C.M.P.No.13706 of 2021
in
S.A.No.680 of 2021

P.T.ASHA, J.,

This Court by order dated 25.08.2021 was pleased to grant an interim order of injunction for the period of 8 weeks from 25.08.2021. The order was passed because a writ petition in W.P.No.14583 of 2001 had been filed indicating that the plaintiff is in possession of the property. Thereafter, the interim order has not been extended and a counter has been filed setting out the facts as to why the interim orders should not be extended.

2. Before considering whether the interim order has to be extended or the above CMP dismissed, it is necessary to briefly touch upon the facts of the case.

3. The appellant who is the plaintiff in the suit O.S.No.4341 of 1994, on the file City Civil Court, Chennai had filed for specific performance of an agreement of sale dated 06.10.1993 whereby seeking

a direction that the 1st defendant should execute and register the sale deed in respect of the suit property as per the agreement executed by him and on his failure, praying that the Court should execute and register the sale deed in favour of the plaintiff or his nominee and for permanent injunction restraining the defendants, their agents, servants from dispossessing the plaintiff from the suit schedule property to any third parties by way of sale, mortgage, lien or agreement other than the plaintiff.

4. The plaintiff had contended that he had entered into an agreement of sale with the 1st defendant for the purchase of his property for a sum of Rs.4,00,000/-. Till 11.02.1994, the plaintiff had paid a sum of Rs.2,20,000/- towards part sale consideration to the 1st defendant and extended the time for execution of the sale deed since the tenants had not vacated the premises. The plaintiff would submit that certified copies of the title deed, two registered mortgage deeds along with the encumbrance certificate were handed over by the 1st defendant to the

plaintiff. There were 17 tenants in the suit premises who were not paying rent to the 1st defendant. As per the sale agreement, the plaintiff was responsible to obtain the original deed from the mortgagors and vacate the 17 tenants in the plaint schedule property at his risk and cost.

5. The plaintiff would submit that after the agreement, he had evicted 6 tenants by paying them a compensation of Rs.10,000/- each. Since the other tenants were demanding more amounts, further time was extended by the defendant to evict the other tenants and for registration of the sale deed through an additional agreement dated 11.02.1994.

6. It is the contention of the plaintiff that on the date of the agreement of sale he had taken possession of the suit property and was paying the Corporation Taxes and Electricity Bills regularly. The plaintiff had also opened his office in one of the portions that had fallen vacant.

7. It is the further contention of the plaintiff that the deceased 2nd defendant had colluded with the 1st defendant to alienate the property to third parties and when this was questioned by the plaintiff, he was informed that the time granted under the sale agreement had come to an end without considering the subsequent agreement dated 11.02.1992. Therefore, the plaintiff had come forward with the suit in question.

8. Initially, the suit was filed only for a bare injunction and thereafter the plaint has been amended to include the relief of specific performance. Therefore, initially, the deceased 2nd defendant had filed his written statement to the suit prior to the amendment contending that the plaintiff had suppressed the earlier suit filed by him against the 1st defendant.

9. The deceased 2nd defendant had contended that the plaintiff is none other than the relative of the 1st defendant and they had colluded together to file the suit to defeat the deceased 2nd defendant's lawful

right over the suit property. It is contended that earlier the 1st defendant had filed a suit O.S.No.1903 of 1993 on the file of the VIII Assistant City Civil Judge, Madras for a bare injunction alleging that he is in possession of the property suppressing the earlier sale agreement between the defendant and himself. Initially, an interim order was granted which was vacated subsequently. Pursuant to the suit becoming infructuous, the 2nd defendant had filed a suit O.S.No.3188 of 1994 on the file of the IV Assistant Civil City Judge, Madras against the 1st defendant for specific performance and an interim order was initially granted in I.A.No.8190 of 1994. Therefore, this suit for the very same relief (i.e; for bare injunction) is not maintainable.

10. The deceased 2nd defendant would submit that the 1st defendant had never been in possession of the suit property at any point in time and he had no interest to enter into a sale agreement with the plaintiff since the deceased 2nd defendant had purchased the property as early as on 17.10.1979 from the 1st defendant for a total sale

consideration of Rs.52,001/-. The deceased 2nd defendant would submit that a sum of Rs.52,001/- was paid over a period of time. The deceased 2nd defendant would further submit that from the date of purchase, he has been in possession of the suit property.

