



CMA.Nos.989 and 990 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2025

PRONOUNCED ON :02.06.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

**CMA.Nos.989 and 990 of 2025
and CMP.Nos.7921, 7926 and 7931 of 2025**

CMA.No.989 of 2025:

K.Jayapal

... Appellant

Vs.

1.Brij Khandelwal
2.M/s.Star Square Feet Ventures LLP,
Rep. by its Managing Partner Mr.N.Sreedhar,
having office at No.57, Ormes Road, Kilpauk,
Chennai – 600 010.

... Respondents

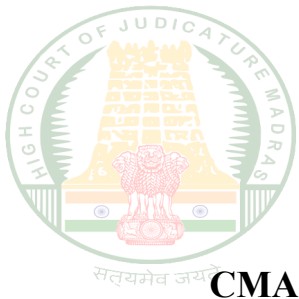
Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of CPC, praying to allow the above CMA by setting aside the order and decretal order dated 12.11.2024 passed by the Sessions Judge, Mahila Court, Chengalpattu, in I.A.No.4 of 2024 in I.A.No.3 of 2024 in O.S.No.209 of 2024.

For Appellant

:Mr.N.Sivaprakash

For Respondents

:Mr.T.P.Manoharan
Senior Advocate
for M/s.G.Bavithra Selia



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CMA.No.990 of 2025:

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For Appellant

:Mr.N.Sivaprakash

For Respondents

:Mr.T.P.Manoharan
Senior Advocate
for M/s.G.Bavithra Selia

J U D G M E N T

These two appeals are filed challenging the fair and final order passed by the Trial Court in I.A.Nos.3 and 4 of 2024 in O.S.No.209 of 2024, whereunder the trial Court allowed the application for vacating interim injunction in I.A.No.4 of 2024 and dismissed the application seeking interim injunction in I.A.No.3 of 2024.



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2. The appellant herein is the plaintiff in the main suit. He filed a suit for specific performance of sale agreement dated 06.01.2024 against the respondents 1 and 2. According to the appellant/plaintiff, the first respondent is the owner of the subject matter of the sale agreement. The appellant entered into a sale agreement with first respondent on 06.01.2024 agreeing to purchase the agreement mentioned property for sale consideration of Rs.1,82,00,000/-. It was pleaded that an amount of Rs.5,00,000/- was paid by the appellant to first respondent by way of cash on 30.12.2023. Further a sum of Rs.10,00,000/- was paid on 06.01.2024 to first respondent by the appellant by way of money transfer to his account. Again a further sum of Rs.5,00,000/- was paid by the appellant to first respondent on 08.01.2024 by way of cash. Therefore, according to the appellant a sum of Rs.15,00,000/- was paid to first respondent by way of advance on two days i.e. 30.12.2023, 06.01.2024. It was agreed between the parties that sale transaction should be completed by paying balance sale consideration within six months from the date of execution of the sale agreement (06.01.2024). It was also pleaded that pursuant to the suit sale agreement, the appellant/plaintiff developed the property by spending



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Rs.5,00,000/-. It was further pleaded that the appellant requested his friend

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and mother of his friend to deposit a sum of Rs.50,00,000/- to the account

of the first respondent/defendant in part performance of suit sale agreement.

It is not in dispute that though said amount of Rs.50,00,000/- was paid to

the account of first defendant in two instalments on 22.02.2024 and

29.02.2024, the said amount was returned by the first defendant on the

ground that he did not have any transaction with persons who transferred

the money to his account. Subsequently, violating the terms of the

agreement, the first defendant attempted to alienate the property to third

parties. He also appointed the second respondent herein as his power agent

to deal with his property on 28.02.2024 by way of registered power deed for

consideration. Since the first respondent attempted to wriggle out of

contract, the instant suit for specific performance was filed. Along with the

plaint, the appellant herein filed I.A.No.3 of 2024 seeking temporary

injunction restraining the respondents 1 and 2/defendants 1 and 2 from

alienating or encumbering the agreement mentioned property pending

disposal of the suit. Initially, the Trial Court granted temporary injunction

and thereafter, the first respondent herein filed I.A.No.4 of 2024 seeking

vacation of the interim order. Both the interlocutory applications were



heard together and the application filed by the first respondent seeking vacation of the interim order was allowed and the interlocutory application filed by the appellant seeking temporary injunction was dismissed after vacating the order. Aggrieved by the said order, these two appeals are filed by the appellant.

