

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.275 of 2023

and

C.M.P.(MD)No.3383 of 2023

N.Banupriya

...Appellant/Petitioner/Plaintiff

Vs.

J.Sumathi

...Respondent/Respondent/Defendant

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(r) of the Civil Procedure Code, to set aside the decree and order dated 19.07.2022 in I.A.No.1 of 2021 in O.s.No.158 of 2022 on the file of the learned III Additional District Judge, Tiruchirappalli.

For Appellant : Mr.P.Ganapathy Subramanian

For Respondent : Mr.R.Baskaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the fair and final order dismissing the application filed by the appellant seeking an interim injunction in the suit filed for specific performance.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)The plaintiff has filed the suit for enforcement of agreement said to have been executed by the defendant on 23.11.2019 on receiving a sum of Rs.64,25,000/- towards sale consideration. The said suit has been laid on the ground that the defendant was evading from executing the document, even though the plaintiff was always ready and willing to perform his part of contract. When the suit was pending, an application has been filed seeking interim injunction restraining the defendant from creating any part of encumbrance over the suit property.

(ii)The respondent denying execution of agreement took a stand that an oral sale agreement was entered into between the plaintiff and the defendant in the year 2019 and the said oral sale agreement was also cancelled for non payment of

sale consideration. At present, no agreement is in existence between the plaintiff and the defendant. The cancellation of oral sale agreement was also endorsed on the back side of the xerox copy of the possession agreement.

4.The trial Court after considering the evidence adduced on either side, had held that the suit is ripe for trial and when the respondent specifically denied the execution of the sale agreement and signature available in the said agreement and before establishing the validity of the agreement, interim injunction cannot be granted. Accordingly, the trial Court dismissed the application filed by the plaintiff seeking interim injunction. Challenging the same, the present appeal has been filed.

5.The learned counsel for the appellant would submit that the plaintiff/appellant herein was in possession of the suit property based on the agreement. The trial Court has also recorded that the plaintiff is in possession of the property, however denied to grant the relief of interim injunction.

6.In view of the above submission, now the point arises for consideration in this appeal is:

(1) Whether the plaintiff can seek to protect his possession based upon an unregistered agreement, particularly when the agreement itself is denied?

7.I have heard the arguments adduced on either side and perused the materials placed on record.

8.Admittedly, the suit was laid only based upon an unregistered document, wherein an injunction was also sought against the defendant on the basis of the alleged possession. There is an amendment in the Registration Act that any agreement relating to the sale of immovable property at the value of above Rs.100/- requires to be compulsorily registered. The amendment came into effect on 01.12.2022 by the Act 29 of 2012. Though an unregistered agreement can be enforced as per Section 49 of the Registration Act, in order to defend the possession as part performance of the contract, an agreement is required to be compulsorily registered. It has not been done so in the present case. The said unregistered document can only be used as a shield and not as a sword to seek a relief of injunction. Such being the position, when the agreement itself is disputed

in the case on hand and the suit itself is ripe for trial, the question of granting an interim injunction does not arise at all. Even assuming that the apprehension of the appellant is true and if any encumbrance is created, the same could be assailed by invoking the doctrine of *lis pendens*.

9.In view of the above discussions, I do not find any merits in the appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. The trial Court is directed to complete the process of trial and dispose of the Original Suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

20.03.2023

NCC : Yes/No

Index : Yes/No

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To

1.The III Additional District Judge,
Tiruchirappalli

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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N.SATHISH KUMAR, J.

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