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Original Side Appeal No. 35 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Original Side Appeal No. 35 of 2023

G. Dhayalan

..

Appellant

Versus

- 1.U. Parthan
- 2.M.P. Saroja
- 3.C. Sundari
- 4.C. Ravindran
- 5.S. Revathi
- 6.K. Purushothaman
- 7.V. Kasthuri
- 8.R. Rani
- 9.K. Ravichandran
- 10.S. Mahalakshmi
- 11.K. Sudakar
- 12.P. Moothi
- 13.D. Padmavathi
- 14.C. Ezhilarasi



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15.S. Indumathi

16.K. Selvi

17.D. Baskar

18.K. Ravinder

19.A. Rani

20.S. Vasanthi

21.E. Vedhavalli

22.R. Dhamodharan

23.Yasodha

24.S. Rukmani

25.U. Shoban Kumar

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 29.11.2022 passed in Original Application No. 738 of 2022 in Civil Suit No. 245 of 2022 on the file of this Court.

For Appellant : Mr. A.K. Sriram, Senior Advocate
for M/s. D.R. Law Chambers

For Respondents : Mr. Yashod Vardhan, Senior Advocate
for Mr. P. Sesubalan Raja for R1

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J)

The appellant, who is the 24th defendant in the suit in CS.No.245 of 2022, has come forward with this intra-court appeal questioning the validity



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and/or correctness of the order dated 29.11.2022 passed in Original Application No. 738 of 2022 in Civil Suit No. 245 of 2022.

2. The plaintiff / first respondent herein preferred the aforesaid suit praying to grant a decree of declaration declaring that he is in possession of the property described in the plaint and to restrain the appellant/24th defendant, his men and persons claiming any right under him from interfering with the possession of the plaint described property, either by threatening the tenants or by entering into tenancy agreement with them or in any other manner.

3. Pending suit, the plaintiff/first respondent has filed the Original Application No. 738 of 2022 for the relief of interim injunction restraining the appellant/24th defendant, his men, agents, or persons claiming right under him from interfering with his possession of the plaint described property, either by threatening the tenants or by entering into tenancy agreement with them or in any other manner till the disposal of the suit. In the said application, the learned Judge passed an order dated 29.11.2022, which is under challenge in this Original Side Appeal.



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4. The averments made by the plaintiff/first respondent in the suit are briefly stated as follows:

(i) The property in T.S. No.97/14, R.S. No.111/1 bearing Plot No.1 measuring 3591 square feet at No.6, 22nd Street, Ashok Nagar, Chennai - 600 083 originally belonged to one Mrs. V. Chinnammal, who has purchased it by way of a registered sale deed dated 29.01.1995. On the death of Mrs. Chinnammal, her legal heirs (i) M.P. Kannaiya (ii) M.P. Ponnurangam and (iii) M.P. Ramachandran and (iv) M.P. Saroja (first defendant) have inherited the property by way of succession and are in enjoyment of the same. According to the plaintiff, his father P.S. Ulagarakshagan entered into a registered sale agreement dated 16.12.1986 with the legal heirs of the deceased Chinnammal and it was also registered as document No. 4444 of 1986 in the office of the Sub-Registrar, Kodambakkam. At the time of execution of the agreement of sale, the father of the plaintiff paid Rs.45,000/- as advance out of the total sale consideration of Rs.2,45,000/-. As per the agreement, the father of the plaintiff also paid the remaining sale consideration and obtained an irrevocable power of attorney in favour of his employee by name, one Ravichandran from the vendors on the same day and



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it was registered as document No. 445 of 1986 on the file of Sub-Registrar, Kodambakkam.

(ii) According to the plaintiff, the recitals contained in the agreement of sale dated 16.12.1986 and the irrevocable power of attorney executed in favour of the employee of the plaintiff's father would make it abundantly clear that there was a contract between his father and his vendors to transfer the property covered in the agreement of sale dated 16.12.1986 for a valuable consideration. Such contract includes necessary terms to ascertain the handing over of possession and authority given to the plaintiff's father to enjoy the property so conveyed absolutely, besides it shows that the father of the plaintiff was put in possession of the said property.

(iii) The plaintiff would further proceed to state that on the strength of the transfer of title to the property, in the manner aforesaid, his father obtained planning permission to raise a commercial building and completed the construction during 1991-1992. The building so constructed by his father was also assessed to payment of property tax. After completion of the construction, the plaintiff's father divided the building into several portions and let it out to tenants and collecting rents.



