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C.R.PD.No.1119 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.1119 of 2023

a n d

C.M.P.No.7977 of 2023

1. Aadhav Builders and Associates

A Partnership Firm

rep. By its Partner

Mr.R.B.Baskar

61 Main Road

Namakkal District.

2. R.B.Baskar

3. B. Usha Devi

...

Petitioners

Vs

1. Bhuvana Promoters

rep. By its Managing Partner

Mrs.G.Vallikannu

2. G. Vallikannu

3. A.R.Gnanasekaran

...

Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order dated 13/2/2023 passed in I.A.No.1 of 2023 in C.M.A.No.1 of 2023 against I.A.No.2 of 2022 in O.S.No.1153 of 2022 passed by the Hon'ble Principal Subordinate Judge, Coimbatore.



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For Petitioners

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Mr.A.Shabnam Banu

For respondents

...

Mr.V.Raghavachari

Senior Advocate

for Mr.J.Kingsly Solomon

ORDER

Aggrieved by the order dated 13/2/2023 passed by the learned Principal Subordinate Judge, Coimbatore in I.A.No.1 of 2023 in C.M.A.No.1 of 2023, this Civil Revision Petition is filed.

2. The facts in brief are as under:-

The first petitioner is a partnership firm, wherein, the petitioners 2 and 3 are the partners. The first petitioner is the owner of immovable property having purchased under two registered sale deeds dated 13/7/2012. The respondent firm which is involved in construction of building has entered into a Development Agreement to develop the immovable property belonging to the petitioner firm vide, Development Agreement dated 3/9/2015. They agreed to complete the entire construction of 68 flats, out of which 24 flats would be allocated to the petitioners and 44 flats allocated to the respondents. Accordingly, a Flat Sharing Agreement was entered with the respondents on 18/1/2016. The



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project was supposed to be completed within 24 months with a grace period of six months more. However, it took six years to complete the project and to handover the flats to the petitioner. The first respondent firm started selling the flats allotted from January 2018 onwards and sold 42 flats leaving 2 flats to be sold. However, the petitioner could not sell only six flats out of 24 flats allotted. The respondent firm could not complete the work pertaining to sewage treatment plant, intercom facility in individual apartments, CCTV camera, painting the exteriors of the building as well as cleaning and renovating the community hall, etc. Notice, dated 13/9/2022 was issued to the respondents asking them to complete the balance of work.

3. The petitioners have cancelled the Power of Attorney dated 13/9/2015 executed in favour of the respondents by way revocation of the General Power of Attorney, dated 17/8/2022, as the respondents continue to cause disturbance and not allowing the petitioner to sell 18 flats to be sold by the petitioners, the petitioners filed O.S.No.1153 of 2022, on the file of the learned District Munsif, Coimbatore, seeking permanent injunction restraining the respondents/defendants from disturbing or interpreting to sell or alienate the suit properties. The



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petitioners have also filed I.A.No.2 of 2022, whereas the respondents have filed I.A.No.4 of 2022 and after hearing, the learned District Munsif has allowed I.A.No.2 of 2022 filed by the petitioner and I.A.No.4 of 2022 filed by the respondents was dismissed and granted interim injunction in favour of the petitioners.

4. The respondents aggrieved by the grant of interim injunction has preferred an appeal and filed I.A.No.1 of 2023 on the file of the learned Principal Subordinate Court, Coimbatore, seeking stay of orders passed by the learned District Munsif, Coimbatore in I.A.No.2 of 2022 in O.S.No.1153 of 2022. The learned Principal Subordinate Judge, Coimbatore, has allowed the said I.A.No.1 of 2023, and granted stay of operation of injunction order passed in favour of the petitioners/plaintiffs. Aggrieved by the same, present Civil Revision Petition is filed.

5. Heard the learned counsel appearing on either side and perused the materials available on record.



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6. The main ground on which the learned Subordinate Judge, allowed I.A.No.1 of 2023 is that the trial Court has granted the relief of injunction in the Interlocutory Petition which the petitioner has sought in main suit. So far as this observation is concerned, there is no law or authority which prohibits the Courts from granting interim reliefs which are sought for in the main suit. In fact, it is a matter of experience that in most of the suits like simple injunctions, the plaintiffs would come forward with an interlocutory application, seeking the relief of interim injunction and Courts have been granting such kind of reliefs. There are also instances where a suit for mandatory injunction is filed seeking for a removal of certain obstructions and an application is also filed for grant of interim mandatory injunction for removal of the obstruction and the same was considered and obstruction was removed, thereby, the relief which is sought in the main suit has already been granted in the interlocutory application.

