

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
20.03.2025

PRONOUNCED ON
23.04.2025

CORAM

THE HONOURABLE MR JUSTICE K.KUMARESH BABU

A.No.5284 of 2024

in

C.S.No.239 of 2024

M/s.Tamil Nadu Nurses and
Midwives Council,
Represented by its Registrar,
No.56, Santhome High Road,
Chennai – 600 004.

Applicant(s)

Vs

1.N.Srinivasan

2.P.S.Mani @ P.N.A. Mani Sundhar

3.P.S.Mohan

4.P.S.Saravanan

Respondent(s)

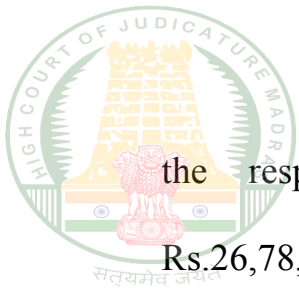
For Applicant(s) : Mr.K.S.Viswanathan
Senior Counsel
for Mr.S.Sivakumar

For Respondent(s): Mr.S.R.Raghunathan for RR1, 2 & 4
for MR.Vigneshwar Elango

No appearance for R3

ORDER

This instant application has been filed by the applicant/plaintiff to direct



the respondents/defendants to furnish security of the amount of Rs.26,78,40,000/-.

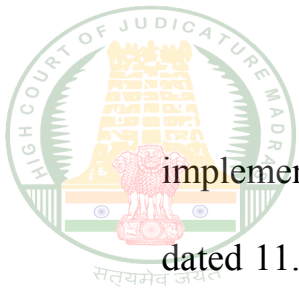
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2) Heard Mr.K.S.Viswanathan, learned Senior counsel appearing for Mr.S.Sivakumar, learned Counsel for the applicant and Mr.S.R.Raghunathan, learned counsel appearing for Mr.Vigneshwar Elango appearing on behalf of the respondents 1, 2 and 4.

3) Mr.K.S.Viswanathan, learned Senior counsel for the applicant submits that the suit was filed by the applicant/plaintiff for recovery of money to a tune of Rs.26,78,40,000/- from the respondents/defendants. He submits that the applicant is an autonomous statutory body formed under the Tamil Nadu Nurses and Midwives Act,1926 to provide registration of qualified Nurses, Auxilliary-Nurses-Midwives, etc. He further submits that the applicant entered upon a Memorandum of Understanding and an agreement of sale dated 21.03.2022 to purchase the suit schedule property for a sale consideration of Rs.21,60,00,000/- from the respondents. He further submits that at the request of the respondents the applicant paid a sum of Rs.12,25,00,000/- to the HDFC Bank Ltd., as a one time settlement for the Mortgage of the suit property. Further, the applicant paid Rs.25,00,000/- to the respondents and a further sum of Rs.21,60,000/- towards TDS. He further submits that the respondent agreed



to adjust the above said payments from the sale consideration and hence, the applicant agreed to pay the balance sum of Rs.8,88,40,000/- at the time of registration. He further contends that the applicant made request to furnish the patta which the respondents promised to furnish at the time of registration. The suit property was without any subsisting encumbrance. Therefore, the applicant paid the remaining sale consideration of Rs.8,88,40,000/-. He further submits that the applicant and respondents prepared the sale deed dated 11.04.2022 for registration and presented the same before the Joint Sub-Registrar-II, Saidapet. The Registrar refused to register the sale deed since, the suit schedule property has been classified as a poromboke land. He contends that the respondents proposed to sell the suit schedule property with defective title and false representation. He further contends that the respondents are not having absolute clear and marketable title of the property. He further contends that the respondents have received the full sale consideration and the sale deed in respect of suit schedule property is not registerable. He further submits that the respondents have consciously avoided reference to the Memorandum of Understanding executed between the parties on 21.03.2022, wherein it is stated that if the respondents refuse to perform the registration, then the applicant can enforce any sort of legal action available against them. Therefore, the respondents are liable to reimburse the sale consideration of Rs. 21,60,00,000/- along with interest. He further contends that the respondents failed to



implement the Agreement of sale dated 21.03.2022 and to register the sale deed dated 11.04.2022. He further relied upon section 54 of the Transfer of Property

Act and stated that there is clear failure on the part of the respondents in completing the registration of the sale deed. He further contends that the possession of the subject property was not handed over to the applicant. He further submits that the applicant caused legal notice dated 18.10.2023 to the respondents to repay the sale consideration and the same was returned as door locked and left. He submits that the applicant filed suit for recovery of money. He further contends that the subject property cannot be considered as security and further it is submitted that the respondents hold four other properties apart from subject property. He further submits that the respondent is having sufficient security for the repayment of the above said due amount and it is necessary to direct the respondents to furnish the security for the suit money. Hence, he prays to allow the application.

