



WEB COPY



1

CMA.No. 688 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 688 of 2023

and

CMP.No. 6064 of 2023

V.A. Balakrishnan

...Appellant

Versus

Pavun

Respondent

Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of the Civil Procedure Code, prays to set aside the fair and decretal order dated 18.11.2022 passed in I.A.No.2 of 2022 in O.S.No. 5421 of 2022 on the file of XXI Additional City Civil Court, Allikulam.

For Appellant : Mr. M. Jaikumar

For Respondent : Mr. V. Devendhiran

**JUDGMENT**

WEB COPY

This Civil Miscellaneous Appeal has been filed seeking to set aside the fair and decretal order dated 18.11.2022 passed in I.A.No.2 of 2022 in O.S.No. 5421 of 2022 on the file of XXI Additional City Civil Court, Allikulam.

2. The appellant herein is the plaintiff and the respondent herein is the defendant in the original suit.

3. It is the case of the plaintiff that the suit property was originally purchased by one Mangala Lakshmi under a sale deed dated 28.05.1976, registered as Doc.No. 135 of 1976 on the file of Sub Registrar Office, Kodambakkam. After her demise, her husband Munusamy entered into an agreement for sale on 12.02.2007 with the plaintiff to sell the suit property for sale consideration of Rs.32,50,000/- and the plaintiff had also paid Rs.15,00,000/- as advance and he was put in possession of the suit property. According to the plaintiff, he was in possession of the suit property from the year 2007 and he was handed over all the original documents pertaining to the above said property. After the demise of



Munusamy, the defendant approached the plaintiff claiming herself to be the sister and the only legal heir of Munusamy. Subsequently, the appellant entered into an agreement on 11.01.2008 with the defendant and paid an amount of Rs.7,50,000/-. In the said agreement, the defendant acknowledged the receipt of Rs.22,50,000/-. On 12.06.2008, the defendant received a further amount of Rs.3,00,000/- and acknowledged the same. The plaintiff therefore claimed to have paid Rs.25,50,000/- out of total sale consideration of Rs.32,50,000/-. The plaintiff stated that he was in uninterrupted possession and enjoyment of the suit property from the year 2007. Though the plaintiff agreed to pay the balance sale consideration at the time of registration, the defendant did not come forward to execute the sale deed in favour of the plaintiff. In 2010, the defendant informed that there was a Will dated 01.11.2006 executed by her brother Munusamy in her favour and that she would execute the sale deed after the Will was probated before the Court. The plaintiff was not informed about the probate order passed in O.P.No. 298 of 2012 on 06.06.2018. The plaintiff was always ready and willing to perform his part of contract but the defendant did not come forward to execute the sale deed. The plaintiff sent a legal notice dated 05.01.2021 calling upon the



WEB COPY

defendant to receive the balance sale consideration of Rs.7,00,000/- and execute the sale deed in his favour. Even though the defendant received the notice, the defendant did not send any reply. The plaintiff therefore filed the suit for specific performance and permanent injunction among other reliefs. Thereafter, the defendant gave a Police complaint against the plaintiff and his tenants to vacate the suit property. During the pendency of the suit proceedings, the plaintiff filed I.A.No.2 of 2022 in O.S.No. 5421 of 2022 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, for an order of Ad-Interim injunction restraining the defendant from interfering with the plaintiff's peaceful possession of the schedule mentioned property from in any manner whatsoever other than due process of law, pending disposal of the suit. After perusing the records, the Court below dismissed the said application by the impugned order dated 18.11.2022. Aggrieved by the said order of the Court below, the appellant/plaintiff has filed the present Appeal.

4. The defendant denied all the plaint allegations particularly that the plaintiff was put in possession of the suit property from the year 2007 and was entrusted all the original documents pertaining to the suit



property. According to the defendant, taking advantage of the age and loneliness of her brother, with an evil intention to grab the valuable suit property, the plaintiff had ingeniously trespassed into the suit property and taken all the documents pertaining to the suit property. The entire construction was put up by her brother Munusamy by spending huge sum and now taking advantage of their absence, the plaintiff had let out the portions of the property to various third parties by projecting himself as the owner of the suit property and had collected huge sum as advance and rents. The defendant denied the suit sale agreement and also the receipt of Rs.25,50,000/- as advance. After the demise of her brother, the defendant visited the suit property and found that the plaintiff was occupying the suit property illegally and therefore, asked him to enter into a Composite Lease Agreement. The defendant believed the plaintiff and signed the documents. The cheque which was issued towards the lease amount was also returned. It was only when the defendant asked the plaintiff to vacate the suit property, that she came to know that the plaintiff had obtained her signatures in the document alleged to be extension of sale agreement and thus became aware of his evil design to grab the suit property. The defendant gave a Police complaint in CSR.No.270 of 2022 on 03.05.2022



WEB COPY

that the plaintiff was illegally occupying the suit property by letting out portions of the property to various third parties for rent projecting himself to be the landlord. According to the defendant, the conduct of the plaintiff dis-entitled him to the equitable relief of specific performance and the interim relief prayed for. The defendant came to know that her brother had executed a Will dated 01.11.2006 on the file of SRO, Kodambakkam, vide Doc.No.96 of 2006, and therefore, she filed a probate petition before the Court in O.P.No.289 of 2012 and the same was ordered in the year 2018. After obtaining the probate order, the defendant applied for transfer of Patta before the Revenue Authorities. On 03.05.2022, when the defendant visited the house property, the plaintiff and his henchmen threatened her with dire consequences. The plaintiff had given the house on lease to five persons claiming to be the owner of the property and collected Rs.5,00,000/- each, totalling a sum of Rs.25,00,000/-. According to the defendant, she had not executed any document much less the extension of sale agreement and hence, the plaintiff was illegally squatting over the suit property by letting it to third parties and by taking huge amounts as advance projecting himself as a landlord. Such being the conduct of the plaintiff, the defendant prayed that the suit be dismissed.



