



C.M.A(MD)Nos.576 and 577 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.11.2022

PRONOUNCED ON: 23.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)Nos.576 and 577 of 2022

and

C.M.P.(MD)Nos.4973 to 4976 of 2022

C.M.A.(MD)No.576 of 2022:

P.Kavitha : Appellant/Respondent/Defendant

Vs.

G.Sujatha : Respondent/Petitioner/Plaintiff

PRAYER:- Civil Miscellaneous Appeals filed under Order 43 Rule of Civil Procedure Code, against the Fair and Decretal order dated 30.03.2022, passed in I.A.No.54 of 2022 in O.S.No.81 of 2022, on the file of VI Additional District Judge, Madurai.



C.M.A(MD)Nos.576 and 577 of 2022

C.M.A.(MD)No.577 of 2022:

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1.P.Kavitha
2.P.Gowtham : Appellants/Respondents/Defendants

Vs.

G.Sujatha : Respondent/Petitioner/Plaintiff

PRAYER:- Civil Miscellaneous Appeals filed under Order 43 Rule of Civil Procedure Code, against the Fair and Decretal order dated 30.03.2022, passed in I.A.No.55 of 2022 in O.S.No.82 of 2022, on the file of VI Additional District Judge, Madurai.

For Appellants
in both appeals : Ms.J.Anandhavalli

For Respondent
in both appeals :Mr.N.S.Karthikeyan

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals are directed against the orders passed in I.A.No.54 of 2022 in O.S.No.81 of 2022 and in I.A.No. 55 of 2022 in O.S.No.82 of 2022, dated 30.03.2022, on the file of VI Additional District Judge, Madurai.



C.M.A(MD)Nos.576 and 577 of 2022

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2. The appellant in C.M.A.(MD)No.576 of 2022 is the defendant in O.S.NO.81 of 2022 and the appellants in C.M.A.(MD)No.577 of 2022 are the defendants in O.S.No.82 of 2022 and the respondent/plaintiff has filed two suits in O.S.Nos.81 and 82 of 2022 claiming the relief of specific performance of the agreement dated 21.06.2021. The respondent/plaintiff, by alleging that the defendants have offered to sell the suit properties and the plaintiff has agreed to purchase the same, that they have fixed the sale price at Rs.67,50,000/-, that they have entered into two sale agreements on 21.06.2021 and whereunder, after recording the receipt of the advance amount of Rs.45,00,000/-, the defendants in both the suits have agreed to receive the balance sale price of Rs. 22,50,000/- each for the suit property in both the suits and to get it registered, that thereafter, the defendants have received Rs.10,00,000/- each on 25.08.2021 alleging emergent expenses as a part of sale price, that the plaintiff has always been ready and willing to perform his part of contract, but the defendants have been postponing the same on some pretext or the other, that the plaintiff has then sent legal notices dated 24.01.2022 and 25.01.2022 respectively, directing the defendants to receive the balance sale price and to get the sale deed executed, that the



C.M.A(MD)Nos.576 and 577 of 2022

defendants having received the notice on 31.01.2022, have neither sent any reply nor complied with the notice demand and that since the defendants having been making urgent attempts to alienate the properties, the plaintiff was constrained to file the above suits.

3. The plaintiff has also filed two applications in I.A.Nos.54 and 55 of 2022 under Order 39 Rule 1 and 2 of the Code of Civil Procedure seeking temporary injunction restraining the defendants and their men from in anyway alienating or encumbering the suit properties in favour of the third parties till the disposal of the suits.

4. The defendants have filed a written statement in both the suits alleging that they had borrowed Rs.20,00,000/- vide cheques in the name of the first defendant and Rs.15,00,000/- in the name of the second defendant to settle the loans due by the husband of the first defendant and they they have not entered into any sale agreement with the plaintiff as alleged in the plaint. The defendant in O.S.No.81 of 2022 and the defendants in O.S.No.82 of 2022 have filed a memo to treat their written statement as counter statement to the petitions filed in I.A.No.54 of 2022 and I.A.No.55 of 2022.