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(iv) It is also stated by the plaintiff that on 15.12.2018, his father died. After the death of his father, inspite of repeated demands made to his brother/25th defendant, to divide the property by metes and bounds, he did not come forward to effect amicable partition. Therefore, the plaintiff filed the suit in C.S. No. 314 of 2019 against his family members. During the pendency of the suit, a compromise has been entered into, based on which a compromise decree was passed in the suit on 19.08.2021. As per the decree dated 19.08.2021, the property, which is mentioned in the schedule of the present plaint, fell to the share of the plaintiff and he is in possession and enjoyment of the same. The plaintiff also effected transfer of the property tax in respect of the plaint described property and other properties in his name.

(v) However, notwithstanding the compromise decree passed in the suit in C.S. No. 314 of 2019, his brother, the 25th defendant is instigating the tenants not to attorn the tenancy in favour of the plaintiff and refuse to pay the rent to him. Therefore, the plaintiff was constrained to file an Execution Petition in the suit in C.S. No. 314 of 2019 to enforce the compromise decree. At this stage, the 24th defendant made a rival claim by stating that he had purchased the plaint described property by means of a sale deed dated



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13.06.2022 from the defendants 1 to 23. On verification of the sale deed, it is seen that the defendants 2 to 23 claimed themselves to be the legal heirs of M.P. Kannaiya, M.P. Ponnurangam and M.P. Ramachandran, who, along with the first defendant, have sold the plaint described property in favour of the plaintiff's father. According to the plaintiff, the 24th defendant has no wherewithal to purchase the plaint described property. The 24th defendant is only a name lender and the sale deed dated 13.06.2022 is fabricated by the 25th defendant in connivance with the 24th defendant. The plaintiff also came to know that the 25th defendant had taken the original title deeds after the demise of his father and making a rival claim in respect of the plaint described property. The plaintiff also said to have given a complaint to the jurisdictional police against the 25th defendant for having taken the original documents without his knowledge, however, no action was taken thereof.

(vi) The plaintiff also stated that the 24th defendant, on the strength of the property tax assessment obtained in his name illegally, has filed Writ Petition No. 26661 of 2022 seeking to forbear the officials of the Electricity Board from changing the Electricity Service Connections in respect of the plaint described property. The writ Court did not grant any relief in the writ



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petition filed by the 24th defendant, but directed him to approach the Civil Court for appropriate relief.

(vii) Notwithstanding the order passed by this Court, on 08.10.2022, the 24th defendant came to the plaint described property along with his men and threatened the tenants of the plaintiff by name Neelakandan, Yasin and Prabu to accept him as the landlord and to enter into agreement with him, else they will be evicted forcibly. When this was informed by the tenants, the plaintiff has given a complaint against the 24th defendant and his men before the jurisdictional police authorities seeking to take appropriate action against the 24th defendant and his men. On the basis of such complaint, CSR receipt was issued to the plaintiff and an enquiry was conducted on 10.10.2022. During the enquiry, five advocates brought by the 24th defendant appeared and have forcibly removed the 2 CCTV cameras installed by the plaintiff in front of the schedule mentioned property. Thus, the attitude of the 24th defendant in threatening the tenants of the plaintiff and collecting the rents is illegal, arbitrary and unreasonable. Therefore, the plaintiff has filed the instant suit.



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5. Pending suit, reiterating the very same averments made in the plaint, the plaintiff has filed the Original Application to restrain the 24th defendant, his men or any one claiming right under him from collecting the rent from the tenants in the plaint described property till the disposal of the suit.

6.(i) On notice, the contesting 24th defendant filed a counter affidavit stating that the plaintiff cannot assert any manner of right in the property described in the plaint. Even according to the plaintiff, his father only obtained an agreement of sale and no sale deed has been executed in his favour. The plaintiff claims ownership over the plaint described property on the strength of an agreement of sale as well as an irrevocable power of attorney executed in favour of his employee Ravichandran, which will not confer him any right. Even the building planning permission has been granted in favour of the said Ravichandran and such permission has not been granted in favour of the father of the plaintiff. In fact, the power agent Ravichandran passed away on 27.12.1992, however, the father of the plaintiff made payment of property tax in respect of the plaint described property. The plaintiff and his father have conveniently omitted to disclose the death of the power agent in the year 1992 and even after his death, dealt



with the plaintiff mentioned property. The suit filed by the plaintiff and the compromise decree passed thereon are collusive in nature and it will not bind on the 24th defendant in any manner. When the father of the plaintiff himself has no title over the property in question, the plaintiff or his brother, the 25th defendant cannot assert any better title to the suit property.