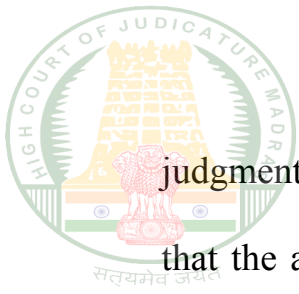
4) Countering the arguments of the applicant, Mr.Mr.S.R.Raghunathan, learned counsel for the respondent submits that the respondents do not owe any money to the Applicant. He submits that the money suit itself is not maintainable and the present application does not arise. He further submits that the respondent executed a sale deed dated 11.04.2022, thereby conveying the subject property to the Applicant. He further submits that the deed was duly



presented for registration on the same date and was assigned pending document

No.17 of 2022 in Book 1 on the file of the Joint Sub-Registrar-II, Saidapet. He

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further submits that the same was refused by the Joint Sub-Registrar-II for registration and the applicant preferred an appeal before the District Registrar in Proceeding No.001869/A1/2023. He further submits that the possession of the subject property has been handed over to the Applicant and duly acknowledged in the Sale Deed. Further, he submits that the applicant has received custody of all the relevant title documents of the property and hence, the sale transaction between the parties has been concluded. He further contends that the applicant has not made out any case falling within the ambit of Section 55 of the Transfer of Property Act, 1882. He further contends that the Applicant suppressed the fact that the Applicant has obtained legal opinion from their counsel and thereafter conducted thorough diligence on the property and subsequently provided a draft sale deed to the respondents. He further submits that the respondents obtained no objection Certificate from the concerned Thasildar, confirming the nature of the property and the applicant already knew the fact that the patta for the subject property was unavailable. He further contends that the objection now raised by the Sub-Registrar, which the applicant is citing as a reason for filing of the present suit is unsustainable and ought to be rejected. He further contends that the patta is not a document of title, as consistently held by the Hon'ble Supreme Court of India in numerous



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judgments and it is merely a record indicating possession. He further submits that the applicant has not contended before the registering authorities that the respondents lack title to the property. He further contends that the buyer must be aware of what he purchased and relied upon the predominant principle of Caveat Emptor. In this context, **he relied upon a Judgment in Application No.869 of 1961 in C.S.No.111 of 1955.** He contends that the respondents never misrepresented any facts to the applicant and the allegations made by the applicant are erroneous and baseless. He further submits that the respondents have neither borrowed any money from the applicant nor is liable to pay any quantified amount of damages to the Applicant. He further contends that the applicant has failed to establish any circumstances warranting an order under Order 38 Rule 5 of the Code of Civil Procedure. In this context, he relied upon a judgment of the Apex Court in ***Raman Tech. & Process Engg. Co and Another Vs Solanki Traders*** reported in ***(2008) 2 SCC 302*** and stated that the plaintiff should show, prima facie, that his claim is bonafide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property. But in this case, the applicant failed to prove the same. He further submits that the available property is in possession of the Applicant and the claim for security is baseless. Hence, he prays to dismiss the application.

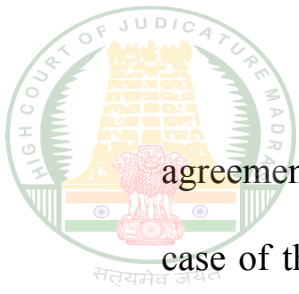


5) Heard the counsels for either sides and perused the material available on record.

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6) The present application had been filed invoking the provisions of Order XXXVIII Rule 5 of CPC. A contention had been raised by the learned counsel for the respondent that the application is bereft of any ingredients of Order XXXVIII Rule 5. As rightly pointed out by the learned counsel for the respondent the scheme of Order XXXVIII is to prevent the obstruction or a delay in the execution of the decree that may be passed against an individual. Before passing an order under Order XXXVIII Rule 5, the Court should be satisfied with itself that there is a reasonable chance of a decree being passed against the defendant and in such an event, the Court should be satisfied with regard to the prima facie case on the side of the plaintiff that a further prima facie case should be made out by the plaintiff establishing that the defendant is attempting to remove or dispose of his assets with an intention to defeat the decree that may be passed. Such being the power vested with this Court under the aforesaid provisions, the Courts should not exercise its power mechanically or merely for the asking. It also cannot be allowed to convert an unsecured debt into a secured debt.

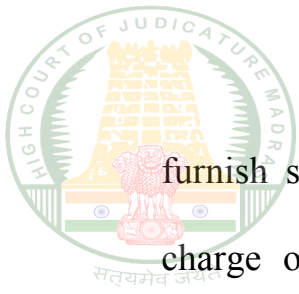
7) The facts of the present case is that the applicants had entered into an



agreement of sale to purchase certain properties from the respondents. It is the case of the applicants that they were not aware of the defect in the title of the property. But, on the other hand, the respondents claim that the applicants have conducted a due diligence and was aware that the property was within the Cantonment Board and the same is explicit in the opinions given by the learned counsel for the applicants. After the Sub-Registrar issued a refusal check slip, refusing to register the sale document, an appeal seems to also have been filed by the applicant before the District Registrar unsuccessfully and the same is the subject matter of the Writ Petition filed by the respondent.

