A.No.3317 of 2023
in CS.No.595 of 2007

RESERVED ON : 01.09.2023

PRONOUNCED ON : 27.11.2023

A.A.NAKKIRAN, J.

ORDER

1. This application has been filed by the Defendants 1 to 19 in CS.No 595 of 2007, to defer the trial in the said suit, till the disposal of the criminal case in CC.No.33 of 2022, pending on the file of the Central Crime Branch Court, Egmore, Chennai.

2. The above suit has been filed, seeking a judgement and decree, for the following reliefs:-

   (a) Specific performance of the sale agreement, dated 100.8.2006, in respect of the suit property, namely, vacant lands, measuring an extent of 65.21 grounds situated at Ramalayam, Door No.1, Lattice Bridge Road, Padmanabha Nagar, Adyar, Chennai -20.

   (b) Permanent injunction, restraining the defendants from alienating or encumbering or altering the suit property.

   (c) Costs of the suit.

3. The case of the Applicants, as stated in the affidavit filed by the Director of the Applicant Companies 1 to 7 and 9 to 19 and Trustee of the 8th Applicant is as follows:-

   a) The suit was filed for specific performance of the sale agreement, dated 10.08.2006 and permanent injunction, by the 1st Respondent, based upon the Deed of Power of Attorney, dated 05.07.2006, alleged to have been executed by the Applicants 1 to 18 in favour of the 2nd Respondent/20th Defendant, allegedly empowering her, who claims to be a Director of the 19th Applicant Company, to deal with the shares of the Applicants. The Deed of Power of Attorney has not been executed either by the Director of the Applicant Companies or by Beena Kosaraju, Sujini and Ashwin and the Director, Beena Kosaraju and the 2nd Respondent are the children of late K.Subbiah, while Sujini and Ashwin are the children of K.Sudharshan, who is the pre-deceased son of late K.Subbiah. The Director and Beena Kosaraju are the shareholders of the Applicants 1 to 18 Companies and in respect of the 19th Applicant Company, he was the shareholder along with his father late K.Subbiah. The 2nd Respondent has nothing to do with the Applicant Companies. The 2nd Respondent is not in cordial terms with any of the family members and has been kept away from all the family members except in an entity known as "Kakumanu Charitable Trust", in which she was made as a Trustee, even before misunderstanding arose between the parties.

b) The suit property was originally negotiated for purchase by K. Subiah and the Director with the Royal Family of Travancore and various sale agreements and sale deeds have been entered into in their names for various portions and all these information was privy only to the family members of K.Subbiah, which incidentally included the 2nd Respondent. The alleged Deed of Power of Attorney is dated 05.07.2006. On the said date, only the Director and Beena Kosaraju were in Chennai and the other two persons, namely, Sujini and Ashwin were in USA. The signatures of all these four persons, who have alleged to have executed the Deed of Power of Attorney, have been forged by the 2nd Respondent and their thumb impressions have also been fabricated. The address of the executants shown on the reverse of the first page of the said document is 'No 60, Bishop Garden, Greenways Road, Raja Annamalaipuram, Chennai 28', which was sold by Late K.Subbiah in the year 2004 itself. The 2nd Respondent was trying to sell the property to DLF Universal Limited and the deal was almost finalized.

c) On coming to know of the illegal acts of the 2nd Respondent, the Applicants and Beena Kosaraju have cancelled the said Deed of Power of Attorney, by a registered Deed of Cancellation dated 21.08.2006 and a Deed of Cancellation dated 14.09.2006. A criminal case has been filed against the 2nd Respondent in Crime No.766/2006, which was registered in CC.No.33 of 2022 and the same was pending on the file of Metropolitan Magistrate Court II (Land Grabbing Court), Allikulam. The case is now transferred to Central Crime Branch Court, Chennai and posted for hearing on 23.06.2023. In the charge sheet, the 1st Respondent herein has been shown as one of the witnesses. When Police went to serve notice to the 1 Respondent, it was purposely refused, stating that no such person is available in the address. In respect of the 2nd Respondent, who is the main accused, inspite of service of summons, she did not appear. In the criminal case, witnesses have been examined. There is every possibility that the forgery done by the 2nd Respondent would be proved and convicted and in such an event, the present suit will become infructuous, as the suit has been filed only based on the forged Power of Attorney, which is the subject matter of the criminal case. No loss or hardship would be caused to the Respondents if this application is allowed. Hence, this application has been filed, seeking the relief, as stated above.

4. In the counter filed by the 1st Respondent, it is stated as under:-

a) The Applicants herein are the absolute owners of the property measuring an extent of 45.21 grounds comprised in old survey No.57/1 and T.S.No.13/253 (Part) in Block No.21 of Urur Village, Mylapore, Triplicane Taluk and situated at Ramalayam, Door No.1, Lattice Bridge Road, Padmanabha Nagar, Adyar, Chennai - 600 020 having purchased the same by way of several sale deeds. In the very same survey number and in the very same door No, there are another vacant lands measuring an extent of 20 grounds in which 22.50% of undivided shares out of hundred shares were purchased by the 19th Applicant through four sale deeds, dated 06.11.1995 and 24.11.1995. Thus 22.50% of the undivided share of the lands, out of hundred shares, were already purchased by the 19th Applicant and for the remaining extent of 77.50% of the undivided share of the lands, a sale agreement dated 03.08.1994 is still subsisting among the parties and the terms and conditions of the said agreement will have binding effect on the parties.

