



WEB COPY

CMA.No.222 of 2024

In the High Court of Judicature at Madras

Reserved on : 18.7.2024	Delivered on : 22.7.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.222 of 2024
& CMP.No.2268 of 2024

Nemaram

Vs

...Appellant

E.Jayalakshmi

...Respondent

APPEAL under Order XLIII Rule 1(r) of the Civil Procedure Code against the fair and decretal order dated 11.12.2023 in I.A.No.4 of 2023 in O.S.No.38 of 2023 on the file of the Additional District Court, Hosur.

For Appellant : Mr.N.Manoharan
For Respondent : Mr.T.M.Hariharan for
Mr.G.M.Ananthakumar

JUDGMENT

This appeal has been filed under Order XLIII Rule 1(r) of the Civil Procedure Code (CPC) against the fair and decretal order dated 11.12.2023 made in I.A.No.4 of 2023 in O.S.No.38 of 2023 on the file of the Additional District Court, Hosur (for short, the Court below).



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2. The facts leading to filing of this appeal are as follows :

(i) The respondent/plaintiff filed the suit in O.S.No.38 of 2023 against one Mr.Ravichandran and his son - one Mr.Charan on the ground that she obtained hand loans from the said Mr.Ravichandran on various occasions and executed a sale agreement in his favour, that she was paying interest to the first defendant regularly and that however, the said Mr.Ravichandran misused the general power of attorney documents and created a fraudulent sale deed in favour of his son - the said Mr.Charan, who illegally demolished the building situated in the suit properties. Based on these grounds, the respondent sought for the relief of declaring the sale deed, the general power of attorney documents and the sale agreement as null and void and for a permanent injunction to restrain the defendants not to alienate the suit properties to any third parties.

(ii) Before the Court below, the defendants namely the said Mr.Ravichandran and the said Mr.Charan filed their written statement by denying the claim made by the respondent/plaintiff and justifying the execution of both the sale agreement as well as the sale deed by the first defendant in favour of the second defendant. They also stated in the written statement that item Nos.1 and 2 of the suit properties have been sold in favour of the appellant on 03.4.2023 and that he also obtained a patta in his name and is in possession and enjoyment



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of those properties. Accordingly, the defendants therein sought for dismissal of the said suit.

(iii) Subsequently, the respondent/plaintiff filed I.A.No.4 of 2023 seeking for the relief of interim injunction restraining the appellant from interfering with peaceful possession of the suit properties and from putting up any illegal construction in the suit properties. The respondent/plaintiff also filed I.A.No.5 of 2023 to implead the appellant as the third defendant in the said suit.

(iv) Both the said interlocutory applications were taken up by the Court below for hearing on 07.9.2023. Further, by order dated 07.9.2023, the appellant was impleaded as the third defendant in the said suit; an order of temporary injunction was also granted restraining the appellant from putting up further construction in the suit properties; and notice was ordered to the appellant. After notice, the appellant entered appearance and filed a counter in I.A.No.4 of 2023.

(v) I.A.No.4 of 2023 was finally heard by the Court below and an order has been passed on 11.12.2023 allowing the said application and an order of interim injunction has been granted restraining the appellant from interfering with the peaceful possession and enjoyment of the suit properties and from putting up any construction in the suit properties pending disposal of the suit subject to the condition that the



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respondent/plaintiff should deposit a sum of Rs.11 lakhs into court within three months in order to show her bona fides. Aggrieved by the order dated 11.12.2023 passed by the Court below, the third defendant filed this appeal before this Court.

3. Heard the learned counsel for the appellant and the learned counsel appearing for the respondent.

4. The learned counsel for the appellant submitted that that the respondent/plaintiff did not even claim to be in possession and enjoyment of the suit properties nor sought for a permanent injunction in the said suit to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit properties whereas in I.A.No.4 of 2023 filed by the respondent/plaintiff, the Court below granted an order of interim injunction restraining the appellant from interfering with the peaceful possession and enjoyment of the suit properties and that this interim relief granted by the Court below goes beyond the scope of the relief sought for in the said suit.