(ii) The 24th defendant further stated that he is the lawful owner of the property mentioned in the plaint having purchased it by means of a sale deed dated 13.06.2022 and the plaintiff himself has filed this document in serial No.13 of the plaint. The sale deed was registered in favour of the 24th defendant after payment of the entire sale consideration and it was registered in his favour by the legal heirs of Kanniah, Ponnurangam, Ramachandran and Saroja. Therefore, the claim made by the plaintiff in respect of the plaint described property is frivolous. In fact, the vendors of the 24th defendant have filed an affidavit stating that the sale agreement made in favour of the father of the plaintiff expired and therefore, they have every right to execute the sale deed in favour of the 24th defendant.

(iii) As regards the averment that the 24th defendant had threatened the tenants, it is submitted that the tenants themselves, on hearing about the



valid transfer of the plaint described property in his favour, have entered into rental agreement with him and paying the rent. On the other hand, it is the plaintiff who is threatening the tenants to pay the rent to him. As lawful owner, the 24th defendant has every right to enter into tenancy agreement with the tenants and to receive the rent. The plaintiff, who is a person with no legal right over the plaint described property, cannot restrain the true owner of the property by depriving him from the lawful right vested with him. The 24th defendant has purchased the property described in the plaint for a valuable sale consideration through a registered sale deed. On the other hand, the plaintiff asserts a right over the property on the basis of an agreement of sale obtained by his father and the irrevocable power of attorney in favour of the employee of the father Ravichandran. As mentioned above, Ravichandran, power agent died even in the year 1992 and therefore, the plaintiff or his brother/25th defendant, cannot have any right, title and interest over the plaint described property. Stating so, the 24th defendant prayed for dismissal of the application for interim injunction.

7. On appreciation of the rival contentions, the learned Judge, by referring to Section 53-A of the Transfer of Property Act, observed that the



father of the plaintiff, on the basis of the agreement of sale, was put in possession of the plaint described property and there are evidence to show that he had put up the superstructure thereof after obtaining planning permission approval. At the same time, the learned Judge observed that there is nothing to show that the father of the plaintiff paid the balance sale consideration and obtained a sale deed in his favour. Once there is failure on the part of the agreement holder to pay the balance sale consideration, the question for examination is, whether the father of the plaintiff can continue a right to be in possession of the plaint described property without payment of the total sale consideration or obtaining a sale deed in his favour. The learned Judge also observed that the 24th defendant purchased the plaint described property only in the year 2022 and whether his right flows from and out of the sale deed dated 13.06.2022 in his favour, is also required to be examined in the light of Section 53-A of the Transfer of Property Act. Therefore, the learned Judge, leaving the important questions that arise for consideration in the suit during trial, concluded in para Nos.49 to 56 as follows:

"49. As on date, the plaintiff claims to be in possession exercising a right to collect the rents. The issue being nebulous, I would direct that the rents can still be collected by the plaintiff herein but the amounts



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should be deposited into the Court. If at all the 24th defendant is held to be entitled for the rents and is entitled for declaration of title, then, the fruits of the rents paid by the tenants can flow over to the 24th defendant.

50. Let the situation remain as it is, namely, the possession of the plaintiff can be protected. However, the rents collected by the plaintiff should be deposited in Court to the credit of the suit. On such deposit, let the registry transfer the amounts to any nationalized bank so that it could earn interest. On determination of the issues in the suit, let either the amount which have accrued flow over to the plaintiff or flow over to the 24th defendant.

51. At this stage, the balance of convenience will have to be examined. The balance of convenience is that the tenants have already recognized the plaintiff as a person who can receive the rents. It is the interference by the 24th defendant which has led to the filing of the suit. Therefore, I will leave the issue of title open. If the 24th defendant institutes necessary proceedings for recovery of possession, then, the issue of declaration of title can be examined.

52. As on date, the 24th defendant has not initiated such proceeding for recovery. The suit remains a simple suit to recognise possession, a possession based on the agreement as stated above.

53. Let the amounts deposited in Court earn interest and on settlement of the issues between the plaintiff and the 24th defendant and on the result of the trial, the amounts so collected can flow over either to the plaintiff or to the 24th defendant.

54. The tenants including the three named tenants, Yaseen, Neelagandan and G.Veelan are placed under an obligation to pay the rents to the plaintiff. The plaintiff is placed with further obligation to deposit the entire rents collected to the credit of the suit.