3. The learned counsel appearing for the appellant contended that the trial Court dismissed the petition for temporary injunction mainly on the ground that suit agreement was an unregistered agreement and hence it was not valid one for granting specific performance. The learned counsel by relying on the judgment of the Apex Court in ***R.Hemalatha Vs. Kashthuri*** reported in ***AIR 2023 SC 1895*** submitted that unregistered sale agreements can be admitted in evidence in a suit for specific performance and hence the impugned order passed by the trial Court is liable to be set aside. The learned counsel further submitted that the first respondent executed a power of attorney in favour of second respondent empowering him to sell the subject property with third parties and therefore, the intention of the first respondent to alienate the property is very well established. In these circumstances, according to him, the trial Court ought not have vacated the interim order already granted.



4. The learned Senior Counsel appearing for the respondents

would submit that the appellant/plaintiff failed to establish that he had sufficient money in his hands on the date of filing of the suit to complete the transaction and therefore, the readiness and willingness of the plaintiff was not at all proved. The learned counsel also submitted that the suit agreement was dated 06.01.2024 and the stamp papers used in the suit agreements were dated 21.02.2023 and it creates a suspicion with regard to the genuineness of the sale transaction. It was vehemently contended by him that the suit sale agreement was a forged document and therefore, the plaintiff was not entitled to any interim order. The learned senior counsel further submitted that the payments of money by the plaintiff's friend and his mother dated 22.02.2024 and 29.02.2024 were not at all intimated to the first defendant and hence the same was returned.

5. It is the specific contention of the learned senior counsel for the respondents/defendants that the plaintiff is only interested in blocking the suit property and hence the trial Court rightly vacated the interim order and allowed the vacate injunction petition.



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6. In support of the contention, the learned senior counsel

relied on the following judgments:

(i) P.Ravindranath and another Vs. Sasikala and others reported in 2024 SCC OnLine SC 1749;

(ii) A.Nawab John and others Vs. V.N.Subramaniam reported in (2012) 7 SCC 738;

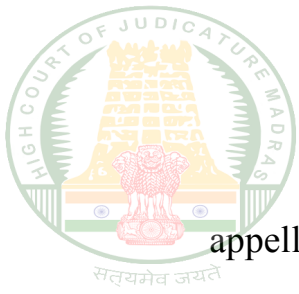
(iii) Ambalal Sarabhai Enterprise Limited Vs. K.S.Infraspace LLP Limited and another reported in (2020) 5 SCC 410;

(iv) Thomson Press (India) Limited Vs. Nanak builders and Investors Private Limited and others reported in (2013) 5 SCC 397;

(v) Usha Sinha Vs. Dina Ram and others reported in (2008) 7 SCC 144.

7. A perusal of the impugned order passed by the Trial Court would indicate that it has given three reasons for dismissing the petition for temporary injunction.

(i) Though six months time was fixed in the agreement for completion of the sale transaction, the suit was filed by the



appellant/plaintiff even before expiry of the terms fixed in the agreement

and hence the suit was prematured one;

(ii) The suit sale agreement was unregistered one and hence it was not valid in eye of law;

(iii) The plaintiff failed to establish the readiness and willingness to perform his part of the contract.

8. A perusal of the pleadings of the parties and the document relied on by them would establish that the suit sale agreement was entered into on 06.01.2024 and it was agreed that sale transaction should be completed within six months. Therefore, the time for performance expires on 05.06.2024. However, the suit had been filed even before expiry of the time limit on 08.04.2024.

9. It is seen from the pleadings and also Ex.R10 dated 28.02.2024, the first respondent herein appointed the second respondent as his power agent empowering him to sell the suit property to the third parties. Therefore, it is clear that even before expiry of the time limit fixed for performance of the suit sale agreement, the first respondent attempted to



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alienate the subject matter of the agreement by appointing the second respondent as his power agent that too for a consideration. The execution of power deed by the first respondent in favour of the second respondent indicates the intention of the first respondent to wriggle out of contract and alienate the property to the third party. Therefore, immediately after acquiring knowledge about the intention of the first respondent to alienate the property to the third parties, the present suit has been filed by the appellant. When one of the party to the contract had taken steps to violate the terms of contract by attempting alienation, the other party need not wait for expiry of the time limit fixed in the agreement and therefore, the observation made by the trial Court, as if, the present suit filed by the appellant before expiry of the terms fixed in the agreement is a prematured one is not acceptable to this Court. The attempt made by the first respondent to alienate the property to the third parties by appointing the power agent compelled the appellant to file a suit seeking specific performance even before expiry of the term fixed in the agreement. Hence, the said reasoning given by the trial Court is not a sound one.