5. The learned counsel for the appellant further submitted that the appellant is a bona fide purchaser for value, that he is the true owner of item Nos.1 and 2 of the suit properties and is in possession



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and enjoyment of the same, that therefore, the order of interim injunction could not be granted as against the true owner of the subject properties, that there was no averment contained in the plaint alleging fraud against the original defendants and rather, a relief has been sought to declare the sale deed as null and void and that unless the entitlement of the respondent for such a relief is decided by the court, there is no question of granting an order of interim injunction against the appellant.

6. Per contra, the learned counsel appearing on behalf of the respondent submitted that the appellant is a pendente lite purchaser of item Nos.1 and 2 of the suit properties, that there is no question of making a claim of a bona fide purchaser in this case, that the respondent/plaintiff had taken loan from the first defendant and as a security, general power of attorney documents were executed in favour of the first defendant and that the first defendant misused the same and dealt with the suit properties in favour of his son, who is none other than the second defendant.

7. The learned counsel appearing on behalf of the respondent further submitted that the very nature of transaction makes it clear that the suit properties were fraudulently knocked away by the



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defendants and to further complicate things, item Nos.1 and 2 of the suit properties were alienated in favour of the appellant during the pendency of the suit, that the appellant, taking advantage of the sale deed executed in his favour, was attempting to put up illegal construction in item Nos.1 and 2 of the suit properties, that the complaints, which were given to the concerned authorities did not evoke any response and that therefore, in order to safeguard the interests of the respondent/plaintiff, two applications were filed seeking (i) to implead the appellant as the third defendant in the said suit and (ii) for the relief of interim injunction pending disposal of the suit.

8. The learned counsel appearing on behalf of the respondent also submitted that the Court below assigned proper reasons and found that the respondent/plaintiff made out a prima facie case and that the balance of convenience was in her favour. According to him, based on the stand taken by the respondent/plaintiff that she took a loan from the first defendant, for which, she executed the general power of attorney documents, the Court below directed the respondent/plaintiff to deposit a sum of Rs.11 lakhs in order to establish her bona fides, that this condition imposed by the Court below was also complied with, that there were no grounds to interfere



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with the order passed by the Court below and that the above appeal is liable to be dismissed by this Court.

9. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record. This Court has also carefully gone through the impugned order passed by the Court below.

10. The respondent filed the said suit against the said Mr.Ravichandran and the said Mr.Charan mainly on the ground that she had taken loan from the said Mr.Ravichandran and that pursuant to the same, she executed two general power of attorney documents by way of security apart from signing in blank stamp papers and cheques. She took a further stand that she was paying interest regularly to the first defendant and in spite of the same, taking advantage of the general power of attorney documents and the original title deeds, which were handed over, the first defendant originally executed a registered sale agreement dated 06.1.2022 in favour of the second defendant and subsequently, a registered sale deed dated 23.2.2022 in favour of the second defendant for all the four items of the suit properties.



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11. This fact came to light only when the respondent/plaintiff received summons from the Court below in O.S.No.175 of 2022 filed by the said Mr.Charan against the respondent and her husband - Mr.M.Srinivasan. O.S.No.175 of 2022 was filed seeking for the relief of declaration of title to the suit properties; for delivery of vacant possession; for demolition of the existing structure; and to restrain the respondent and her husband from causing any damage to the suit properties. The respondent and her husband filed a written statement in O.S.No.175 of 2022 wherein almost the same stand that was taken in the present suit in O.S.No.38 of 2023 was taken.

12. The respondent filed O.S.No.38 of 2023 seeking for a declaration to declare (i) the general power of attorney documents executed by the respondent in favour of the first defendant and (ii) the sale agreement and the sale deed executed by the first defendant in favour of the second defendant, as null and void and for a permanent injunction restraining the defendants from alienating the suit properties to any third parties. When the present suit is pending, item Nos.1 and 2 of the suit properties were sold in favour of the appellant by the second defendant in O.S.No.38 of 2023 - the said Mr.Charan through the sale deed dated 03.4.2023.



