



Civil Miscellaneous Appeal No.2980 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2980 of 2023

and

C.M.P.Nos.28098 & 28101 of 2023

R.Krishnamurthy
S/o.Ramasamy Gounder

... Appellant

Vs.

1.M/s.Gem Granites,
represented by its Managing Partner,
S.R.Aasai Thambi,
Having office at Door No.78, Cathedral Road,
Chennai - 600 086.

2.S.R.Aasai Thambi
S/o.Late S.P.Rangasamy

3.R.Veeramani
S/o.Late S.P.Rangasamy

4.R.Sekar
S/o.Late S.P.Rangasamy

5.S.R.Kumar
S/o.Late S.P.Rangasamy

6.S.C.Sekar
S/o.Late V.Chokkalingam

... Respondents

Civil Miscellaneous Appeal filed under Order XLIII Rule 1(R) of



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the Code of Civil Procedure, against the fair and decreetal order dated 11.08.2023 passed in I.A.No.2 of 2022 in O.S.No.264 of 2022 on the file of Additional District Judge, Dharmapuri.

For Appellant : Mr.I.Abrar Mohamed Abdullah

For Respondents : Mr.C.Manohar Gupta
for M/s.Gupta and Ravi

JUDGMENT

This appeal has been filed challenging the fair and final order passed in I.A.No.2 of 2022 in O.S.No.264 of 2022, dated 11.08.2023, dismissing the application filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, seeking for the relief of ad interim injunction pending disposal of the suit.

2. Heard Mr.I.Abrar Mohamed Abdullah, learned counsel for appellant and Mr.C.Manohar Gupta, learned counsel for respondents.

3. The case of the appellant is that the second respondent had approached the appellant and represented that the first respondent company represented by its directors wants to settle the bank liabilities



and therefore, wanted to sell the subject property described as Item No.2.

The total sale consideration was fixed at Rs.2.50 crores out of which the appellant paid an advance of Re.1 crore. This oral sale agreement was also confirmed by receipt dated 03.11.2020. Even subsequently, certain payments were made. The respondents have not come forward to execute the sale deed and they were also taking steps to alienate the property and thereby deprived the right of the appellant under the oral sale agreement. Thus, the suit came to be filed in O.S.No.264 of 2022 seeking for the relief of specific performance. Pending the suit, application in I.A.No.2 of 2022 in O.S.No.264 of 2022 came to be filed seeking for an order of interim injunction restraining the respondents from in anyway alienating or encumbering Item No.2 of the suit property pending disposal of the suit.

4. The Court below, on considering the facts and circumstances of the case and the plea that was raised on either side, came to a conclusion that the balance of convenience is not in favour of the appellant and that apart, the agreement for sale has merely conferred a right on the appellant *in personam*. The Court below also found that Item No.2 of the suit property has already been sold in favour of the second respondent. Under



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such circumstances, the Court below did not find any ground to grant the relief of interim injunction and accordingly, the application was dismissed by order dated 11.08.2023. Aggrieved by the same, the present appeal has been filed before this Court.

5. Learned counsel for appellant submitted that the respondents are attempting to alienate the property only to defeat the rights of the appellant and if any third party right is created, it will further complicate the issue and lead to multiplicity of proceedings. It was further contended that the sale deed was executed in favour of the second respondent in his individual capacity and that has been done only with a view to defeat the right of the appellant. That apart, it is only Item No.2 of the suit property that remains to be sold and all the adjacent properties have already been sold. The appellant, who has parted with a substantial amount, should not be deprived of the right to get the sale deed executed in his favour with respect to the subject property. Therefore, it is contended that the order passed by the Court below requires interference of this Court.

6. *Per contra*, learned counsel appearing for first respondent submitted that the Court below has properly exercised its discretion and therefore, there is no question of interfering with the interim order passed



by the Court below.

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7. This Court has considered the rival submissions and perused the materials available on record.

8. In the considered view of this Court, the appellant has filed a suit for specific performance based on an oral sale agreement. An agreement for sale does not confer any right over the property. The agreement holder only has the right to convert the sale agreement into a sale deed by enforcing the same. In a recent judgment of this Court in ***M.Chinnathambi @ Mani v. Kannaiyan [2024 (2) CTC 312]***, this Court went to the extent of holding that even if a Power of Attorney document has been executed in favour of the agreement holder, it cannot be said that the agency is coupled with interest and this is in view of the fact that no interest in the property is created in favour of the agent, who also happens to be an agreement holder in that case. Thus, the law on this issue is too well-settled.

9. The Court below took into consideration the fact that the appellant is claiming right through oral agreement for sale. There is substantial denial of this fact by the respondents. Therefore, the Court below came to a conclusion that the very existence of the oral agreement



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for sale is a matter for trial, which cannot be decided at the interlocutory application stage. The Court below also took into consideration the fact that insofar as the relief of specific performance is concerned, the criteria for granting an order of interim injunction falls under different footing than a regular suit where such interim injunction is sought for. That apart, the Court below also found that the property has already been alienated in favour of the second respondent. Hence, the Court below did not find a *prima facie* case or balance of convenience in favour of the appellant. The Court below has properly exercised its discretion while rejecting the application filed by the appellant. This Court, sitting on appeal, should only be satisfied as to whether the discretion has been properly exercised and only in the absence of the same, such order of interim injunction can be interfered with. This Court agrees with the reasoning of the Court below and does not find any ground to interfere with the same.

10. It goes without saying that any alienation that takes place during the pendency of the suit will be subject to the final result in the suit on the principle of *lis pendens* under Section 52 of the Transfer of Property Act. Therefore, merely because, there is some alienation pending the suit that does not really take away the right of the appellant to get the



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agreement for sale translated into a sale deed by establishing the right before the Court.

In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

08.04.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

gm

To

The Additional District Judge,
Dharmapuri.

N.ANAND VENKATESH, J.

gm



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