IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.07.2023

PRONOUNCED ON : 13.07.2023

CORAM

THE HONOURABLE MR. **JUSTICE SUNDER MOHAN**

C.M.A.No.1392 of 2023
and
C.M.P.No.13921 of 2023

1.Ranjith
2.Gunasekaran ...Appellants

Vs.

B.Nallasivam ...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (R) of the Civil Procedure Code seeking to set aside the order granting ad-interim injunction dated 22.02.2023 made in I.A.No.1 of 2022 in O.S.No.850 of 2022 on the file of the learned third Additional District and Sessions Court, Dharapuram.

For Appellants : Mr.N.Manoharan

For Respondent : Mr.V.Ragahavachari,
Senior Counsel for
Mr.M. Guruprasad

JUDGMENT

This Appeal has been filed challenging the order of temporary injunction passed under Order 39 Rules 1 and 2 of the Civil Procedure Code by the learned III Additional District and Sessions Judge, Dharapuram.

2. The respondent herein filed a Suit for Specific Performance against the appellants stating that they, along with others, had entered into a sale agreement with him on 29.10.2020, in respect of the Suit scheduled property; that he had paid an advance of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) out of the agreed sale consideration of Rs.83,58,000/- (Rupees Eighty Three Lakhs Fifty-Eight Thousand Only); that the respondent could not pay the balance sale consideration and get the sale deed executed since there was a Partition Suit pending between the appellants and their co-sharers; that the respondent helped the appellants in obtaining certain documents and also helped the parties in arriving at a compromise in the partition suit; that the respondent issued a pre-suit notice; that after the compromise decree since the appellants did not come

forward to execute the sale deed, he had filed the Suit for Specific Performance. The respondent also filed a petition for a temporary injunction to restrain the appellants from alienating the Suit schedule property till the disposal of the Suit.

3. The appellants filed a counter denying all the averments made in the affidavit in support of the injunction application and stated that the Agreement is invalid, and the respondent had fabricated the Agreement by misusing signed blank stamp papers which were handed over while receiving a loan of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only); that the loan from the respondent is now sought to be treated as an advance amount for the sale of property; and that there is no *prima facie* case made out and the balance of convenience lies in favour of the appellants.

4. The Trial Court, after considering the averments in the petition and the counter, held that the respondent had established a *prima facie* case and the balance of convenience was in favour of the respondent and hence,

passed an order of interim injunction.

5 (a). Mr.N.Manokaran, the learned counsel for the appellants, submitted that the order of injunction passed by the Trial Court is unsustainable as no reasons have been assigned to hold that the respondent had established a *prima facie* case; that it is the specific case of the appellants that the respondent had advanced a loan and obtained blank papers; that he had filled up the blank papers to make it appear that there was an agreement of sale; that the respondent by filing this Suit cannot prevent the appellants from enjoying their property, which includes the power to alienate; that the respondent by filing a vexatious Suit is attempting to prevent the appellants, who are in dire need of money, from selling the property and thereby, coercing them to sell the property in favour of the respondent.

5 (b). The learned counsel further submitted that pending a Suit for

specific performance, there is no bar in transferring the property. However, the said transfer would be subject to the result of the litigation. The learned counsel relied on the Judgment of the Hon'ble Apex Court in ***Thomas Press (India) Limited Vs. Nanak Builders and Investors Private Limited and others*** reported in ***(2013) 5 SCC 397*** in support of his submission.

5 (c). The learned counsel further submitted that the appellants would deposit the amount received by them to the credit of the suit to show their bonafide; that *prima facie* this agreement is invalid and that, even otherwise, as one of the sharers had not signed the Agreement, there is no consensus-ad-idem. Hence, the agreement which is invalid cannot be the basis for instituting a Suit for Specific Performance and in any case, it cannot be said that there is a *prima facie* case.

6 (a). Mr. V. Raghavachari learned Senior Counsel for the respondent *per contra*, submitted that the Agreement was validly executed and the agreement was prepared in duplicate. One was retained by the appellants, and the other by the respondent. The stamp papers in these two copies bear

consecutive numbers, which would show that it was prepared in duplicate; that if the respondent had obtained it in blank papers, then there was no necessity to prepare the Agreements in duplicate.

6 (b). The learned Senior Counsel further submitted that even if one of the parties had not signed the agreement, it would not invalidate the agreement as the respondent had filed the suit only against the appellants, who have been allotted the suit property under the compromise decree in the Partition Suit; and that it is true that a transfer made pending litigation is subject to the result of the suit. However, he submitted that in order to prevent further litigation and the creation of third-party interest in the litigation, an order of injunction can be validly passed restraining the owner of the property from making any alienation.

6 (c). The learned Senior Counsel further pointed out that the appellants had entered into an agreement of sale in respect of the schedule mentioned property with a third party after the order of injunction was

passed by the Trial Court; that this act is in violation of the injunction order; that in the said sale agreement, the sale consideration shown is Rs.45,00,000/- which is half of the sale consideration fixed in the agreement between the appellants and the respondent. Hence, the appellants are trying to create documents to defeat the interest of the respondent. The learned Senior Counsel relied upon the Judgment of the Hon'ble Supreme Court and this Court in (i) ***Julien Educational Trust vs. Sourendra Kumar Roy and others*** reported in (***2010) 1 SCC 379 (ii) Patnam Shankuntala and Another vs. Giridhar Mulji Chavda and others*** reported in ***(2005) 11 SCC 497*** and ***(iii) Balaraja B. Dhanalakshmi Vs. Syed Masood Rowther Ahamed Masood Rowther*** reported in ***1999-1-L.W.484*** in support of his submissions.