C.M.A(MD)Nos.576 and 577 of 2022

WEB COPY

5. During enquiry, both the parties have not adduced any oral evidence, but the plaintiff has produced and exhibited 9 documents as Exs.P.1 to P.9 in both the applications. The learned Additional District Judge, after enquiry, has passed the impugned order in both the applications separately, dated 30.03.2022 granting temporary injunction till the disposal of the main suits. Aggrieved by the said order, the defendants have come forward with the present Civil Miscellaneous Appeals.

6. Before entering into further discussion, it is necessary to refer the three main requirements for granting temporary injunction as settled by the Hon'ble Supreme Court in ***Dalpat Kumar and another vs Prahlad Singh and others*** reported in AIR 1993 SC 276 viz., (1) prima facie case; (2) irreparable loss and (3) balance of convenience and the relevant passage is extracted hereunder:

“5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the



C.M.A(MD)Nos.576 and 577 of 2022

grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound



C.M.A(MD)Nos.576 and 577 of 2022

WEB COPY

judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

7. It is settled law that the Court is duty bound to see whether necessary conditions are satisfied ie., *prima facie* case in favour of the plaintiff and against the defendant; irreparable injury is likely to be caused to the plaintiff or cannot be compensated for in terms of money; and balance of convenience is in favour of the plaintiff and against the defendant. It is pertinent to note that the satisfaction of one of the above conditions would not be sufficient for the Court to order for temporary injunction and the plaintiff has to satisfy the existence of all the three conditions.

8. In the case on hand, as rightly contended by the learned Counsel for the appellants, the learned Additional District Judge, in both the matters, has passed cryptic orders. No doubt, there are 13 paragraphs in the impugned order and all the paragraphs are one or two lines paragraphs. It is necessary to refer paragraph Nos.8 to 10 hereunder for better appreciation:



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C.M.A(MD)Nos.576 and 577 of 2022

“8. On perusal of the counter (written statement) filed on the side of the respondent, it is found that this respondent had admitted that the amount was credited in the Bank account of the respondent.

9. This petitioner had deposited the balance amount of the agreement into the court to show the bonafideness of the petitioner ready and willingness for the performance of the contract.

10. Hence, it is evident the prima facie case and the balance of convenience is in favour of this petitioner.”

9. The learned Additional District Judge, by observing that the defendants had admitted that the amount was credited in the Bank account of the defendants and that the plaintiff had deposited the balance sale price to show his bonafide and willingness to perform his part of contract, has recorded that there existed *prima facie case* and the balance of convenience is in favour of the plaintiff. In the next paragraph, the learned Additional District Judge has stated that if the property is encumbered by the defendants, the plaintiff will be put to irreparable loss.



C.M.A(MD)Nos.576 and 577 of 2022

WEB COPY

10. As rightly contended by the learned Counsel for the appellants, the learned Additional District Judge has neither referred the contentions raised in the statement nor considered the same. The learned Judge has not even quoted the main defence taken by the defendants that they have never entered into sale agreement and there existed only loan transaction between them. The learned Additional District Judge has not recorded his satisfaction about the three necessary conditions contemplated under Order 39 Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunctions. Considering the above, this Court has no hesitation to hold that the impugned orders are liable to be set aside and the matter is to be remitted back to the trial Court to conduct fresh enquiry and for passing of reasoned orders.

11. In the result, both the Civil Miscellaneous Appeals are allowed and the orders passed in I.A.No.54 of 2022 in O.S.No.81 of 2022 and in I.A.No.55 of 2022 in O.S.No.82 of 2022, dated 30.03.2022, on the file of VI Additional District Judge, Madurai are set aside and both the cases are remitted back to the trial Court and the learned VI Additional District Judge, Madurai is directed to conduct fresh enquiry and to pass reasoned orders in accordance with law within a period of one month from the date



C.M.A(MD)Nos.576 and 577 of 2022

of receipt of a copy of this order. Consequently, the connected

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Miscellaneous Petitions are closed. No costs.

23.11.2022

Index : Yes : No

Internet : Yes : No

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To

The VI Additional District Court, Madurai.



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C.M.A(MD)Nos.576 and 577 of 2022

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)Nos.576 and 577 of 2022

23.11.2022