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O.A.No.631 of 2022 & A.Nos.4312 & 4314 of 2022

in

C.S.No.214 of 2022

SENTHILKUMAR RAMAMOORTHY, J

The suit was filed for a decree to direct the defendant to hand over vacant possession of the land and building ad-measuring 1 ground and 975 sq.ft. to the plaintiff. The plaintiff also prayed for a sum of Rs.17,50,000/- as damages with interest thereon at 12% per annum from the date of the plaint till the date of payment.

2. In the said suit, three applications have been presented by the plaintiff. In A.No.4312 of 2022, the plaintiff seeks a direction to the respondent/defendant to provide security for the suit claim of Rs.17,50,000/-; in A.No.4314 of 2022, the plaintiff seeks a direction to the respondent/defendant to deposit a sum of Rs.50,000/- on or before the 5th of every succeeding calendar month towards future damages; and in O.A.No.631 of 2022, an injunction to restrain the applicant from interfering with the applicant's utilization of the vacant area in the suit schedule property is prayed for.



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3. Oral arguments in support of these applications were addressed by Mr.K.Sakthivel, learned counsel for the applicant, and by Mr.R.Thiagarajan, learned counsel for the respondent.

4.Learned counsel for the applicant submitted that the suit schedule property was purchased by the applicant in 2014 under sale deed dated 07.02.2014, which was registered as document No.532 of 2014. He further submitted that the respondent/defendant filed O.S.No.3403 of 2019 (originally registered as C.S.No.816 of 2018) seeking the following relief: a declaration that the respondent is the absolute owner of the superstructure in the suit schedule property; a declaration that the sale deed dated 07.02.2014 is null and void; and for a permanent injunction restraining the 1st to 6th defendants therein, including the applicant, from interfering with the possession of the respondent in respect of the suit schedule property. By judgment and decree dated 21.09.2021, learned counsel points out that the relief of declaration was rejected by the Court but the Court provided limited protection of the respondent's possession by holding that such possession should not be disturbed except by due process of law.



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5. According to learned counsel, it is implicit in the judgment and decree that the respondent is in unlawful possession of the property and that the limited protection is only against unlawful eviction. He further submitted, in this regard, that the applicant has adopted due process by filing the present suit and seeking interim relief herein. With regard to the meaning of the expression “due process”, learned counsel relies upon the judgment of the Hon'ble Supreme Court in *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*, (2012) 5 SCC 370, particularly paragraph 8 thereof.

6. The next contention of learned counsel is that the powers of the Court are not constrained by Order XXXIX Rule 1 and 2 CPC and that the Court is entitled to pass appropriate orders in the interest of justice by invoking Section 94 (e) and Section 151 CPC. In support of this contention, learned counsel relied upon the judgment of the Hon'ble Supreme Court in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, AIR 1962 SC 527. He also relied on the judgment of the Delhi High Court in *Kiran Kapoor v. Ashok Kumar Sharma*, CDJ 1997 DHC 068, wherein the judgment of the Hon'ble Supreme Court was followed.



7. By relying upon the judgment of the Hon'ble Supreme Court in

Padhiyar Prahladi Chenaji v. Maniben Jagmalbhai, judgment dated 03.03.2022 in Civil Appeal No.1382 of 2022, particularly paragraph 11.1 thereof, learned counsel contends that upon rejection of the claim for declaration of title, the respondent was not entitled to injunctive relief since such relief was purely consequential. In fact, he contends that the Court merely protected possession upon noticing that the respondent was in possession.

8. In view of the fact that the Court in the judgment and decree dated 21.09.2021 held that the respondent is not the lawful owner of the property and not in lawful possession, learned counsel submits that he is entitled to the interim relief prayed for and that this Court is fully empowered to grant such relief.

9. These contentions are refuted by learned counsel for the respondent. At the outset, learned counsel for the respondent states that the judgment and decree in O.S.No.3403 of 2019 has been assailed by way of appeal. He states that such appeal was filed under A.S.SR. No.20535 of



2022. His next submission is that the present suit is for handing over vacant possession of 1 ground 975 sq.ft. Consequently, the interim relief prayed for in O.A.No.631 of 2022 almost mirrors the main relief. Indeed, learned counsel contends granting such interim relief would be tantamount to decreeing the suit. As regards the relief prayed for in A.No.4314 of 2022, he submits that the said relief goes beyond the scope of the suit. As regards the relief prayed for in A.No.4312 of 2022, he submits that being a claim for unliquidated damages, it cannot be granted unless the claim is proved at trial. Hence, it is submitted that all the interim applications are liable to be rejected.

10. Upon considering the rival contentions, it is necessary to first examine the relief prayed for in the suit. On perusal of the plaint, it is abundantly clear that the applicant/plaintiff seeks vacant possession of the land and building. The extent of land specified in the schedule is 1 ground 975 sq.ft. Therefore, the grant of the relief claimed in O.A.No.631 of 2022 would be tantamount to granting a substantial part of the relief prayed for in the suit. The respondent asserts that an appeal has been filed against the judgment and decree in O.S.No.3403 of 2019 under A.S.SR.No.No.20535 of



2022. In the said suit, the plaintiff asserted title to the superstructure constructed on the suit schedule property and also prayed for a declaration that the sale deed dated 07.02.2014 in favour of the applicant herein is null and void. The respondent is admittedly in possession of the entire extent of 1 ground 975 square feet and such possession is currently protected by a court decree. In these circumstances, at this juncture, the relief claimed in O.A.No.631 of 2022 cannot be granted.

11. As correctly contended by learned counsel for the applicant, in exercise of equitable jurisdiction, the powers of the Court are wide and expansive. The material question is whether the facts and circumstances justify exercising such power. In the context of a suit for vacant possession of the entire suit schedule property ad-measuring 1 ground 975 sq.ft. and damages of Rs.17,50,000/-, it should be noticed that the relief claimed in A.No.4314 of 2022 is beyond the scope of the suit inasmuch as future damages have not been claimed as final relief. Even as regards the relief claimed in A.No.4312 of 2022, the said relief is labelled as a claim for liquidated damages, but the said label is no more than a misnomer because a claim for liquidated damages may only be made if the contract between the



parties to the dispute stipulates the amount or prescribes the formula for payment of compensation in the event of breach. In a claim for unliquidated damages, the loss caused due to the actions of the counter party and the quantum thereof should be established in order to succeed. At this juncture, the applicant has not discharged this burden. Therefore, these interim applications are rejected.

27.01.2023

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