b) The Applicants executed a general power of attorney on 05.07.2006 in favour of the 2nd Respondent to deal with their respective shares, absolutely including the power to alienate the same to any one. The 2nd Respondent, who is the Director of the 19th Applicant, on the basis of power of attorney dated 5.7.2006, offered to sell the suit schedule property on behalf of the Applicants to the 1st Respondent. The 1st Respondent agreed to purchase the suit schedule property for a total sale consideration of Rs.29,34,45,000/-. Accordingly, the 1st Respondent entered into a sale agreement with Applicants on 10.08.2006. The Applicants were represented by the 2nd Respondent in the said sale agreement and an advance amount of Rs.1,00,00,000/- was paid by the 1st Respondent to the 2nd Respondent. The Applicants did not comply with the conditions mentioned in the sale agreement.

c) The present application has been filed, stating that Sujini and Ashwin did not sign the general power of attorney dated 05.07.2006, claiming that they were in USA and hence, it is forged. Further, they claimed that they have lodged a complaint based, on which criminal case in CC.No.33 of 2022 is pending on the file of Central Crime Branch Court, Egmore. Now they are seeking to defer the trial in CS.No.595 of 2007 till the disposal of the CC.No.33 of 2022. The Applicants 1 to 19 have filed a detailed written statement in the suit in the month of June 2007. When they came to know about the alleged forged documents, they have not taken any steps till the above suit is posted for trial. The prayer sought for by the Applicants cannot be entertained since there is no provision to defer the trial till the disposal of the criminal proceedings. The decision that may be arrived at by the civil court will not at all prejudice them in the Criminal Proceedings. Hence, this application is to be dismissed.

5. This Court heard both sides and also perused the documents available on record.

6. The learned counsel for the applicants contended that originally the suit has been filed for specific performance of the sale agreement, dated 10.08.2006, based upon the Deed of Power of Attorney, dated 05.07.2006, alleged to have been executed by the Applicants 1 to 18 in favour of the 2nd Respondent/20th Defendant, allegedly empowering her, who claims to be a Director of the 19th Applicant Company, to deal with the shares of the Applicants. He further contended that the Deed of Power of Attorney has not been executed either by the Director of the Applicant Companies or by Beena Kosaraju, Sujini and Ashwin. The Director and Beena Kosaraju are the shareholders of the Applicants 1 to 18 Companies and in respect of the 19th Applicant Company, he was the shareholder along with his father late K.Subbiah. The 2nd Respondent has nothing to do with the Applicant Companies. He further contended that on the said date, only the Director and Beena Kosaraju were in Chennai and the other two persons, namely, Sujini and Ashwin were in USA.

The signatures of all these four persons, who have alleged to have executed the Deed of Power of Attorney, have been forged by the 2nd Respondent and their thumb impressions have also been fabricated. On coming to know of the illegal acts of the 2nd Respondent, the Applicants and Beena Kosaraju have cancelled the said Deed of Power of Attorney, by a registered Deed of Cancellation dated 21.08.2006 and a Deed of Cancellation dated 14.09.2006 and a criminal case was filed in CC.No.33 of 2022 before the Metropolitan Magistrate Court II (Land Grabbing Court), Allikulam and the case is now transferred to Central Crime Branch Court, Chennai and witnesses have also been examined. There is every possibility that the forgery done by the 2nd Respondent would be proved and convicted and in such an event, the present suit will become infructuous, as the suit has been filed only based on the forged Power of Attorney, which is the subject matter of the criminal case. Hence, he prays to allow this application.

7. The learned counsel for the 1st respondent/plaintiff contended that the present application has been filed, stating that Sujini and Ashwin did not sign the general power of attorney dated 05.07.2006, claiming that they were in USA and hence, it is forged. Further, the applicants claimed that they have lodged a complaint based, on which criminal case in CC.No.33 of 2022 is pending on the file of Central Crime Branch Court, Egmore. Now they are seeking to defer the trial in CS.No.595 of 2007 till the disposal of the criminal case. The Applicants 1 to 19 have filed a detailed written statement in the suit in the month of June 2007. When they came to know about the alleged forged

documents, they have not taken any steps till the above suit is posted for trial. The prayer sought for by the Applicants cannot be entertained since there is no provision to defer the trial till the disposal of the criminal proceedings. The decision that may be arrived at by the civil court will not at all prejudice them in the Criminal Proceedings. Hence, he strongly opposed to allow this application.

8. The present civil suit was filed for specific performance of the sale agreement dated 10.08.2006, based upon the Deed of Power of Attorney, dated 05.07.2006 alleged to have been executed by the applicants in favour of the 2nd respondent/20th defendant. The applicants denied the execution of the said power of attorney either by the Director of the Applicant Companies or by Beena Kosaraju, Sujini and Ashwin. When it is contention of the applicants that at the time of execution of general power of attorney, Sujini and Ashwin were in USA and they he did not sign the power of attorney and it is a forged one, they did not take any steps till the suit is posted for trial. Now, the present application is filed by the applicants claiming that CC No.33 of 2022 is pending and thereby seeking to defer the present civil trial till the disposal of the criminal case. On perusal of records, It would reveal that after filing the written statement in the year 2007, the applicants kept quiet for more than fifteen years and initiated the criminal proceedings only in the year 2022. There is no explanation offered by the applicants for the said delay. The findings of the criminal court shall not bind the civil court. Further, the decision that may be arrived at by the civil court will not at all prejudice them in the Criminal

Proceedings. The prayer sought for by the Applicants cannot be entertained since there is no provision to defer the trial till the disposal of the criminal proceedings. Hence, there is no merits in this application and the same deserves to be dismissed.

10. In fine, this application is dismissed. No costs.

27.11.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm /uma

A.A.NAKKIRAN, J.

Srcm/uma

Pre-Delivery Order in
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