



A.No.2100 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

A.No.2100 of 2025

in

C.S.No.89 of 2025

1. P.V.Srikrishnan

2. P.V.Sankaranarayanan

... Applicants

Vs.

1. R.Sundaramoorthy

2. N.Riyaz Ahamed

3. R.Parveen

4. S.Indira

... Respondents

PRAYER: Application filed under Order XIV Rule 8 of O.S Rules r/w. Order XXXVIII Rule 5 of CPC, 1908, to grant an interim order directing the respondents to furnish security for an amount of Rs.2,26,16,225/- (Rupees Two Crore Twenty Six Lakh Sixteen Thousand Two Hundred Twenty Five Only) and in default thereof, to direct the attachment before Judgment for satisfying the decree that is likely to be passed against the respondents herein, i.e., the defendants in the present Suit within a time to be stipulated by this Court.



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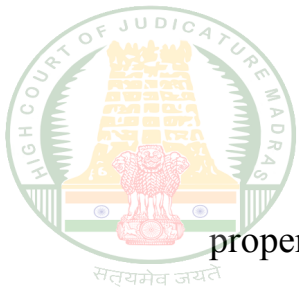
For Applicants : Mr.M.Deivanandam

For Respondents : Mr.Rahul Jagannathan for R1 & R4
: Mr.R.Ganesh Kumar for R2 & R3

ORDER

This application has been filed by the applicants to direct the respondents to furnish security for a sum of Rs.2,26,16,225/- (Rupees Two Crore Twenty Six Lakh Sixteen Thousand Two Hundred Twenty Five Only) and in default thereof, to direct the attachment before Judgment of the properties described in the schedule.

2. The case of the applicants is that the applicants are the plaintiffs in the main Suit. The Suit was filed for the relief of recovery of money against the respondents. Originally, the respondents 2 & 3 jointly purchased a land bearing Plot No.29, Ramalingam Nagar Layout, First Street, comprised in Old Survey Nos.58 and 60, Patta No.13173, as per patta sub-divided Survey Nos.58/21 and 58/23 situated at Madipakkam Village, Puzhuthivakkam Madura, Sholinganallur Taluk, Kanchipuram District, measuring an extent of 1 Ground and 1180 Sq. ft., from one J.Prabhu. Before purchase of the above said land, in the month of April, 2021, the applicants saw an online sale advertisement of “suit schedule

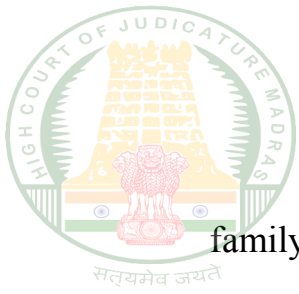


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property” in a web site and thereafter, the first respondent informed that he purchased the suit property from the second and third respondents for a sale consideration of Rs.1.47 Crores and thereby, second and third respondents executed a general power of attorney deed dated 22.01.2022. Based on the said power of attorney deed, the first respondent offered to sell the suit property to the applicants for Rs.1,62,00,000/-. The first respondent in the capacity as general power of attorney coupled with interest of the second and third respondents executed a sale agreement dated 16.06.2021 in favour of the applicants acknowledging the receipt of the advance of Rs.5,00,000/- by way of a cheque dated 16.06.2021 drawn in favour of the first respondent at HDFC Bank, Valasaravakkam Branch. The applicants approached the Bank of Baroda, St. Thomas Mount Branch, Chennai for home loan to purchase the property and also the Bank sanctioned the loan to the tune of Rs.1,13,40,000/-. Thereafter, the property was purchased through sale deed dated 22.07.2021.

3. After purchase of the property, the applicants decided to construct a house in the said property and obtained the building plan permit from the Corporation of Greater Chennai on payment of Rs.6,19,550/-. While so, on 09.07.2022, when the applicants along with



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family members performed Boomi Pooja for the proposed construction of house, one Mr.Ramesh came to the said land and claimed ownership of the same and thereafter, Madipakkam Police also called them, based on the complaint given by the said Ramesh. Thereafter, concerned Surveyor surveyed the land and submitted the report dated 30.11.2015 that the survey number of the said land was 60/16A2, 17 B, 19B and the land of Mr.Prabhu is situated in Survey Numbers 58/21 & 58/23. Moreover, the said Ramesh has filed a Suit on the file of the learned Principal District Judge, Chengalpattu against the respondents 1 to 3 in O.S.No.168 of 2021 and the same is pending and the respondents also received summons in the said suit. Suppressing the above fact of the pending Suit, they sold the property and also without getting the sale deed from the second and third respondents, to avoid stamp duty and registration fees, only the first respondent obtained the General Power of Attorney and then only the applicants realized the criminal conspiracy, fraudulent mind and cheating of the respondents.