7. This Court, on perusal of the impugned order, pleadings and the submissions of the learned counsels on either side, finds that the respondent/plaintiff had filed a Suit for specific performance based on a sale agreement dated 29.10.2020, entered into between the appellants and others on the one hand and the respondent on the other hand. The signatures in the

agreement are not disputed. It is also not disputed that the respondent had paid Rs.25,00,000/- to the appellants. However, it is stated by the appellants that blank signed papers were misused, and it was made to appear that a sale agreement was entered into between the parties and that the amount of Rs.25,00,000/- was borrowed from the respondent and it was not received towards the sale consideration. It is also submitted that one Mrs. Ambika did not sign the Agreement, although she was shown as a party. These issues have to be decided during the Trial.

8.The question is whether the respondent had made out a *prima facie* case for a grant of injunction. This Court is of the view that the respondent had been able to show that there was an agreement entered into between the appellants and the respondent. As per the terms of the agreement, he waited for a Partition Deed to be executed between the parties. However, there was a Partition Suit which later ended in a compromise. The respondent, in the meanwhile, issued a pre-suit notice and thereafter, filed the instant suit. There is an agreement between the parties, and admittedly it has been prepared in duplicate. The appellants have filed their copy of the agreement in the typed set. The stamp paper of the agreement produced by the appellants before this Court and the stamp paper of the agreement produced by the respondent before the trial Court bear consecutive numbers. Therefore, the execution of the agreement has been established *prima facie* by the respondent. That apart, the Suit is instituted only against the appellants and not against Ambika, who had not signed the agreement. The validity or otherwise of the agreement on account of the said fact is for the trial Court to decide. The respondent had waited for the partition suit to conclude and, thereafter, had instituted this Suit, and therefore, there is no delay. Hence, the respondent, as stated earlier, has established the existence of an agreement *prima facie* and thus made out a *prima facie* case for the grant of injunction.

9. Further, this Court also is of the view that the balance of convenience lies in favour of the respondent. The learned Senior Counsel for the respondent pointed out an agreement entered into between the appellants and a third party purporting to sell the suit property for a sale consideration of Rs. 45,00,000/- (Rupees Forty Five Lakhs Only).

The learned counsel for the appellants submitted that documents not relied upon before the Trial Court cannot be considered. This Court finds that the said agreement was executed after the order of injunction passed by the Trial Court, and hence obviously, it could not have been considered by the trial Court. Nevertheless, that will have a bearing on this appeal. If the appellants are allowed to alienate the property, third party interest would be created. Hence the balance of convenience is in favour of the respondent, and allowing the sale of the property would cause irreparable damages to the respondent. The Hon'ble Supreme Court in ***Patnam Shankuntala and Another vs. Giridhar Mulji Chavda*** reported in ***(2005) 11 SCC 497*** had held that in a Suit for specific performance interim order may be passed if the Court is of the view that the third party interest would be created. The relevant observations are as follows;

> *"4.The appeals are filed against the interim order passed in appeal by the High Court vacating the earlier order of injunction granted directing maintenance of status quo. After hearing the learned counsel for the parties, in our opinion, the High Court erred in exercising the discretion in vacating the injunction already granted. The*

result would be that third-party interest would be created and the litigation will prolong. Instead it would have been appropriate for the High Court to direct the parties to maintain status quo with regard to the property in question until decision of the appeals.

10. This Court finds that there cannot be any dispute with the proposition that pending a Suit for specific performance, the sale made by the defendant would be subservient to the interest of the rights of parties to the suit as reiterated by the Honourable Supreme Court in ***Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and Others (cited Supra).*** However, this Court is of the view that in the instant case, as stated earlier, since *prima facie* case is made out, the order of injunction passed by the trial Court need not be interfered with. However, this Court is of the view that the respondent should be directed to deposit the balance sale consideration to the credit of the Suit to show his bonafide.

11.The learned Senior Counsel, on instructions submitted, that the respondent/plaintiff is willing to deposit the balance sale consideration.

Considering the fact that this Court is inclined to sustain the order of injunction, the respondent is directed to deposit the balance sale consideration to the credit of the Suit within a period of three (3) weeks from the date of receipt of the copy of this order. Hence, the injunction order passed by the Trial Court is confirmed on the condition that the respondent deposits the balance sale consideration to the credit of the Suit in O.S. No. 850 of 2022 on the file of the III Additional District and Sessions Court, Dharapuram within three (3) weeks from the date of receipt of a copy of this order failing which the order of injunction shall stand vacated. This Court also deems it appropriate to direct the learned III Additional District and Sessions Judge, Dharapuram, to expedite the trial in the Suit in O.S. No. 850 of 2022. Accordingly, the appellants shall file their written statement as expeditiously as possible. The trial Court may commence and conclude the trial without being influenced by any of the observations made in this order within a period of six months from the date of filing of the written statement.

12.With the above observations, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

13.07.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation: Yes/No
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To
The III Additional District & Sessions Judge,
Dharapuram.

SUNDER MOHAN,J.

dk/ay

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Dated:13.07.2023