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13. There is one more crucial fact that has to be taken note of by this Court. O.S.No.175 of 2022 was filed by the said Mr.Charan against the respondent and her husband claiming to be the owner of the suit properties through the registered sale deed dated 23.2.2022. As stated supra, in O.S.No.175 of 2022, the said Mr.Charan, as the plaintiff, had only sought for the relief of declaration of title, for delivery of vacant possession, for a mandatory injunction to demolish and remove the temporary ACC hotel shed and for a permanent injunction to restrain the respondent and her husband from making any further damages in the suit properties.

14. It is quite clear from the prayer sought for in O.S.No.175 of 2022 that the vacant possession was not handed over to the said Mr.Charan. There is absolutely no indication as to when the suit properties came into the possession of the said Mr.Charan. The manner, in which, the suit properties came into the possession of the said Mr.Charan is indicated in the plaint filed by the respondent/plaintiff in O.S.No.38 of 2023. She stated that on 03.9.2022, the said Mr.Ravichandran and the said Mr.Charan (the defendants in O.S.No.38 of 2023) along with some rowdy elements barged into the suit properties, demolished the existing structure and carried away all the hotel and household articles in a tempo. On going by this averment, at



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least from the stand point of the respondent, forcible possession was taken over.

15. The said Mr.Ravichandran and the said Mr.Charan, in their written statement in O.S.No.38 of 2023, came up with a stand that the ACC cement shed in the suit properties was completely damaged by rain and wind and hence, the debris were removed and possession was handed over to the appellant, who purchased item Nos.1 and 2 of the suit properties through the registered sale deed dated 03.4.2023. The appellant took a stand in the counter filed in I.A.No.4 of 2023 that he visited the properties concerned before purchasing the same, that he noticed one ACC cement shed, that therefore, he approached the respondent and that she promised to remove the entire structure.

16. It is quite evident that both the said Mr.Ravichandran and the said Mr.Charan, who are the defendants in O.S.No.38 of 2023 as well as the appellant in this appeal have taken two different stands with respect to the manner, in which, the possession of the properties concerned was taken over. With the materials available, it is pellucid that the respondent did not hand over possession of the suit properties to the said Mr.M.Ravichandran and the said Mr.Charan and at some stage, forcible possession was taken over and the ACC shed was



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removed. That is the reason why item Nos.1 and 2 of the suit properties purchased by the appellant were shown to be vacant properties.

17. It must be borne in mind that the appellant is a pendente lite purchaser and therefore, he cannot get a better right than what is possessed by the said Mr.Charan. When it comes to a pendente lite purchaser, the concept of a bona fide purchaser can never be applied and the law on this issue is now too well settled.

18. Useful reference can be made to the latest judgment of a learned Single Judge of this Court in the case of ***Sowbakkiam Ammal Vs. Gunasekaran [reported in 2024 (2) MLJ 563]***. Reference can also be made to the judgment of the Apex Court in the case of ***Chander Bhan (Deceased) through legal heir Sher Singh Vs. Mukhtiar Singh [reported in 2024 (3) CTC 543]***.

19. There is yet another fact that must be borne in mind by this Court. The respondent/plaintiff took a specific stand that she obtained loan from the said Ravichandran and executed general power of attorney documents as security. She also took a stand that she was paying the interest regularly and in spite of the same, the said



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Mr.Ravichandran misused the general power of attorney documents. The said Mr.Ravichandran executed the sale agreement and the sale deed with respect to all the four items of the suit properties in favour of his son - the said Mr.Charan. This fact cannot be brushed aside and it will have a bearing touching upon the very genuineness of the transaction between the father and son.

20. The said Mr.Charan, based on the sale deed, instituted the first suit in O.S.No.175 of 2022 seeking for the relief of declaration of title. Hence, he was aware of the fact that the respondent created a cloud over the title and that is the reason why he sought for a declaratory relief. All the consequential reliefs that were sought for in the first suit went on the footing that the possession is yet to be handed over to the said Mr.Charan by the respondent.

