



WEB COPY

A.No.3105 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 05.03.2025	PRONOUNCED ON 01.04.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.3105 of 2024

in

C.S.No.65 of 2022

Mr.SPN.Sathyamurthy

... Applicant/3rd defendant

vs.

1.Mr.Hemant Raj

2.Mr.S.Kalyanasundaram

3.Mrs.K.Vasantha

... Respondents2 & 3/defendants 1 & 2

4.Mr.A.D.Murugan

5.The Sub Registrar,

No.685, D.AJ Block,

2nd Street, Anna Nagar,

West Extension, Chennai – 600 101.

6.The Tahsildar,

Aminjikarai,

Gajalakshmi Colony,

Shenoy Nagar,

Chennai – 600 030.

7.The ICIC Bank Ltd.,

No.193/104, 1st Floor,

Arcot Road, Vadapalani Branch,

Chennai – 600 026.

... Respondents 4-7/Defendants 4-7

For Applicant : Mr.R.Balachanderan

For Respondents : Mr.K.V.Babu for



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Mr.D.Saikumarran for R1

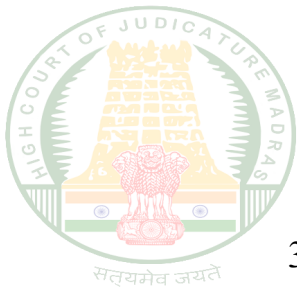
Mr.J.Daniel GA for R6

ORDER

The present application had been filed to declare the sale deed is illegal invalid non-est and other reliefs.

2) Heard Mr.R.Balachanderan, learned counsel appearing for the applicant and Mr.K.V.Babu, learned counsel appearing for the first respondent and Mr.J.Daniel, learned Government Advocate appearing for the first respondent.

2. The learned counsel appearing for the applicant, who is also the third defendant in the Suit would submit that the instant Suit had been initiated by the plaintiff seeking for various reliefs. He would submit that even though the plaintiff/first respondent had entered into an agreement of sale with the first defendant as early as in the year 2010, even according to the plaintiff there has been a sale deed which was entered upon between the first defendant and one M/s.H.M.Foundation Pvt., Ltd., which was not registered and thereafter, the first defendant had executed a sale deed in favour of the applicant/third defendant.



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3. When that being so, he would submit that the prayers a), b) & e) cannot be claimed by the plaintiff and utmost, it could be only claimed by the said company and for that reason, the reliefs cannot be agitated by the plaintiff. He would further submit that if as alleged by the plaintiff that the sale deed had been executed by the first defendant, but not registered, it is for the person in whose favour the sale deed was executed to seek for compulsory registration under the provisions of the Registration Act. In such circumstances, he would pray this Court to dismiss the Suit in respect of reliefs a, b, & e on the basis of the admission made in the plaint particularly paragraph 15.

4. The learned counsel appearing for the plaintiff would first submit that the first defendant had earlier entered into an agreement of sale in the year 2010 under which he had also agreed to sell the property either in favour of the plaintiffs or his nominees. The plaintiff had nominated M/s.H.M.Foundation Pvt., Ltd., in whose name, the first defendant shall execute the sale deed. The sale deed infact was prepared and executed, but was refused to be registered. Hence, the plaintiff who has nominated the said company as purchaser of the property, is the obligation to also perfect the title by exercising his rights under



the agreement of the year 2010 and therefore, the plaintiff cannot be said to have any cause of action against the defendants. That apart, he would further submit that the specific performance of the sale deed of the year 2017, had been sought for by the first respondent/plaintiff or in the alternative, he had sought for recovery of monies paid to the first defendant. Therefore, he would submit that even accepting that the claim of the third defendant is valid in the present application, the Suit cannot be dismissed as against the first defendant, as in the event of the failure to obtain a decree for specific performance, the plaintiff would be entitled for recovery of money from the first defendant. Hence, he would submit that at this stage, the present application ought to be rejected.

5. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

6. The facts that are available before the Court is that the first defendant had entered into a sale agreement agreeing to convey his property to the plaintiff in the year 2010. An averment had been made by the plaintiff indicating that the first defendant had executed a sale deed in favour of M/s.H.M.Foundation Pvt., Ltd., which is his nominee and however, the same



was not registered as required under law. He had also claimed that as his nominee, he had an obligation to perfect the title and hence, he had filed the present suit. An alternative prayer had also been sought for by the plaintiff to recover the amounts paid to him in the event of him failing to get a decree for specific performance from the first defendant.

7. It is also to be noted that this Court while disposing of the Injunction Application in O.A.No.338 of 2019, having found a *prima facie* case that the applicant therein is in possession, namely, the plaintiff is in possession, an injunction was also granted. An Intra Court Appeal against the same in O.S.A.No.206 of 2019, was preferred and the injunction was also affirmed by the Division Bench of this Court.

8. The issues raised in this application by the third defendant, if considered as an admission of fact and the prayer as sought for by him in dismissing the Suit in the context of prayers a), b) & e), is allowed, it would dis-entitle the plaintiff from seeking the alternative relief in prayer b) against the first defendant. Further, this Court is of the view that such issues should also be decided on the basis of evidence that have been let in by the parties. In such an event, this Court is of the view the present Application cannot be entertained and accordingly, the same is dismissed. However, there shall be no



order as to costs.

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Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU.J.,

Pbn

Pre-Delivery Order in
A.No.3105 of 2024
in
C.S.No.65 of 2022

01.04.2025