matter of parking of their vehicles or the vehicles of their respective guest or customer at the entrance of either parties, thereby facilitating the vehicles to be parked in an orderly manner. This arrangement shall continue among the parties till the disposal of the suit. The learned counsel for the parties also agreed for the same.

14. It is made clear that the observations, which this Court has made in these Civil Miscellaneous Appeals, are only for the purpose of disposal of these appeals and this Court has



not gone into the merits of the case of the appellant as well as the respondents. Therefore, the trial court shall proceed with the trial in the suit uninfluenced by any of the observations made in this appeal and to independently consider the case of the parties to the suit.

15. With the above direction, these Civil Miscellaneous Appeals are disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

rsh/ssi

To:

1. The V Additional District Judge,
Coimbatore.
2. The Section Officer,
V.R. Section,
High Court, Chennai.

+3ccs to Mr. T.S. Baskaran, Advocate SR.No.10935

+2ccs to Mr. I. Abrar Mohamed Abdullah, Advocate SR.No.10977, 10978

+1cc to Mr. I. Abrar Mohamed Abdullah, Advocate SR.No.10976
RN(22/03/2021)

C.M.A.Nos.3285, 3290 & 3291 of 2021

MT(CO)
GMY(17/03/2022)