55. This would balance the case of both the plaintiffs and the 24th defendant since neither of them as on date have filed any suit or proceedings claiming title over the property. The only claim is a right to collect the rents, which claim or right can be determined only after evidence is recorded. The 24th defendant has not even filed the written statement as on date.

56. With the above observations, the Original Application stands disposed of."

8. Assailing the aforesaid order dated 29.11.2022 passed by the learned Judge in the Original Application, the 24th defendant has preferred



this appeal.

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9. (i) The learned Senior counsel appearing for the appellant would vehemently contend that the learned Judge did not consider that the suit itself is not maintainable inasmuch as it was not filed for a declaration to declare the title of the plaintiff. Rather, it was filed for a declaration to declare that the plaintiff is in possession of the plaint described property and to consequently restrain the appellant/24th defendant from interfering with the possession of the plaintiff. Such a relief sought for by the plaintiff, to recognise his possession, when he himself has no title to the plaint described property, is not maintainable. The present suit has been filed by the plaintiff on the basis of a time barred unperformed agreement of sale and it is bad in law. The sale agreement was dated 16.12.1986 and it never culminated in getting a sale deed. Even though the learned Judge observed that it is not known as to whether the balance sale consideration has been paid by the father of the plaintiff, yet, concluded that the 24th defendant purchased the plaint described property only on 13.06.2022 and therefore, the issues relating to the right over the plaint described property have to be examined only during trial. On the other hand, the plaintiff himself admitted that the



appellant/24th defendant had purchased the suit property by a registered sale deed dated 13.06.2022 for a valuable sale consideration. While so, the order passed by the learned Judge recognising the right of the plaintiff to collect the rent from the tenants and to deposit the same, is unwarranted. That apart, while dealing with an application for interim injunction, without any evidence, the observation of the learned Judge that the superstructure was put up by the father of the plaintiff after obtaining planning permission is unwarranted. Further, the power agent Ravichandran died on 27.12.1992 and it was mentioned by the plaintiff in the plaint, however, it was projected as though Ravichandran, power of attorney agent, is alive and the irrevocable power of attorney is still in force. In any event, the observation made by the learned Judge as though the plaintiff is in possession of the suit property and he had been collecting rent from the tenants for a long time, will not *ipso facto* a material for being considered to grant an interim injunction pending the suit.

(ii) The learned senior counsel for the appellant also submitted that Section 53-A of the Transfer of Property Act cannot be pressed into service in the present case, inasmuch as the plaintiff, as an agreement holder, cannot



seek any protection thereunder. Even though the learned Judge placed reliance on the decision of the Honourable Supreme Court in ***Rambahau Namdeo Gajre vs. Narayan Bapuji Dhatra (dead) through legal heirs [2008 (8) Supreme Court Cases 614]***, it was held therein that an agreement to sell immovable property does not create an interest or charge in favour of the proposed vendor in the suit property. The learned Judge also relied on the decision in ***Vasanthi vs. Venugopal (dead) through legal representatives [2017 (4) SCC 723]*** wherein it was held that the doctrine of part-performance is rooted in equity and provides a shield of protection to the proposed transferee to remain in possession against the original owner, who has agreed to sell to the transferee, if the proposed transferee satisfies the other conditions in Section 53-A. The other condition refers to the proof to show the payment of balance sale consideration, which the plaintiff did not satisfy in the present case and the Learned Judge, according to the Learned Senior Counsel for the appellant, failed to recapitulate the legal position emerging therefrom. However, by placing reliance on the above decisions, the learned Judge, at the interlocutory stage, granted the relief in favour of the plaintiff and thereby recognised the possession and right on the part of



the plaintiff to collect the rent from the tenants pending disposal of the suit.

By virtue of such a direction issued in the order, which is impugned in this appeal, the learned Judge has indirectly granted a decree of declaration in favour of the plaintiff, even though the suit is filed only to recognise his possession.