11. The 2nd defendant would further submit that he has been in open, continuous and uninterrupted possession of the suit property since the date of his purchase and from out of the sale consideration received, the 1st defendant had discharged his mortgage and all the original documents were handed over to the deceased 2nd defendant. Though the sale deed was executed in favour of the deceased 2nd defendant since there was continuous interruptions and attempts to trespass, the deceased 2nd defendant had filed O.S.No.38 of 2004 on the file of the VIII Assistant City Civil Court, Madras and an order of injunction was obtained. Aggrieved by which the 1st defendant had set up his relative, the plaintiff to file this vexatious suit. Therefore, the deceased 2nd defendant prayed for the dismissal of the suit.

12. After the suit was amended to include the relief of specific performance, the deceased 2nd defendant had filed an additional written statement. He would submit that the suit filed by the plaintiff is vexatious, unsustainable and hopelessly barred by limitation. The deceased 2nd defendant would further contend that the plaintiff had created a bogus/fraudulent document with the active collusion of the 1st defendant totally ignoring the fact that the deceased 2nd defendant had paid the entire sale consideration between 1977 and 1979. The deceased 2nd defendant has been put in possession after paying the entire sale consideration. The present suit appears to be a deliberate attempt to extract money from the 2nd defendant. The tenants are paying the rent only to the deceased 2nd defendant. The deceased 2nd defendant would further submit that the plaintiff had caught hold of tenants who had already vacated the premises and for the purpose of the suit had created certain documents. The deceased 2nd defendant would submit that all the original documents are with him, since he has purchased the property after paying full sale consideration.

13. Pending the suit, the 2nd defendant had passed away and their legal heirs have been brought on record as defendants 3 to 5. The defendants 3 to 5 had also file an Additional Written Statement inter alia denying the allegations contained in the plaint and contending that the plaintiff has no right, title or interest over the suit property. They would also contend that there is no cause of action for the filing of the suit and even otherwise, the suit is hopelessly barred by limitation. Therefore, they prayed for the dismissal of the suit.

14. The 1st defendant had filed a written statement admitting to the fact that there was an earlier suit for specific performance in suit O.S.No.3188 of 1994. The 1st defendant would submit that the plaintiff had used the signatures of the 1st defendant on various blank papers for creating documents. The 1st defendant would submit that it was the plaintiff who had engaged a lawyer on the strength of power of attorney and made the 1st defendant to sign on blank papers. The 1st defendant

had also denied the execution of the agreement of sale. The plaintiff was put on notice about the amounts alleged to have been spent by him on the property. He would also submit that the agreement is a cooked up one.

15. An additional written statement after the amendment of the plaint had been filed in which the 1st defendant had come to know that the plaintiff had filed O.S.No.10271 of 1996 on the file of the III Assistant City Civil Judge, Chennai against him and one Mr.Subramani. The 1st defendant would submit that his signature in the vakalat was forged and a counsel was made to appear on behalf of the 1st defendant. The 1st defendant had no knowledge about the said suit as he had never signed any vakalat nor engaged any counsel. On coming to know about the said suit, the 1st defendant thereafter obtained a change of vakalat and engaged the services of one Mr.Ramasamy. Thereafter, the plaintiff withdrew the suit fearing that his fraudulent act would be exposed.

16. Thereafter, the 1st defendant had filed a private complaint against the plaintiff before the II M.M, Egmore in Crl.M.P..2339 of 1999 seeking the registration of his complaint and to conduct an enquiry. The learned Magistrate had also passed an order dated 27.05.1999 directing the Additional Deputy Commissioner of Police to conduct an inquiry. During the inquiry before the Criminal Court, the plaintiff had produced an order of injunction said to have been passed in O.S.No.8853 of 1997 by the XVIII City Civil Court, Chennai. This suit was never brought to the notice of the 1st defendant and nor had notice been issued to the 1st defendant. The 1st defendant thereafter made an enquiry and once again came to learn that his signature in the vakalat had been forged and one Mr.Anbalagan had appeared on his behalf. Once again, the 1st defendant had engaged the services of another counsel who had taken steps to vacate the order of injunction.

17. The 1st defendant would submit that the Court after going through the records came to the conclusion that the averments made by the 1st defendant was true and his signature had been forged in the vakalat as well as in I.A. Thereafter the interim order of injunction was also vacated.