10. The trial Court also recorded a finding that the suit sale

agreement is an unregistered one and hence invalid in the eye of law. The

Apex Court in ***R.Hemalatha Vs.Kashthuri*** reported in

Manu/SC/0344/2023:AIR 2023 SC 1895 by relying on proviso to Section

49 of the Registration Act, held that unregistered agreement can very well

be admitted in evidence in a suit for specific performance. The relevant

observation of the Apex Court reads as follows:

“13. Under the circumstances, as per proviso to [Section 49](#) of the Registration Act, an unregistered document affecting immovable property and required by [Registration Act](#) or the [Transfer of Property Act](#) to be registered, may be received as evidence of a contract in a suit for specific performance under ChapterII of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to [Section 17\(1A\)](#) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per [Section 17\(1A\)](#) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to [Section 49](#) of the



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Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of [Section 49](#).”

11. The very same view was taken by the Division Bench of this Court in ***R.Ananda Padmanabhan and others Vs. R.Vadivel Gounder and others reported in MANU/TN/3059/2019 and K.Manoharan and others Vs. T.Janaki ammal and others reported in MANU/TN/1502/2012.***

12. In ***K.Manoharan and others Vs. T.Janaki ammal and others*** cited supra, a Division Bench of this Court held that an unregistered agreement could be relied on for the purpose of granting relief of injunction against alienation. The relevant observation reads as follows:

“37. It is not as if all the agreements for sale referring to instance of delivery of possession shall be compulsorily registered u/s 17(1-A) of Indian Registration Act. Only when the Agreement for Sale which speaks about delivery of possession is filed to claim benefit of "part performance" as contemplated u/s 53-A of Transfer of Property Act, Court will have to find out whether the document was registered or not. If such document was not



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registered, then the benefit of Section 53-A of Transfer of Property Act cannot be claimed by the prospective purchaser of the property. [Vide [R. Palanisubramanian Vs. Trans Medica \(India\) Ltd. and Another](#), MANU/TN/1598/2009 : AIR 2009 Mad 110]. We fully endorse the said views of the learned Single Judge.

38. In the case on hand, Plaintiff is not seeking for protection or claiming benefit u/s 53-A of Transfer of Property Act. Plaintiff has only sought for permanent injunction restraining the Defendants 1 to 3 from in any way alienating the property. Such relief sought for is an independent of the clause of handing over possession to the Plaintiff. That being so, there is no embargo for the Plaintiff to rely upon Ex. A1-Agreement of Sale. Trial Court must construe the provisions of Section 17(1-A) of Indian Registration Act.”

It is also pertinent to mention that as per suit sale agreement, possession was not handed over to the purchaser on the date of agreement and it was agreed that possession would be delivered only on the date of registration of sale deed.



13. In view of the law settled by the Apex Court that

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unregistered sale agreement can be relied on as evidence of agreement of sale in a suit for specific performance, the findings rendered by the trial Court that the suit sale agreement is invalid for want of registration is untenable in law.

14. The Trial Court also observed that the plaintiff failed to prove his readiness and willingness to perform his part of the agreement. It is settled law that in a suit for specific performance, the plaintiff has to establish his readiness and willingness from the inception of agreement till the date of decree. In fact, the learned senior counsel for the respondents relied on various decisions in support of his contention that the plaintiff failed to establish his readiness and willingness. With regard to the proposition of law that the plaintiff must establish his readiness and willingness in a suit for specific performance is concerned, it is very well settled and nobody can have any quarrel with that proposition. The readiness and willingness of the plaintiff is a question of fact which can be established only during full trial in a suit for specific performance. At this stage, this Court is only concerned with prima facie case, balance of



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convenience and irreparable injury to the plaintiff, in case of refusal of interim prayer. It may not be appropriate to expect the plaintiff to prove his readiness and willingness even at the stage of considering the interlocutory application. The points raised by the learned Senior Counsel for the respondents with regard to the readiness and willingness can very well be agitated by him at the time of final disposal of the suit.