(iii) In support of his submissions, the learned Senior counsel for the appellant placed reliance on the decision of the Division Bench of this Court in the case of ***Padmanabhan V.A. and 3 others vs. M.A. Narasimhan and five others [1993 -I -Law Weekly 169]*** wherein it was held thus:

"16. What has been culled out by us leaves no manner of doubt that possession in part performance of a contract is a right falling under Section 53-A of the Transfer of Property Act and the transferee in possession of the property in part performance of the contract can defend his possession in case there is any attempt by the transferor or any person claiming through him to dispossess him. That the transferee can do either as a plaintiff or a defendant. Ordinarily, the issue as to possession or any other right under Section 53-A of the Act shall be consequential or a dependent issue upon the issue of the existence of the contract itself and with the decree for the enforcement of the contract there can be an order for maintaining use possession of the agreement holder/transferee. In considering, however, whether injunction should be granted on the plea of possession and allegation of threat to dispossession to a person holding the agreement for sale, the rule will be as one reiterated almost in every case that to a plaintiff claiming only an equitable right, the court would not ordinarily grant temporary injunction pending the suit on the basis of Section 53-A of the Act as mere possession of the plaintiff of the suit property on the date of the suit cannot be taken to enable him to obtain injunction from the Court. The passive equity as provided under Section 53-A of the Act shall be available as a shield against any interference by the defendant who is



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either the transferor himself or any other person claiming through the transferor but would not become active equity without there being something more. The doctrine of lis pendens as enunciated in Section 52 of the Act and similar other doctrines will take care of all penderue lite transfers. But there may be exceptional cases where the other rules of equity as are noticed in the cardinal principles for grant of injunction will intervene and injunction may be the proper and equitable order. The Bench decision of this Court in the case of T. Pammeshwari and Ors. v. S.S. Investments Private Ltd., and Anr. O.S.A. Nos. 122 and 123 of 1991 Judgment dated 24.10.1991, which has been affirmed by the Supreme Court in S.LP. Nos. 17926 and 17927 of 1991, has clearly said that no one can question the jurisdiction of the Court to grant temporary injunction even in a suit for specific performance of a contract for sale. But, while applying to exercise the discretion it would necessarily take the court to the various provisions governing the suit for specific performance of a contract for sale of immovable property as well as other equitable doctrines.

17. When we come to the facts of the instant case, however, there is a vague assertion in the plaint that pursuant to the agreement the defendants delivered possession of a certain portion of the land under the conveyance and that the plaintiffs have come in possession of certain other portions after getting third parties evicted. There is no specific mention on the portions of which the plaintiffs are exercising possession. The agreement is dated 12.3.1981. The suit has been filed in the year 1992. The alleged part performance is of the year 1982, in so far as possession of certain portion delivered by the defendants is concerned and it is not known when and how the plaintiffs obtained possession of the other part of the suit property and what portion is still remaining in the possession of the third parties or in the possession of the defendants. A Court shall allow a passive equity only to a limit and not beyond. It will be necessary in all cases to see if the property is not preserved in a status quo who will suffer greater injury, the plaintiff or the defendant?"

18. Learned Counsel for the appellants has tried to persuade us to imagine that the transferor and/or others claiming through him have intended to dispossess the plaintiffs. He has also tried to persuade us to hold that even though there are no specific specifications of the land in possession of the plaintiffs available, the defendants know about it and the third parties in possession also are fully aware of it. The Court should order maintenance of status quo which, according to learned Counsel for the appellants, would serve the ends of justice. We are, however, unable to accept this extreme contention. We have no material before us to hold that plaintiffs are in possession of any portion of the



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suit property. Learned Counsel for the appellants/plaintiffs has tried to show to us the mention of possession of a certain portion delivered to the plaintiffs by the defendants as part performance of the contract. But the defendants have denied any such possession by the plaintiffs, in the written statement that they have filed in the suit. It is not a fit case, in our opinion, for any interference with the impugned order. The appeal is dismissed. No costs."

(iv) The learned Senior counsel for the appellant therefore prayed for setting aside the order passed by the learned Judge leaving it open to the plaintiff to prove the plaint averments after recording of evidence during trial.

10.(i) On the other hand, the learned Senior counsel for the first respondent / plaintiff would contend that the plaintiff has made out a *prima facie* case for grant of an interim relief. The balance of convenience is also in favour of the plaintiff. Even though the 24th respondent/appellant has assailed the order passed by the learned Judge by filing the present appeal, he has not filed any independent suit seeking declaration especially when a cloud has been created in his title. The first respondent/plaintiff has purchased the plaint described property by a registered sale deed dated 13.06.2022, however, the possession of the plaint described property continuously remains with the plaintiff and he is collecting the rent from the tenants. The tenants also, recognising the possession and right of the



plaintiff, have been paying the rent all along. It is in those circumstances, the plaintiff has filed the present suit for recognising his lawful possession in the suit property and to protect his right to collect the rent from the tenants. In the light of the above undisputed facts, the learned Judge is right in permitting the plaintiff to collect the rent and to deposit it in the Court. Such a direction issued by the learned Judge is to strike a balance in the claim of the parties pending disposal of the suit. In any event, no adverse order was passed by the learned Judge in the application seeking interim injunction. The learned Judge only observed that depending on the outcome of the suit, the rental amount deposited can be directed to be withdrawn with accrued interest. In such circumstances, the learned Senior counsel for the first respondent/plaintiff would submit that the order passed by the learned Judge does not require any interference by this Court.