WEB COPY

5. Before the Court below, no witnesses were examined on the side of the plaintiff and the defendant. Ex.P1 to Ex.P26 were marked on the side of the plaintiff and Ex.R1 to Ex.R11 were marked on the side of the defendant. On the side of the defendant, the copy of the sale deed in the name of Mangalalakshmi was filed as Ex.R1, the death certificate and legal heirship certificate of Mangalalakshmi were marked as Ex.R2 and Ex.R3. The probate order in favour of the defendant was marked as Ex.R4, to prove that the suit property still stood in the name of the defendant, and that she was in possession of the same.

6. The learned counsel for the appellant submitted that the plaintiff was inducted into the suit property under the agreement of sale executed by the brother of the defendant and thereafter he continued to be in possession. The learned counsel further submitted that the possession of the original documents by the plaintiff would show that plaintiff was in possession of the suit property. The learned counsel for the plaintiff further submitted that the defendant having executed the extension of sale agreement it cannot be said that he was a rank trespasser. Lastly, the counsel submitted that the plaintiff apprehended that the defendant would



take law into her hands and evict the plaintiff from the suit property.

WEB COPY

7. The learned counsel for the respondent submitted that there is absolutely no *bona-fides* in the application and the conduct of the plaintiff would show that he is not entitled to the equitable and discretionary relief of temporary injunction.

8. The learned counsel further submitted that the original sale agreement, the extension agreement and the balance sale consideration received under the agreement, are all disputed and they are the subject matter of trial. The learned counsel further submitted that the trial Court on an appreciation of the facts involved in the case had rightly rejected the injunction application and absolutely there was no perversity in the impugned order passed by the trial Court.

9. Heard both sides and perused the materials placed on record.

10. The suit property originally belonged to one Munusamy, the brother of the defendant. The brother of the defendant executed an



agreement of sale in favour of the plaintiff for the sale of the suit property for a sale consideration of Rs.32,50,000/- and received a sum of Rs.25.50,000/- as advance. The defendant's brother Munusamy died on 22.06.2007 and the defendant, his sister, became his sole legal heir. The said Munusamy during his life time, executed a Will in favour of the defendant and she initiated probate proceedings in O.P.No. 298 of 2012 which was ordered on 06.06.2018. The plaintiff claims to be in possession of the suit properties by virtue of the sale agreement dated 12.02.2007. The defendant, on the other hand, disputed the sale agreement and stated that the plaintiff was a rank trespasser. The agreement of sale was disputed and so the same would have to be proved at the time of trial.

11. The plaintiff filed the documents, namely, Ex.P6 and Ex.P9 to Ex.P11, the Lease Agreements, Exs.P7 & Ex.P8 receipts, Ex.P12 & Ex.P13 the Rental Lease Agreements, Ex.P20 the Ration card, Ex.P21 the Aadhar Card, Ex.P22 the Gas Bill, Ex.P23 the EB Card, Ex.P24 the Voter ID of the plaintiff, Ex.P25 the Property Tax Bill and Ex.P26 the Water and Drainage Bill. From the above documents, it is clear that the plaintiff had leased out the suit properties to third parties. From these documents it



WEB COPY

cannot be inferred that the plaintiff is in lawful possession of the suit properties in pursuance of the Agreement of Sale. The plaintiff traces his possession to the suit sale agreement.

12. It is seen that the suit sale agreement is an unregistered document and there is no stipulation regarding handing over of possession, therein. Therefore, it is clear that the possession of the plaintiff is illegal and the plaintiff is only a trespasser. It is well settled that there cannot be any injunction against the true owner. The defendant has *prima facie* established that she is the legal heir of the deceased Munusamy and as such entitled to the suit property by filing the orders in the probate proceedings dated 06.06.2018 in O.P.No. 298 of 2012. The plaintiff is only an agreement holder and unless he is able to establish that he was given possession of the suit properties in part performance of the agreement, he cannot be granted the relief of injunction. The plaintiff has sought the equitable and discretionary relief of injunction. From the evidence as record and the facts of the case it is clear that the plaintiff's possession of the suit properties is illegal and unlawful. In my view, the conduct of the plaintiff in leasing out the suit properties to tenants



projecting himself as the true owner and receiving huge amounts as advance disentitle him from getting the discretionary relief of injunction.

13. In the light of the above discussion, I am of the view that there is no perversity or impropriety in the impugned order passed by the trial Court and therefore, the Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

17.04.2023

Index : Yes / No
Speaking Order : Yes/ No
Neutral Citation : Yes/No
msm

To

1. The XXI Additional Judge, City Civil Court, Allikulam.
2. The Section Officer, V.R. Section,
High Court of Madras, Chennai-600 104.



WEB COPY



12

CMA.No. 688 of 2023

N. MALA, J

msm

C.M.A.No. 688 of 2023

17.04.2023