



C.M.P.Nos. 7864 & 7865 of 2024
in A.S.No. 220 of 2024

R.SUBRAMANIAN, J.
AND
R.SAKTHIVEL, J.

(Order of the Court was made by R.SUBRAMANIAN, J.)

Admittedly, the suit filed by the appellant seeking specific performance of an agreement of sale deed dated 31.07.2009 has been dismissed by the Trial Court and the instant appeal is against the said decree.

2.In these petitions, the petitioner seeks an order of injunction restraining the defendants from interfering with its peaceful possession and enjoyment of the property by implementing the decree for possession granted in O.S.No.1244 of 1987, for execution of which, execution proceedings in E.P.No.1625 of 2011 has been launched by the respondents. There is also a prayer for interim injunction restraining alienation.

3. As regards the prayer for injunction restraining the alienation, we do not think that we can grant such an injunction at the instance of a plaintiff in a suit for specific performance who has lost before the Trial Court. Since the second paragraph of Section 54 of Transfer of Property Act 1882 makes very



clear that an agreement of sale does not create an interest in the property.

Having failed in a suit for specific performance, the appellant cannot seek an injunction restraining the rightful owner from alienating the property. Section 52 of the Transfer of Property Act protects the interest of the appellant in as much as it makes alienations subject to result of the suit. Therefore, we do not see any reason to grant an injunction restraining alienation.

4. As regards the other prayer for injunction restraining the respondents from interfering with the possession. Though the prayer is couched in the form of an injunction, what is really sought to be achieved is a stay of execution of a decree passed in another suit. None of the provisions of Order 21 of the Code of Civil Procedure, 1908 empower an Appellate Court to grant stay of execution of a decree passed in another suit or collateral proceedings.

5. Mr.R.Thiagarajan, learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in ***Gurinder Singh and Others Vs. Harmala Kaur and Others*** reported in ***(1982) 2 SCC 54***. The Hon'ble Supreme Court invoked the provisions of Order 21 of Rule 26 of the Code of Civil Procedure to grant stay on execution the decree pending the second appeal. That was an appeal against a decree made in the very suit. Order 21,



Rule 26 reads as follows:-

"26. When Court may stay execution.

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

*(3) **Power to require security from, or impose conditions upon, judgment-debtor-** Before making an order to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court shall require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit."*

6. A plain reading of the provision would show that the said rule



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enables a Court, to which, a decree has been sent for execution, grant stay of the decree for a reasonable time to enable the judgment debtor to apply to the Court which passed the decree or any Court having appellate jurisdiction in respect of the decree or execution thereof for an order to stay of execution. It is clear that the power under Order 21, Rule 26 is a transitory power exercisable only to enable the judgment debtor to apply to a competent Court for stay. The said provision does not enable the Court to grant stay of execution of a decree in collateral proceedings.

7. Mr.R.Thiagarajan would also seek to invoke the aid of Order 21, Rule 29. Order 21, Rule 29 reads as follows:-

"29. Stay of execution pending suit between decree-holder and judgment-debtor.

Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

(Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.)



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8. That enables the Court in which a suit is pending against the holder of a decree of such Court. The above provision does not enable the Court to stay execution of a decree passed in another suit unless the validity of the decree is in question in the suit. We therefore, see no merits in the application for injunction restraining the defendant from interfering with the possession and executing a decree in O.S.No.1244 of 1987 on the file of the City Civil Court, Chennai. Hence, both the Civil Miscellaneous Petitions are dismissed as devoid of merits.

[R.S.M., J.] [R.S.V., J.]
22.07.2024

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