4. Thereafter, the second applicant lodged a complaint as against the respondents before the Commissioner of Police, Greater Chennai. Based on which, an FIR was registered in Cr.No.59/2022 dated



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28.10.2022 for the offence under Sections 420, 120B of IPC as against

the respondents 1 to 3 and one Prabhu and the same is pending.

Thereafter, in the month of July, 2024, the respondents 1 to 4 approached the applicants and negotiated compromise and proposed to settle the matter by repaying the sale consideration and the respondents 1 and 4 executed a Memorandum of Understanding on 12.07.2024 and the same was also submitted before this Court in Crl.O.P.No.19223 of 2023. Thereafter, the respondents 1 and 4 did not come forward to fulfill their obligations as per the Memorandum of Understanding. Now, the fourth respondent attempting to sell the schedule-mentioned property to evade legal obligations and obstruct the execution of any decree that may be passed in favour of the applicants. Therefore, the applicants filed this application.

5. The case of the fourth respondent is that the Suit itself is not maintainable and there is no cause of action to this Suit. The Suit itself is pre-mature. There are no specific pleadings made against the fourth defendant and no prayer sought for against the fourth respondent/fourth defendant. The fourth defendant did not execute any sale deed to the applicants. The fourth respondent had given a loan of Rs.1,47,00,000/- to



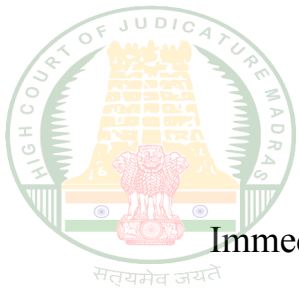
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the second and third defendants. Therefore, she had obtained power of attorney deed to recollect the loan along with interest. The plaintiffs obtained all the documents and after verification only, he purchased the property and also the applicants obtained loan for the purchase of the property from the Bank of Baroda. Therefore, after verification of title only, they purchased the property. Now, only because a person who is a third party to the Suit property filed the Suit, it cannot be termed as there is no title dispute in respect of the property. Therefore, the main Suit itself is not maintainable and they have not produced any document to show that the properties belong to this respondents. Therefore, this application is liable to be dismissed.

6. This Court heard both sides and perused records.

7. It is an admitted fact that the plaintiffs purchased the suit property from the respondents 2 and 3 through power agent/first respondent. The sale was took place on 22.07.2021. Thereafter, the applicants while attempting to construct the house, one Ramesh restrained them from conducting Boomi Pooja claiming that he is the owner of the property. The said occurrence took place on 09.07.2022.



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Immediately, the applicants lodged a criminal complaint and thereafter, they filed a suit for recovery of money as against the respondents/defendants 1 to 4. The main prayer sought for in the suit is to direct the respondents 1 to 3 to refund the sale consideration of Rs.1,62,05,000/- with interest at the rate of 12% p.a and to repay the expenses incurred by the plaintiffs towards stamp duty, registered fees, property tax, etc., to the tune of Rs.24,25,655/- with interest at the rate of 12% p.a and also to direct the respondents 1 to 3 to pay a sum of Rs.34,85,570/- with future interest to the plaintiffs on the loan amount of Rs.34,85,570/- with future interest at the rate of 12% and also Rs.5,00,000/- as compensation.

8. The prayer in the Suit is only as against the respondents/defendants 1 to 3, whereas, the application filed for attachment before Judgment is as against the respondents 1 to 4/defendants 1 to 4. Even according to the applicants, the property sought to be attached belongs to the fourth respondent/fourth defendant, against whom no relief sought for in the main Suit. Moreover, the case of the plaintiff itself is based on the sale deed obtained by the applicants/plaintiffs, but so far the said sale deed has not been set aside



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and the title of the property has not been declared by the Court.

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Therefore, this application is not maintainable to attach the properties of the fourth respondent/fourth defendant against whom no any relief sought for in the main suit. Moreover, there are no records produced by the applicants to show that the petition mentioned property belongs to the respondents. There are no ingredients to fulfil the conditions of Order 38 Rule 5 of CPC and the petition must contain conditions mentioned under Order 38 Rule 5 (i) of Civil Procedure Code, to order furnish security, but there are no pleadings to that effect. More over, without any prayer sought for against the fourth respondents/fourth defendants, the property of the fourth respondent cannot be attached. Therefore, this application has no merit and it deserves to be dismissed.

Accordingly, this application is dismissed.

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Index: Yes/No

Internet: Yes/No



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