21. This Court has already held that the appellant cannot have a better right than the said Mr.Charan since the appellant is the pendente lite purchaser claiming his right and title from the said Mr.Charan. The said Mr.Charan is also apprehensive of the cloud in the title created by the respondent. There is also no clarity as to how the possession was taken over by the said Mr.Charan from the respondent in order to, in turn, hand it over to the appellant. Nowhere the



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respondent admitted with regard to handing over of possession of the suit properties and what she stated was that the ACC shed was forcibly removed and that all the articles were carried away in a tempo.

22. All the above facts were taken into consideration by the Court below. Further, the Court below also wanted to test the bona fides of the respondent/plaintiff and hence, directed the respondent to deposit a sum of Rs.11 lakhs into court, which amount was claimed to have been obtained as loan from the said Mr.Ravichandran as evident from the two general power of attorneys marked as Ex.P.13 and Ex.P.14.

23. As on date, the properties concerned remain as vacant lands and this Court can safely come to such a conclusion since both the parties are now saying that the ACC shed was removed from the properties concerned. Therefore, the properties concerned can be directed to be kept as vacant properties without changing their status or character. The respondent/plaintiff did not specifically plead as if she is in possession and enjoyment of the suit properties and that is the reason why the respondent did not seek for the relief of permanent injunction restraining the said Mr.Ravichandran and the said Mr.Charan from interfering with the peaceful possession and enjoyment of the



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suit properties. Rather, the respondent sought for the relief of permanent injunction restraining the said Mr.Ravichandran and the said Mr.Charan from alienating the suit properties.

24. Even in the affidavit filed in support of I.A.No.4 of 2023, the respondent sought for the relief of temporary injunction restraining the appellant from putting up any construction over the suit properties. However, in the application in I.A.No.4 of 2023, the respondent added the relief of temporary injunction restraining the appellant from interfering with her peaceful possession and enjoyment of the suit properties.

25. Both these reliefs cannot go together. If the respondent is in possession and enjoyment of the suit properties, there is no question of putting up any construction by the appellant. Only if the appellant is in possession and enjoyment of the suit properties, he can put up a construction in the suit properties. These mutually contradicting reliefs sought for by the respondent were not properly considered by the Court below.

26. In any event, an interim relief sought for in a case cannot travel beyond the scope of the main relief sought for in the suit. When



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the respondent has not sought for the relief of permanent injunction restraining the said Mr.Ravichandran and the said Mr.Charan from interfering with peaceful possession and enjoyment of the suit properties, an interim relief of that nature cannot be sought for. In fact, such an interim relief was not sought for initially and I.A.No.4 of 2023 was taken out at a later point of time after the appellant purchased item Nos.1 and 2 of the suit properties.

27. In so far as the possession of vacant lands is concerned, it always runs with title. In other words, a person, who has title over a vacant land, is construed to be in possession of the same. This title is now in a hazy state of affairs.

28. In the light of the above discussions, the order passed by the learned Additional District Court, Hosur in I.A.No.4 of 2023 in O.S.No. 38 of 2023 dated 11.12.2023 is modified to the extent that there will be an order of interim injunction restraining the appellant from putting up any construction over the suit properties or changing the character of item Nos.1 and 2 of the suit properties pending disposal of the suit. The appellant shall retain item Nos.1 and 2 of the suit properties in their present status till the suits are disposed of. The amount that has been deposited by the respondent shall be kept in a fixed deposit and



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it shall be renewed from time to time till the disposal of the suits. It is made clear that any observations made by this Court in this judgment will not have any bearing while deciding the suits on merits. The Court below shall decide both the suits in O.S.No.175 of 2022 and 38 of 2023 on their own merits and in accordance with law without being influenced by any observations made while disposing of I.A.No.4 of 2023 by the Court below and while disposing of this appeal by this Court.

29. In the result, the above civil miscellaneous appeal is disposed of in the above terms. No costs. Consequently, the connected CMP is closed.

22.7.2024

Neutral Citation : Yes
Speaking Order : Yes

To
The Additional District Court,
Hosur.

RS



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N.ANAND VENKATESH,J

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