15. It is the specific case of the respondents that the suit sale agreement was a forged one. It is also stated that already the first respondent has filed an application seeking comparison of the signature found in the sale agreement with his admitted signature. Whether the suit sale agreement is a forged one or not is also a disputed question of fact which can be established only at the time of final disposal of the suit. In the case on hand, the suit sale agreement has been produced by the plaintiff and the same was marked as Ex.R1 in vacate interim injunction petition. Ex.R4 is the statement of accounts relating to bank account of the plaintiff.

16. A perusal of the same would indicate that a sum of Rs.10,00,000/- was transferred to the bank account of the first respondent

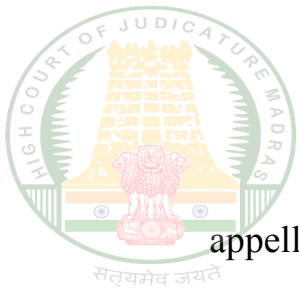


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on 06.01.2024. The payment of Rs.10,00,000/- by the plaintiff on the date

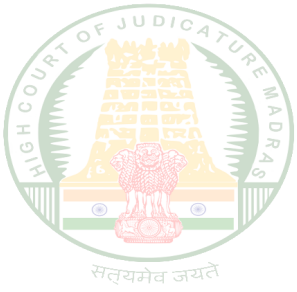
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of agreement to the first respondent was also admitted by the first respondent. However, it was explained that the appellant was involved in real estate business and as per the prevailing practice in real estate business, at the time of handing over xerox copies of the title document to the appellant to enable him to procure prospective purchaser, a sum of Rs.10,00,000/- was collected by the first defendant from the appellant. Therefore, it is clear that on the date of suit sale agreement, the appellant paid a sum of Rs.10,00,000/- to the first respondent by bank transfer. Whether it was paid as part of the advance towards the suit sale agreement or as a token amount for the purpose of getting xerox copies of the title documents as contented by the first respondent is again a disputed question of fact which can be determined only at the time of final disposal of the suit. Ex.R1, suit sale agreement r/w Ex.R4 statement of bank accounts would establish that there was a transaction between the appellant and the first respondent with regard to the subject matter of the agreement. The appellant contends that he entered into a sale agreement under Ex.R1. The first respondent contends that he received a sum of Rs.10,00,000/- as a token amount at the time of handing over copies of title document to the



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appellant to enable him to procure prospective purchaser. The disputed question of facts arising for consideration in this case regarding the alleged forgery of the suit sale agreement, true nature of the transaction between the appellant and the first respondent and the readiness and willingness of appellant/plaintiff etc., can be decided only at the time of final disposal. The documentary evidence available on record namely Exs.R1 and R4 *prima facie* establish the case of the plaintiff regarding suit sale agreement. Ex.R10 certified copy of General Power of Attorney executed by the first respondent in favour of second respondent on 28.02.2024 would establish that even before expiry of the time fixed in the suit sale agreement, the first respondent attempted to alienate the property by appointing a power of attorney. It clearly establishes the intention of the first respondent to alienate the subject matter of the agreement to the third parties. If injunction is not granted and the first respondent is allowed to encumber the subject matter of the agreement, unnecessarily the third party rights will be created and alienation of the agreement mentioned property pending suit for specific performance will unnecessarily bring the third party to the litigation and complicate the issue and also lengthen the litigation.



17. It was vehemently contented by the learned senior counsel

appearing for the respondents that doctrine of *lis pendens* as enshrined under Section 52 of Transfer of Property Act, will take care of the appellant/plaintiff and hence the first respondent need not be enjoined from alienating the subject property to the third properties.

18. In this regard, it would be appropriate to refer to the recent judgment of the Apex Court in ***Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and others reported in 2024 INSC 913***. The relevant observation of the Apex Court reads as follows:

“45. Quite often, in these types of litigations, it is sought to be argued that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of the provisions of Section 52 of the T. P. Act whereunder all such transfers cannot but abide by the result of the suit. It is true that the doctrine of lis pendens as enunciated in Section 52 of the T. P. Act takes care of all pendente lite transfers; but it may not always be good enough to take fullest care of the