8) It is the case of the applicant that the sale had not been acted upon and the possession of the property is also not taken upon by them and on the other hand, the respondent claims that the possession had been taken over by the applicants and that all the facets of sale had been completed except the registration. In such circumstances, it is clear that there has been no effective transfer of title in favour of the applicant as the sale deed had not been registered. The applicant had alleged to have refused to accept the possession and title of the property on a tenable ground that the property is not in clear title. This issue can only be decided at the end of trial in the present suit.

9) The issue now is as to whether the respondent should be directed to



furnish security. Section 55(6)(b) of the Transfer of Property Act creates a charge over the property of the consideration that had been paid by the purchaser to the buyer in the event the buyer refuses to take possession of the property. That is the dictate of the Hon'ble Apex Court in interpreting the provisions of Section 55(6)(b) of the Transfer of Property Act in the case of ***Delhi Development Authority Vs Skipper Construction Co. (P) Ltd and Others*** reported in ***2000 (10) SCC 130***. For better appreciation, the relevant paragraphs of the said order is extracted hereunder:-

“... 29. These points depend upon the effect of the provisions in sub-section (6) of Section 55 of the Transfer of Property Act. That section starts with the words: “In the absence of a contract to the contrary”, and reads thus (insofar as it is material for our purpose):

“55. (6)(b) The buyer is entitled—

*(a)****

(b) unless he has improperly declined to accept delivery of the property to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money property paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.”

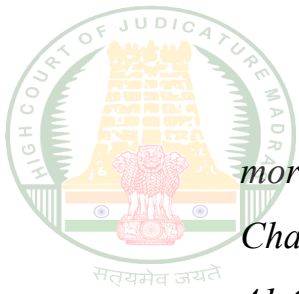
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It is plain from the above provision that, in the absence of a contract to the contrary, the buyer will have a charge on the seller's interest in the property which is the subject-matter of the sale agreement insofar as the purchase money and interest on such amount are concerned, unless the buyer has improperly declined to accept delivery. The charge is available against the seller and all persons claiming under him. This charge in favour of the buyer is the converse of the seller's charge under Section 55(4)(b). The buyer's charge under this section is a statutory charge and differs from a contractual charge which a buyer may be entitled to claim under a separate contract [M.M.R.M. Chettiar Firm v. S.R.M.S.L. Chettiar Firm, AIR 1941 PC 47 : 46 CWN 57] . No charge is available unless the agreement is genuine [Trimbak Narayan Hardas v. Babulal Motaji, (1973) 2 SCC 154 : AIR 1973 SC 1363] . As pointed out in Mulla's Commentary on Transfer of Property Act, 8th Edn. (p. 411), the charge on the property under Section 55(6)(b) is enforceable not only against the seller but against all persons claiming under him. Before the amending Act of 1929, the words “with notice of payment” occurred after the words “all the persons claiming under him”. These words were omitted as they allowed a transferee without notice to escape. After the amendment of 1929, notice to the purchaser has now become irrelevant.

30. *When the property upon which the charge is created gets converted into another form, the buyer will be entitled to proceed against the substituted security. This is a general principle of law and Section 73 of the Transfer of Property Act is only an example of the said principle. The above principle has been applied to enforce*

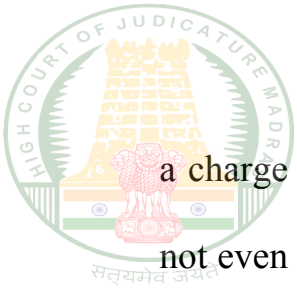


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mortgage on substituted securities (see Barhamdeo Prasad v. Tara Chand [(1913) 41 IA 45 : 12 All LJ 82 : 16 Bom LR 89 : ITR (1914) 41 Cal 654 (PC)] and Surapudi Muniappa v. Nookala Seshayya Gari Subbaiah [AIR 1917 Mad 880]). The same principle which is applicable to mortgages applies to cases of statutory charge under Section 55(6)(b). If immovable property is charged and is converted into another property or money, then the charge will fasten on the property or money into which the subject-matter of the agreement is converted.

31. The above sub-section of Section 55 also makes it clear that the buyer is entitled to interest on the amount of purchase money paid. Interest is payable from the date of payment of the purchase money to the seller till the date of delivery of property to the purchaser or till the execution of the sale deed, whichever is earlier. Points 1 and 2 are decided accordingly in favour of the buyers...”

10) It is the case of the respondents that they have perfect title and the property is situated within the Cantonment area for which they have to get no objection from the Cantonment Board for dealing with the property. The issue of the title can only be decided at the end of the trial. As rightly pointed out by the learned counsel for the respondent that no ingredients of Order XXXVIII Rule 5 had been driven home by the applicants for this Court to exercise its powers under the said provision for ordering of furnishing of security. That apart, as per the judgment of the Hon'ble Apex Court, Section 55(6)(b) creates



a charge over the property of such consideration paid by the buyer. That apart not even an apprehension to satisfy ingredients of O XXXVIII R 5 of CPC has been made out. Therefore, I do not find any compelling reasons to order the application.

11) In fine, the application stands dismissed. However, there shall be no order as to costs.

23.04.2025

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K.KUMARESH BABU.J.

Gba

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