



C.M.A.No.2645 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2645 of 2022

&

C.M.P.No.20564 of 2022

S.Padmavathy

...Appellant

Vs.

C.M.T.Khader's Granite
and Tiles India Ltd.,
Rep. by its Managing Director
S.A.Abdul Salam – 52 years,
S/o.Abdul Khader,
No.222, Karanampettai, Trichy Road,
Sulur P.O.,
Coimbatore – 641 402.

... Respondent



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Prayer: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of the CPC against the order dated 16.08.2022 passed in I.A.No.1 of 2021 in O.S.No.518 of 2021 by the Principal District and Sessions Judge, Tiruppur.

For Appellant : Mr.M.Kalyanasundaram,
Senior Counsel

For Mr.R.Vasudevan.

JUDGEMENT

The above appeal is filed challenging the order passed in I.A.No.1 of 2021 in O.S.No.518 of 2021 by the Principal District and Sessions Judge, Tiruppur. The plaintiff / petitioner is the appellant before this Court. The brief facts which are required to appreciate the objections to the order under appeal is as follows.



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2. The suit property was settled on the plaintiff by her husband Siva Kumar who is the original owner, under a settlement deed dated 15.12.2010. The respondent had entered into an unregistered agreement dated 03.05.2017 with the petitioner's husband in respect of an extent of 1.18 acres in S.F.No.222/10 to take on rent the suit property for a sum of Rs.25,000/-, for which an interest free advance of Rs.1,00,000/- was paid which was refundable at the end of the lease period. Thereafter, the respondent had purchased the said property for a sum of Rs.31,64,000/- under a registered sale deed dated 19.12.2018.

3. It is the case of the appellant that although the document had shown the sale consideration as a sum of Rs.31,64,000/-, however, the parties had agreed for sale consideration of a sum of Rs.1,36,64,000/- and for the payment of the balance sale consideration a Memorandum of Understanding was entered into on 18.07.2019 between the



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appellant and the respondent, in and by which the respondent had undertaken to pay the balance sum of Rs.1,05,00,000/-.

4. However, the respondent had reneged on his understanding and therefore, the petitioner was constrained to file the suit O.S.No.518 of 2021 on the file of the Principal District and Sessions Court, Tiruppur, for recovery of a sum of Rs.1,05,00,000/-.

5. The respondent / defendant had filed a written statement denying the execution of the Memorandum of Understanding. Along with the said suit, the appellant had filed I.A.No.1 of 2021 seeking an injunction restraining the respondent from alienating or encumbering the suit property.

6. In the affidavit filed in support of the said application, the appellant had contended that the respondent is in possession of the



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property. The plaintiff would further submit that the respondent who is unable to sell the property is attempting to mortgage the same for a heavy price and even if the plaintiff were to succeed in obtaining the decree, she would be deprived of property.

7. The respondent had not contested the matter and was set ex parte.

8. The Principal District and Sessions Judge, Tiruppur, dismissed the said application taking into account the fact that the entire sale consideration as stated in the sale deed dated 19.12.2018 had been obtained by the plaintiff and the ownership had been transferred. In these circumstances, the plaintiff was not entitled to injunction.

9. Challenging the said order, the appellant is before this Court.



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10. Heard the learned senior counsel appearing for the appellant.

11. The learned senior counsel would submit that in the ultimate event of the appellant succeeding in the suit, she will not be in a position to executed her decree. Therefore, the balance of convenience and ends of justice were entirely in favour of the appellant for grant of injunction.

12. The suit in question is simpliciter suit for recovery of money on the basis that the sale consideration narrated in the sale deed does not constitute the agreed sale consideration. This is a matter which is subject to proof. As on date, there is a registered agreement in favour of the respondent and it is not the contention of the appellant that the amount due under the sale consideration as narrated has not been paid.



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13. In these circumstances, there cannot be an injunction against the true owner. I see no reason to interfere with the order passed by the learned Principal District and Sessions Judge, Tiruppur. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

01.12.2022

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Index : Yes/No

Speaking order/non-speaking order

To,

The Principal District and Sessions Judge,
Tiruppur.



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P.T.ASHA, J.,

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