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plaintiffs interest vis-a-vis such a transfer. We may give one appropriate illustration of a suit for specific performance of contract based on an agreement of sale. In a suit wherein the plaintiff prays for specific performance and if the defendant is not restrained from selling the property to a third party and accordingly a third party purchases the same bona fide for value without any notice of the pending litigation and spends a huge sum for the improvement thereof or for construction thereon, the equity in his favour may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief of specific performance to the plaintiff at the trial and to award damages only in favour of the plaintiff. It must be noted that Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of lis pendens as enacted in Section 52 of the T. P. Act was regarded to have provided all the panacea against pendente lite transfers, the Legislature would not have provided in Rule 1 for interim! injunction restraining the transfer of suit property. Rule 1 of Order 39, in our view, clearly demonstrates that, notwithstanding the Rule of lis pendens in Section 52 of the T. P. Act, there can be occasion for the grant of injunction restraining pendente lite transfers in a fit and proper case. (See: Sm. Muktakesi Dawn and Ors. v. Haripada Mazumdar.



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and Anr. reported in AIR 1988 Cal 25). (emphasis supplied by this Court)

46. In the aforesaid context, we may refer to one old decision of the Calcutta High Court in *Promotha Nath Roy v. Jagannath Kisore Lal Singh Deo* reported in (1912) 17 Cal LJ 427 where it has been observed that a Court will in many cases interfere and preserve property in status quo during the pendency of a suit in which the rights to it are to be decided and though the purchaser pendente lite would not gain title, the Court will prevent by injunction the embarrassment that would be caused to the original purchaser in his suit against the vendor. And it has been ruled there on the authority of *Turner, LJ in Hadley v. London Bank of Scotland*, reported in (1865) 3 De GJ & S 63 at 70 that if there is a clear valid contract for transfer, the Court will not permit the transferor afterwards to transfer the legal estate to third person, although such third person would be affected by *lis pendens*. Mr. Muhkerjee has drawn our attention to Dr. S. C. Banerji's *Tagore Law Lectures on Specific Relief* (2nd Edition, page 592) where the decision in *Promotha Nath* (*supra*) has been approvingly referred to and also to *Fry's Treatise on Specific Performance* (6th Edition) where the same Rule has been enunciated as a general principle on the authority of *Turner, L.J., in Hadley* (*supra*).



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47.Today, all that we say is that having regard to the nature of dispute between the parties and the materials on record, the property should not change hands any further.”

19. Therefore, it is clear that notwithstanding the doctrine of *lis pendens*, in appropriate case, the Court can grant an order of injunction against alienation, in order to maintain the status-quo and to prevent unnecessary complication in the litigation by creation of third party interest which will unduly lengthen the life of litigation.

20. In the case on hand, Ex.R1-suit sale agreement, R4-statement of bank accounts relating to bank account of plaintiff and Ex.R10-General Power of Attorney executed by the first respondent in favour of second respondent clearly establish the prima facie case in favour of the appellant. The General Power of Attorney executed by the first respondent just prior to filing of the suit establish his intention of alienating the properties to the third parties, even before expiry of the terms fixed in the suit sale agreement. Hence, the balance of convenience is also in favour of the appellant. If the property is allowed to be alienated, the third

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party purchaser will file an impleading application in the pending litigation which will unnecessarily lengthen the litigation and cause injury to the plaintiff.

21. In view of the discussions made earlier, the reasonings given by the trial Court for vacating the interim injunction already granted are not acceptable to this Court.

22. Accordingly, the impugned fair and final order passed by the trial Court are set aside. I.A.No.4 of 2024 filed by the first respondent seeking vacation of the interim injunction stands dismissed. I.A.No.3 of 2024 filed by the appellant seeking interim injunction stands allowed and the respondents 1 and 2 are injuncted from alienating the subject matter of the suit sale agreement to third parties pending disposal of the suit.

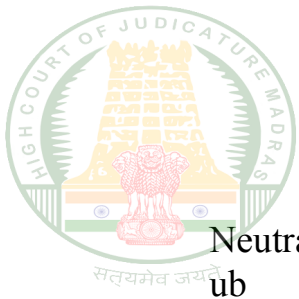
23. Accordingly, both the appeals stand allowed. Consequently, connected miscellaneous petitions are closed. No costs.

02.06.2025

Index : Yes/No

Speaking order: Yes/No

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Neutral Citation: Yes/No

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S.SOUNTHAR, J.

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To

1. The Sessions Judge,
Mahila Court, Chengalpattu

2. The Section Officer
VR Section, High Court, Madras.

Pre-delivery Judgment made in
CMA.Nos.989 and 990 of 2025

02.06.2025

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