7. What is required to be seen for grant of interim relief of injunction under Order 39 Rule 1 (2) of the Code of Civil Procedure is whether the petitioner has made out three credential principles of making out a prima facie case, showing of a balance of convenience and establishing of



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irreparable damage, if interim orders have not been granted. As long as those three principles have been made out by the plaintiffs, certainly the relief sought by the petitioner can be granted, in an Interlocutory Petition. In the case on hand, the petitioners have sought for grant of perpetual injunction in the main suit, restraining the respondents/defendants from interfering with the sale of alienation of the flats belonging to the petitioners. By way of interlocutory order also, the petitioners have sought for similar interlocutory relief and the trial Court after full fledged enquiry has granted the same. This Court finds no irregularity in the orders passed by the learned trial Court, on the ground that the relief in the main prayer and also in the interlocutory application is one and the same.

8. In view of the above, this Court is totally convinced with the finding of the trial Court that the petitioner is entitled to seek for the relief of interim injunction restraining the respondents from obstructing from the sale of the flats, even though the main relief in the suit is also the same. Therefore, on this ground, the impugned order passed by the learned Principal Subordinate Judge, Coimbatore, in C.M.A.No.1 of 2023, dated 13/2/2023 can be set aside.



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9. The other ground on which the learned Principal Subordinate Judge, Coimbatore has reversed the order of the learned District Munsif, Coimbatore is that there is a lien of the respondents over the flats belonging to the petitioners, as the petitioners have to pay the charges/taxes to the concerned Departments and thereby, the petitioners/plaintiffs are not entitled for interim injunction. This is a very strange conclusion made by the learned Subordinate Judge. The learned Subordinate Judge has mentioned in the impugned order that lien over the flats belonging to the petitioners continue until charges/taxes paid by the Department. On a careful reading of paragraph (h) of the impugned order, the learned Judge has failed to point out as to how he has come to the conclusion that there is a lien over the flats that were allotted to the petitioners/plaintiffs. He has referred to the submissions of the respondents/defendants and basing on which the learned Judge has made such conclusion.

10. It is to be noted that the respondents/defendants are not the officers belonging to the Department of either State or Central Government. Even if the petitioners/plaintiffs are required to pay some taxes for charges to the various State or Central Government



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Departments how the respondents/defendants can resist or raise objections from selling or alienating of the flats that are admitted to the share of the petitioners/plaintiffs. The respondents/defendants have no business to obstruct the petitioners/plaintiffs when they intend to sell the flats to third parties. In case, if the Central or State Government Departments have got any grievance against the petitioners, then they will initiate appropriate action against the petitioners/plaintiffs, in case, if the petitioners have violated any of the laws, Notifications etc., by non payment of any taxes including, GST, I.T., etc. The petitioners are bound to pay the taxes due to the State or Central, however, the respondents under any stretch of imagination cannot obstruct the plaintiffs from sale of the flats, on the ground that the petitioners/plaintiffs are due to some taxes. Further, no record is placed by the respondents/defendants to show that the petitioners/plaintiffs is due to pay some taxes and that there is lien of the respondents/defendants over the flats of the petitioners/plaintiffs. Therefore, this Court is not in agreement with the finding of the learned Subordinate Judge that there is a lien over the flats belonging to the flats allotted to the petitioners share, until the payment of all the charges or taxes to the Government of the concerned Department.



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11. Further, as rightly observed by the learned Subordinate Judge that whether the petitioners/plaintiffs can revoke the General Power of Attorney given in favour of the respondents/defendants are the questions which cannot be decided in this application, unless full fledged trial is conducted.

12. In the result, this Civil Revision Petition is allowed and the order dated 13/2/2023, passed in I.A.No.1 of 2023 in C.M.A.No.1 of 2023 is hereby set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

13/6/2023

Index :yes/no

Neutral Citation: Yes/No

mvs.

To

The Principal Subordinate Judge, Coimbatore.



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Dr.D.NAGARJUN,J

mvs.

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