(ii) The learned counsel for the first respondent/plaintiff relied on the decision in *Ramesh Chand Ardawatiya vs. Anil Panjwani* [2003 (7) *Supreme Court Cases* 350] wherein it was held that a person who has entered into possession over immovable property under a contract for sale



and is in peaceful and settled possession of the property with the consent of the person in whom vests the title, is entitled to protect his possession against the whole world, excepting a person having a title better than what he or his vendor possesses. If he is in possession of the property in part performance of contract for sale and the requirements of section 53A of the Transfer of Property Act are satisfied, he may protect his possession even against the true owner.

(iii) For a similar proposition of law, the learned Senior counsel for the first respondent/plaintiff placed reliance on the decision in ***Biswanth Banik and others vs. Sulanga Bose and others [MANU/SC/0318/ 2022] (Civil Appeal No. 1848 of 2022 dated 14.03.2022)*** wherein it was held thus:

"7.4. While rejecting the plaint, the High Court has also observed and held that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act against the original owner would not be maintainable and for that reliance is placed upon the decision of this Court in the case of Delhi Motor Company (supra). However, it is required to be noted that even the plaintiffs have also prayed for the decree for a permanent injunction claiming to be in possession and the declaration and permanent injunction as such invoking Section 53A of the Transfer of Property Act. When the suit is for a decree of permanent injunction and it is averred that the plaintiffs are in possession of the suit property pursuant to the agreement and thereafter, they have developed the land and that they are in continuous possession since more than twelve years and they are also paying taxes to the Corporation, the cause of action can be said to have arise on the date on which the possession is sought to be disturbed. If that be so, the suit for decree for permanent injunction cannot be said to be barred by limitation. It is the settled proposition of law that the plaint cannot be



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rejected partially. Even otherwise, the reliefs sought are interconnected. Whether the plaintiffs shall be entitled to any relief under Section 53A of the Transfer of Property Act or not has to be considered at the time of trial, but at this stage, it cannot be said that the suit for the relief sought under Section 53A would not be maintainable at all and therefore the plaint is liable to be rejected in exercise of powers under Order VII Rule 11 Code of Civil Procedure."

(iv) By pointing out the above decision, it is submitted by the learned Senior counsel for the plaintiff that the plea raised by the counsel for the appellant that the suit has been instituted based on a time barred unperformed agreement of sale cannot be countenanced. The Plaintiff has been in peaceful possession of the plaint described property until it was sought to be disturbed by the appellant/24th defendant on the basis of the sale deed dated 13.06.2022. In such circumstances, it cannot be said that the suit is barred by the period of limitation and the cause of action to institute the suit had arisen on the date when the possession of the plaintiff was disturbed by the appellant/24th defendant. The learned Judge, on appreciation of the above facts, has rightly directed the plaintiff to receive the rent and to deposit it in the Court. Such a direction granted by the learned Judge will not cause any prejudice to the appellant/24th defendant. Thus, the learned Senior counsel for the plaintiff prayed for dismissal of the appeal.

11. We have heard the learned Senior counsel for the appellant as well



as the learned Senior counsel for the first respondent and also perused the materials placed on record.

12. It is seen that the first respondent / Plaintiff has filed the suit for a declaration to declare that he is in possession of the plaint described property and to restrain the appellant/24th defendant or his men from interfering with his possession either by threatening the tenants or by entering into tenancy agreement with them. The 25th defendant in the suit is the brother of the plaintiff. The plaint was filed by the plaintiff mainly on the ground that his father Ulagarakshagan had entered into a registered agreement of sale dated 16.12.1986 with the legal heirs of deceased Chinnammal and at the time of execution of sale, he paid Rs.45,000/- out of the total sale consideration of Rs.2,45,000/-. It is stated that the plaintiff's father paid the remaining sale consideration to the owner of the property, but did not obtain a sale deed, instead, he had obtained a power of attorney in favour of his employee Ravichandran which was registered as document No. 445 of 1986 on the file of Sub-Registrar, Kodambakkam and therefore, the title to the property in question stood transferred in the name of his father and he also constructed a commercial building in the property during the year 1991-1992. According