18. Taking into account the seriousness of the issue and the fraud played by the plaintiff, the 1st defendant had filed W.P.No.12715 of 2020 on the file of this Court, seeking an investigation into the entire matter and to conduct an enquiry on the fraud and forgery committed by the plaintiff. Thereafter, the matter had been referred to the forensic department. The report of the forensic department clearly shows that the signature of the 1st defendant and the records had been forged by the plaintiff in O.S.No.8853 of 1997. It is in this background that the present suit has been filed.

19. The learned IV Assistant City Civil Judge, Chennai by his judgement and decree dated 15.02.2010 came to the conclusion that the agreement of sale was a fabricated one and further held that the plaintiff was not in possession of the suit property and dismissed the suit. Aggrieved by this judgement and decree of this Trial Court, the plaintiff had filed A.S.No.255 of 2011 on the file of the II Additional City Civil Court, Chennai. The Lower Appellate Court, had also concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by this concurrent judgement and decree, the plaintiff is before this Court.

20. Even after the dismissal of the suit and when the First Appeal was pending, it appears that the appellant herein had taken steps to put up the 1st and the 2nd floor on the suit property. By then, the 1st defendant/respondent had passed away and his son who is one of the co-owners had filed W.P.No.14583 of 2021 seeking a direction to direct the respondents 1 to 3 in the Writ Petition to demolish the illegal construction being put up by the appellant on the 1st and the 2nd floor

of the property. While this Writ Petition was pending, the appeal in A.S.No.255 of 2011 had been decreed in favour of the defendants. On 16.07.2021, the Division Bench of this Court in W.P.No.14583 of 2021 had clearly observed that the construction was being proceeded without any approved plan. This Court had directed the respondents in W.P.No.14583 of 2021 to report as to the action taken since it was represented that a lock and seal order has been passed.

21. Thereafter, the appellants had preferred this Second Appeal in which they have taken out an application for ad interim injunction and since it was brought to the notice that W.P.No.14583 of 2021 is pending and the plaintiff is in possession, their possession should be protected for a period of 8 weeks.

22. The mater has been listed today before this Court for extension of the interim orders and a counter has been filed by the respondents 6 to 8 who are the legal heirs of the 1st

defendant/respondent. It is brought to the notice of the Court that W.P.No.14583 of 2021 was ultimately disposed of with a direction to the appellant herein to proceed with the appeal filed by him under Section 80A of the Tamil Nadu Town and Country Planning Act and till then the appellant and his family were permitted to reside in the ground floor of the suit property.

23. It is also brought to the notice of the Court that the appeal filed by the appellant under the provisions of the Tamil Nadu Town and Country Planning Act has also been dismissed and a writ petition was filed challenging the same in W.P.No.9095 of 2022. The learned counsel for the appellant would submit that the interim order already granted should therefore be extended.

24. The learned counsel for the respondents on the other hand would submit that the findings of both the Courts below would clearly display as to how the appellant has played fraud on Court and has

fabricated the documents and therefore this Court should not grant him the injunction.

25. Heard the counsels.

26. As rightly pointed out by the learned counsel for the respondents that both the Courts below after considering the evidence had come to the conclusion that the appellant/plaintiff had not only fabricated the documents and forged the signatures but had also kept filing one proceeding after the other to prevent the defendants from taking possession of the suit property.

27. It is also evident that even without getting a title to the property by having a sale deed registered in his favour, the appellant/plaintiff who is none else than the power agent of the 1st defendant had commenced construction that too an unauthorized construction on the suit schedule property. This construction has been

commenced after two Courts have non suited the appellant/petitioner. The appellant/plaintiff has demonstrated that he has no respect for the rule of law. Such being the conduct of the appellant/plaintiff and taking into account the fraud and fabrication done by the appellant/plaintiff, this Court cannot give a seal of approval to the conduct of the appellant/plaintiff by granting him an interim order of injunction. Therefore, taking note of the fact that the interim order has not been extended beyond 15.09.2021, the above Civil Miscellaneous Petition is dismissed.

28. Post the above Second Appeal for argument on 31.01.2024.

18.12.2023

shr

P.T.ASHA.J

shr

C.M.P.No.13706 of 2021
in
S.A.No.680 of 2021

18.12.2023