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C.M.A.Nos.890 & 891 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.10.2023

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

C.M.A.Nos.890 & 891 of 2016

and

CMP.No.8265 of 2019

1. V.Kamaraj
2. K.Gandhimathi

...Appellants

Vs.

1. M/s. Sri Velkrupa Builders Pvt. Ltd.,
(Formerly Jaivin Properties Pvt. Ltd.),
Rep. by its Director, P.Harikrishnan,
Having office at No.83, Sri Raje Guru,
3rd Cross Street, Maduravoyal,
Chennai – 600 095.
2. P.Harikrishnan
3. Jayanthi Harikrishnan
4. C.V.Rajeshwar
5. Sumathi
6. P.Rajnkanthan
7. Shree Mahaveer Constructions,
Rep. by its Proprietor M.Parthasarathy
No.29/75, Padavattammal Koil,
Third Cross Street, Madhavaram,
Chennai – 600 051.

...Respondents



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Common Prayer: Civil Miscellaneous Appeals filed under Order XLIII Rule 1(R) of CPC, as against the decretal and fair order dated 04.03.2016 dismissing in I.A.Nos.3 & 4 of 2016 in O.S.No.247 of 2015 on the file of the III Additional District Judge, Thiruvallure at Poonamallee.

In both CMA's.:

For Appellants : Mr.B.K.Girish Neelakantan

For Respondents : Mr.P.Wilson for
M/s. A.S.Kailasam & Associates, for R1 to R3
No Appearance, for R4 to R7

COMMON JUDGEMENT

Challenging the common order dated 04.03.2016 passed in I.A.Nos.3 & 4 of 2016 in O.S.No.247 of 2015 on the file of the III Additional District Judge, Thiruvallure at Poonamallee, the petitioners are before this Court.

2. It is the case of the appellants that they are the owners of the suit schedule properties and are in continuous and peaceful possession and enjoyment of the same. At the time of entering into the agreement of development dated 08.06.2011, it was decided that only after finalising the block details and planning permit, the respective flats will be earmarked between the appellants and the respondents 1 to 3 and as per the said

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agreement, 40% of the constructed building will be retained by the owners/appellants and remaining 60% of the constructed portion shall be alienated by the respondents 1 to 3. Whiles, upon obtaining the encumbrance certificate, the appellants came to know that an extent of 2910 sq.ft., from and out of 9600 sq.ft. of land (item No.2) in the construction agreement in S.No.461 was illegally sold to the 4th and 5th respondents, vide sale deed bearing Doc.No.1298 of 2012 dated 20.12.2012 and a further extent of 2850 sq.ft from and out of 9600 sq.ft of land (Item No.1) was sold to the 6th respondent by way of sale deed bearing Doc.No.13129 of 2012 dated 20.12.2012 by the respondents 1 to 3 by misusing the Power of Attorney and the above said sale transactions took place without the knowledge of the appellants/owners. Thereby, the appellants filed a suit against the respondents for the following relief:

A) To declare that the plaintiffs are the sole and absolute owners of the plaint schedule property Item No.1 & 2 of plaint.

B) For a direction directing defendants 4 to 7 to vacate and hand over the vacant possession of the schedule property to the plaintiffs.

C) Consequently, to declare the sale deeds both dated 20.12.2012 registered as Doc.No.12981 of 2012 on the file of the Sub-Registrar, Ambattur as null and void.



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D) Consequently, to declare the sale deeds both dated 20.12.2012 registered as Doc.No.13129 of 2012 on the file of the Sub-Registrar, Ambattur as null and void.

E) For a mandatory direction to the defendants 1 to 3 to produce the statement of account for the period from 15.06.2011 till 11.09.2014.

F) For a permanent injunction restraining the defendants, their agents, sub-ordinates and power of attorney agents and anybody acting under them from alienating or encumber the plaint schedule Item No.1 & 2.

G) For the costs of this suit and to grant such further relief.

2.1 Pending suit, the appellants have also filed I.A.No.3 of 2016 seeking interim injunction restraining the respondents, their agents, sub-ordinates and power of attorney agents and anybody acting under them from alienating or encumber the plaint schedule Item No.1 & 2 and also filed an I.A.No.4 of 2016 for interim injunction restraining the respondents, the agents, sub-ordinates and power of attorney agents and anybody acting under them from altering the physical features of the plaint schedule Item No.1 & 2. In the said applications, it is specifically contended that the 7th respondent, on the basis of the MOU entered into with the respondents 4 to 6, is proceeding with the construction in



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the suit property and unless the interim injunction is granted restraining the 7th respondent from proceeding with the construction, the rights of the appellants will adversely be affected. The learned III Additional District Judge took up both the interim applications together and after contest, vide order dated 04.03.2016, had mechanically dismissed both the interim applications in I.A.Nos.3 & 4 of 2016 in O.S.No.247 of 2015. Challenging the same, the appellants/petitioners/plaintiffs have come up with these appeals.

3. Learned counsel for the appellants submitted that, the dismissal of the interim applications by the Trial Court clearly exhibits total non-application of mind as the interim injunction is a discretionary relief which should be exercised by the Court in the interest of justice and considering the balance of convenience and irreparable loss and injury to the parties. The specific case of the appellants being that, the sale deeds have been executed by the respondents 1 to 3, which is against the agreement for development entered into on 08.06.2011 between the appellants and the respondents 1 to 3, necessarily non grant of injunction would cause substantial injury to the appellants. The trial court had misconstrued the order of interim injunction granted by this Court in O.A.No.953 of 2013 and



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refused to grant the relief of injunction, but O.A.No.953 of 2013 was filed in respect of an agreement where arbitration clause was put in issue which is not the case on hand. Hence, the order passed by the trial court dismissing the interim applications is nothing but a seal of approval given to the 4 to 7 respondents to proceed with the construction on a property which is the subject matter of suit in O.S.No.247 of 2015. In spite of the fact that the interim injunction was initially granted, the trial court failed to note the said interim order and had dismissed the interim applications, thereby allowing the 7th respondent to alter the physical features of the suit property in the absence of valid title and it is against the orders passed by this Court in O.A.No.953 of 2013. Therefore, he prayed that the said order requires to be interfered with in the interest of justice.

4. Learned counsel appearing for the respondents 1 to 3 submitted that, the respondents 1 to 3 would not alienate the suit property hereinafter till the disposal of the suit in O.S.No.247 of 2015 and this Court may pass appropriate orders.



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5. Heard learned counsel for the appellants and the learned counsel appearing for the respondents 1 to 3 and perused the material documents placed on record.

6. Though very many contentions have been raised by the learned counsel for the appellants in the present appeal, however, in view of the fact that the learned counsel appearing for the respondents 1 to 3 has fairly submitted that the respondents would not alienate or encumber the suit schedule property until the disposal of the above said suit, this Court while recording the said submission, is inclined to set aside the order passed in I.A.Nos.3 & 4 of 2016 with a direction to the respondents 1 to 3 not to alienate or encumber the suit schedule property or alter the physical features of the suit schedule property till the disposal of the suit in O.S.No.247/2015. There shall be a further direction to the Trial Court to dispose of the suit in O.S.No.247/2015 within a period of six months from the date of receipt of a copy of this order, after affording sufficient opportunity to the parties to canvass their grounds.



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7. With the above observations and directions, these appeals stand disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

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Index : Yes / No
Speaking Order : Yes / No
NCC : Yes / No

To

- 1.The III Additional District Judge,
Thiruvallure at Poonamallee.
- 2.The Section Officer,
V.R. Section, High Court, Madras.

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