to the plaintiff, his father died on 15.12.2018, pursuant to which he requested his brother, the 25th defendant to enter into an amicable partition, but he did not oblige. Therefore, he filed a suit in C.S. No. 314 of 2019 against his family members in which a compromise decree was passed on 19.08.2021. Contrary to the terms of the compromise decree, his brother instigated the tenants to attorn the tenancy in his favour and not to pay the rent to the plaintiff. Therefore, the plaintiff filed an application for execution of the compromise decree in the suit in C.S. No. 314 of 2019. At this stage, the 24th defendant made a rival claim that he has purchased the plaint described property through a sale deed dated 13.06.2022 executed by the defendants 1 to 23. On enquiry, the plaintiff came to know that the defendants 1 to 23 are the legal heirs of the original owners of the property, who have sold the property to his father by executing the agreement of sale. It is in those circumstances, the plaintiff has instituted the suit to recognise his possession based on the agreement of sale executed in favour of his father. In other words, it is the plea of the plaintiff that he is in lawful possession and it should not be disturbed by the 24th defendant or his men in any manner.

13. It is the stand of the 24th defendant that the possession of the



plaintiff in the plaint described property is illegal and unlawful. According to the 24th defendant, the father of the plaintiff did not obtain any sale deed from the original owners, but only an agreement of sale as well as power of attorney in favour of his employee Ravichandran. The said Ravichandran, power agent passed away on 27.12.1992 and therefore, the power of attorney executed in favour of the agent ceased to have any effect. However, on the basis of the agreement of sale, the plaintiff is squatting over the plaint described property. On the other hand, the 24th defendant obtained a valid sale deed dated 13.06.2022 executed by the legal heirs of the original owners. The sale agreement executed in favour of the father of the plaintiff will not confer any right, title or interest to the plaintiff to remain in possession of the plaint described property. Accordingly, the 24th defendant prayed for dismissal of the plaint.

14. The possession of the plaintiff is not disputed. It is not the case of the 24th defendant that the plaintiff or his father first acquired possession by illegal means. *Prima facie* this court is also of the view that the plaintiff's father was initially put into possession based on the agreement, that he had developed the property, inducted tenants and receiving rents. The validity



and effect of the possession of the plaintiff either after the demise of the original vendors or the power of attorney agent cannot be decided at this stage and can be decided only after trial. That apart, as rightly contended by the learned Senior Counsel for the plaintiff, when earlier the father of the plaintiff and now the plaintiff, is in continuous and uninterrupted possession of the property by virtue of a sale agreement and later, a power of attorney, in favour of the employee of the plaintiff's father, the provisions of Section 53A of the Transfer of Property Act would get attracted. The reliance upon the judgment of the Division Bench of this Court in ***Padmanabhan V.A. and 3 others vs. M.A. Narasimhan and five others [1993- I- Law Weekly 169]*** will not come to the aid of the learned Senior Counsel for the appellant to drive home the points that the passive equity can be used only as a shield and that, unless the suit for specific performance is sought, the relief of injunction cannot be sought under Section 53-A of the Transfer of property Act is not sustainable, according to us, for the simple reason that much water has flown on the theory of possession by virtue of the judgment of the Apex Court in ***Hammad Ahmed v. Abdul Majeed, (2019) 14 SCC 1 : (2020) 1 SCC (Civ) 475 : 2019 SCC OnLine SC 467***. In view of the fact that the



appeal is against the interim order, we wish not to elaborate further at this stage. Insofar as the relief of specific performance is concerned, the court at the initial stage of deciding the application for interim injunction, is not expected to see whether the suit can be decreed or not. It is needless to point out that for grant of interim injunction, it is suffice that the enquiry is directed towards the three basic principles of prima facie case, balance of convenience and irreparable loss, which, in the view of this court, have been rightly applied by the Learned Judge.

15. The next contention of the Learned Senior Counsel for the appellant that by grant of the interim order of injunction, the main relief itself has been granted. We do not think so. In every suit for permanent injunction, it is pleaded that the plaintiff is in possession of the property and upon consideration of the facts, the interim protection may be granted, if the statutory requirements are satisfied. The findings given to grant an order of interim injunction to preserve the subject matter of suit to be decided at the time of trial are different from any other relief which extinguishes completely the right of the defendant, leaving nothing to be decided after trial. Every



interim order granted by the Trial court would not amount to granting the final relief. At this juncture, it will be useful to refer to the judgment of the Apex Court in ***Hammad Ahmed case (cited supra)***, in which, it was held as under:

“58. The ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction. In Deoraj v. State of Maharashtra [Deoraj v. State of Maharashtra, (2004) 4 SCC 697] , this Court held that Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Therefore, in appropriate case, ad interim injunction in mandatory form can be granted. The Court held as under : (SCC p. 703, para 12)

“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the



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parties on such terms as may be prudent.”

