



Reserved on: 16.04.2024

Pronounced on: 26.04.2024

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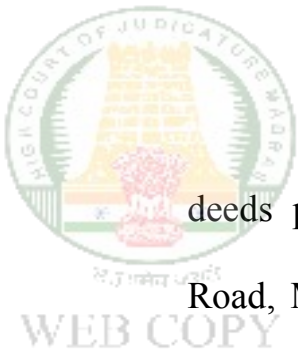
OA. No.549 of 2022
in
C.S. No.158 of 2002 and
C.S. No. 340 of 2003

P.B.BALAJI, J.,

This is an Application taken out by the Plaintiff seeking an interim injunction to restrain the respondents/defendants from in any manner alienating or encumbering the suit properties, pending disposal of the suit.

2. The case of the applicant/plaintiff is that pending the suit, the 6th defendant filed an Application in A.No.2504 of 2020 seeking permission of this Court to sell the property situated at No.8, Govindan Road, Mettupalayam, West Mambalam, Chennai- 600 033, undertaking to deposit a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only). The said Application was hotly contested by the applicant/plaintiff and by order dated 27.09.2021, the said Application was closed and parties were directed to complete the trial in the suit.

3. It is the further case of the applicant/plaintiff that thereafter the 6th defendant has fraudulently lodged a police complaint as if the original title



deeds pertaining to the above mentioned property namely, No.8 Govindan Road, Mettupalayam, West Mambalam, Chennai- 600 033 had been lost and was untraceable and that after obtaining an untraceable certificate from the police authorities, the 6th defendant has settled the property in favour of his son Mr.Allen Abraham. The applicant apprehends that pursuant to the fraudulent settlement deed, the 6th defendant along with his son, are trying to alienate the said property to third parties. It is further stated that the applicant being a mortgagee, he has a charge upon the property and therefore, the order of ad interim injunction is to be granted as prayed for.

4. The 6th respondent has filed a counter affidavit stating that the application seeking an omnibus injunction is liable to be dismissed. According to the 6th defendant they are disputing the alleged security interest claimed over various properties set out in the schedule to the plaint and in fact C.S.No.340 of 2003 has also been filed against the plaintiff seeking a declaration that the defendants are entitled to redemption of the mortgage, as excess recovery has already been made by the applicant/plaintiff. It is also contended that the mortgagee has no right to restrain the respondents from dealing with the properties and therefore, this application is liable to be dismissed.

5. I have heard the learned counsel Mr.M.L.Ramesh, for the



applicant/plaintiff and Mr.Karthick, learned counsel for M/s.Menon, Karthick, Mukundan & Neelakantan, the respondents 1 to 12.

6. The suit has been filed for recovery of a sum of Rupees 2,41,21,626/-, based on a mortgage created by the defendants in respect of the suit schedule properties, by deposit of original title deeds. Admittedly, the suit is in a part heard stage. It is also an admitted fact that C.S.No.340 of 2003 has been filed for redemption of the mortgage in respect of properties mentioned in Schedules A to F of the present suit. The said suit is also pending. It is the specific case of the applicant/plaintiff that earlier, the applicant has already approached this Court with an application seeking permission to sell one of the Items of the mortgaged properties, namely No.8 Govindan Road, Mettupalayam, West Mambalam, Chennai- 600 033. It is seen that by an order dated 27.09.2021 the said application was closed and no orders were passed, excepting issuing a direction to the parties to complete the trial of the suit.

7. Thereafter, the 6th defendant has approached the police authorities contending that the original documents have been misplaced in respect of the above mentioned property and he has obtained a non traceable certificate based on which he has settled the property in favour of his son. It is the apprehension of the applicant/plaintiff that the 6th defendant and his son are attempting to



alienate the said item of the property taking advantage of the non traceable certificate issued by the police authorities and also the settlement deed executed by the 6th defendant in Document No.1318 of 2022 dated 20.04.2022 on the file of the Sub Registrar, Ashok Nagar.