59. The argument that under Order 39 Rules 1 and 2 of the Code, the Court has the jurisdiction to maintain the status of the parties on the date of filing of the suit or on the date of passing of the order but cannot direct the parties to do something which was not in existence at the time of filing of the suit, is not a general rule of universal application. The nature of the orders claimed by the appellant are not passed ordinarily in a routine manner as the plaintiff is required to have a case which should be of higher standard than mere prima facie case. But in view of the agreement between the parties, as recorded by the Division Bench in an earlier round of litigation the primary question was agreed to be that who is to act as Chief Mutawalli. Both the learned Single Judge and the Division Bench have examined such question only. Even, before this Court, the parties have argued primarily on the question as to who shall be the Chief Mutawalli. Therefore, a prima facie opinion would lead to consequential order in respect of management of the affairs of Hamdard.”

Thus, the findings given for the grant of interim injunction by the learned Judge are only a *prima facie* view, according to us.

16. Further, it is evident from the plaint averments that even though a cloud is created in the title of the plaintiff by the 24th defendant by virtue of a sale deed dated 13.06.2022 executed by the legal heirs of the original owners, the plaintiff has chosen to file the present suit only to recognise his possession. In other words, the suit was filed as a suit simplicitor for bare injunction without any prayer for title. The possession of the plaintiff is admitted even by the 24th defendant. The 24th defendant, on the other hand, is armed with the sale deed dated 13.06.2022 of the property in question but he is out of possession. It is in those circumstances, the learned Judge



observed that the father of the plaintiff was put in possession of the plaintiff described property and he had also put up the superstructure thereof, however, there is nothing to show that he paid the balance sale consideration to the owner of the property or obtained a sale deed in his favour. It is needless to state that the plaintiff must prove his case. It is for the trial court to frame the issues based on the pleadings as held by the Apex Court in ***Anathula Sudhakar vs. P. Buchi Reddy [2008 (4) SCC 594]***. The learned Judge also observed that whether the father of the plaintiff had paid the balance sale consideration to the original owners or as to how he came into possession of the plaintiff described property, is required to be examined during trial in the suit in the light of Section 53-A of the Transfer of Property Act. At this juncture, it is useful to look into Section 53-A of the Transfer of Property Act, which reads as follows:-

"53-A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract;

and the transferee has performed or is willing to perform his part of the contract;

then, notwithstanding that where there is an instrument of



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transfer, that the transfer has not been completed in the manner prescribed there for by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract.

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

17. By pointing out Section 53-A of the Transfer of Property Act, the learned Judge has rightly held that the plaintiff's possession over the plaintiff described property is not disputed, but when the 24th defendant has purchased the suit property by means of a registered sale deed dated 13.06.2022 executed by the legal heirs of the original owners and when he did not file any independent suit for recovery of possession, he cannot merely be permitted to defend the suit filed by the plaintiff to recognise his possession. In such circumstances, in order to strike a balance, the learned Judge rightly restrained the 24th defendant from interfering with the possession and the plaintiff was also directed to deposit the rent collected from the tenants to the credit of the suit and depending upon the outcome of the suit, the amount deposited can be withdrawn either by the plaintiff or the 24th defendant. Such a direction issued by the learned Judge would protect



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the interest of both the plaintiff as well as the contesting 24th defendant.

Therefore, the said decision, according to us, also satisfies the requirement of equity. While so, we find no reason to interfere with such a well considered order passed by the learned Judge.

18. At this juncture, the learned counsel appearing for both sides submitted that the rent payable may be directed to be deposited to the credit of the suit in CS.No.245 of 2022 directly by the respective tenants. Taking note of the same, the respective tenants shall deposit the rent payable by them, in respect of the suit property, directly to the credit of the suit. Considering the nature of the relief, the learned Judge shall dispose of the suit, on merits and in accordance with law, as expeditiously as possible.

19. With the above directions, the Original Side Appeal stands dismissed. No costs.

(R.M.D., J.) (M.S.Q., J.)

13.06.2023

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