8. There is no dispute that the above mentioned property along with the other suit scheduled properties are under a valid mortgage by deposit of the title deeds with the applicant/plaintiff. The applicant/plaintiff, therefore, has a charge on the suit properties. However, the 6th respondent/defendant has deliberately made a false statement before the police authorities that the original title deeds to the property No.8 Govindan Road, Mettupalayam, West Mambalam, Chennai- 600033, had been lost and were untraceable, knowing fully well that the said item of property has been mortgaged with the applicant/plaintiff, by way of deposit of original title deeds. Such an action on part of the 6th respondent/defendant cannot be lightly condoned. Order XXXIX of the Code of Civil Procedure, 1908 enables and empowers the Court to grant an interim injunction where the defendant is intending to remove or dispose of property, with a view to defraud creditors or otherwise, cause injury to the plaintiff in relation to any property in dispute in the suit. Here, the conduct of the 6th defendant needs to be noted. He voluntarily approached this Court in



Application No.2504 of 2020 and sought for permission to sell the said item of property undertaking to deposit a sum of Rs.25 lakhs. However, no orders were passed on the said Application and on the contrary by order dated 27.09.2021, the parties were directed to complete the trial in the suit.

9. Thereafter the 6th respondent/defendant has chosen to settle the said item of the property in favour of his son, on 20.04.2022. The said factum of executing the settlement deed has also not been denied in the counter affidavit. The action of the 6th respondent/defendant clearly indicates that he is attempting to defraud the applicant/plaintiff namely, the mortgagee. The very fact that the 6th respondent/defendant has deliberately and wilfully made a false statement that the original documents relating to the said item of property were lost and untraceable was only to facilitate encumbering the suit property. Already by executing a settlement deed, the property has been encumbered and title has now been transferred and vested with the son of the 6th respondent/defendant, who is not a party to the suit.

10. The learned counsel for the 6th respondent would submit that the plaintiff being a mortgagee, though the claim of the mortgagee is denied in the written statement, the plaintiff has a charge on the suit properties and moreover,



Section 52 of the Transfer of Property Act, 1882 would protect the interest of the plaintiff and therefore no interim order need be granted. I am unable to countenance the said argument advanced by the learned counsel for the 6th respondent.

11. As already discussed herein above the conduct of the 6th respondent in deliberately making a false statement before the police authorities was only in order to obtain a non-traceable certificate in order to deal with the said item of property. Therefore, the intention of the 6th respondent/defendant is manifest and he clearly intends to defraud the applicant/plaintiff. Section 52 of the Transfer of Property Act, 1882 sets out that wherein a suit or proceeding a right in immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of the other party there to, except under the authority of the Court and on such terms as it may impose. In view of the specific mandate of Section 52 of the Transfer of Property Act, 1882, once the suit has been instituted, any party to the suit shall have to necessarily seek the permission of the Court to dispose of or transfer the property which is directly and specifically in question in the suit. The settlement deed executed by the 6th defendant in favour of his son is also subject to the mandate of Section 52 of the Transfer of



Property Act, 1882 and the son of the 6th defendant is also bound by any order or decree made in the suit even though he is a third party to the suit and the settlement deed will therefore be subject only to the result of the suit.

12. Even though the applicant/plaintiff has sought for a blanket interim injunction in respect of all the items of the suit properties, the applicant has shown prima facie case only in respect of one item of the suit property namely, No.8 Govindan Road, Mettupalayam, West Mambalam, Chennai-600033, in respect of the other items of the suit property, there is no specific allegation or averment in support of the injunction application. In any event, being the mortgagee and having filed the suit for recovery of money based on mortgage, the right in immovable properties being specifically and directly in issue in the suit, Section 52 would squarely apply in respect of all the items of the suit properties. No specific order need be passed granting any injunction as prayed for by the applicant/plaintiff. It is suffice to state that the respondents/defendants shall not be at liberty to deal with or transfer or encumber any of the suit properties without the permission of this Court, as required under Section 52 of the Transfer of the Property Act, 1882. It is also made clear that the settlement deed dated 20.04.2022 would also be subject to the result of the suit and the son of the 6th defendant cannot claim any right



whatsoever under the settlement deed, without the suit being disposed of ultimately. In other words the settlement deed executed by the 6th defendant in favour of his son would not bind the applicant/plaintiff, who in any event has a statutory charge over the said item of the property. Thus making it clear that the respondents shall not be entitled to transfer or deal with any of the items of suit property without the prior permission of this Court, there is no necessity for grant of any ad interim injunction as prayed for by the applicant/plaintiff. Application is therefore closed. Parties shall proceed with the trial of the suit.

13. Post the suit before the learned I Additional Master, for continuation of plaintiff's side evidence, on 10.06.2024.

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P.B.BALAJI, J.,



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**Pre-delivery Order in
OA. No.549 of 2022
in
C.S. No.158 of 2002 and
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