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CMA No. 1861 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

**CMA No. 1861 of 2023
and CMP.No. 18087 of 2023**

NAJIMUNNISA

W/o.late Syed Muneer Ahamed, No.31-
19, Hakka Sahib Dharga St, Parankipet.
AND 3 OTHERS

Appellant(s)

Vs

R.Murali

S/o.Ramu, Temporary Address No.7,
Senthamarai Nagar, Muthiyalpet,
Puducherry. Current Address NO.19,
2nd Cross, Sankaradass Swamigal
Nagar, Muthiyalpet, Puducherry. AND
ANOTHER

Respondent(s)

Prayer: This Civil Miscellaneous Appeal has been filed under Order XLIII Rule 1 of the Code of Civil Procedure, against the fair and decretal order passed in I.A.No.59 of 2021 in O.S.No.149 of 2021, dated 26.10.2021 by the II Additional District Judge, Chidambaram.



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For Appellant(s): Mr.Srinivas, Senior Advocate,
for M/s.V.Mythili

For Respondent(s): M/s. V.S.Senthilkumar For
Respondents
(vide Court Order Date
01/08/2023)
Notice Ordered To R2 On
05/12/2024
Notice Sent To R2 - Service
Awaited
M/s. M.Guruprasad-ms/395/2007
C.Ramaraj-ms/2336/2016
S. Umashankar
For R2

ORDER

The appellants have filed this appeal against the fair and decretal order passed in I.A. No. 59 of 2021 in O.S. No. 149 of 2021, dated 26.10.2021, by the learend II Additional District Judge, Chidambaram.

2. By challenging the impugned order passed in I.A. No. 59 of 2021 in O.S. No. 149 of 2021, the defendants have preferred this appeal. Before the trial court, the respondents herein (plaintiffs) filed a suit for specific performance,



seeking a direction to the defendants (appellants herein) to execute a sale deed pursuant to the sale agreement dated 01.08.2012. The suit also sought permanent injunction.

3. According to the plaintiffs, under the sale agreement dated 01.08.2012, the plaintiff had paid several instalments of substantial advance amounts on various dates. However, the defendants failed to execute the sale deed as agreed and attempted to encumber the property. Hence, the plaintiffs filed a suit for specific performance, permanent injunction, and also sought an order of temporary injunction restraining the defendants from alienating or encumbering the suit property or transferring it to third parties, by filing an application under Order XXXIX Rules 1 and 2 CPC, pending disposal of the suit.

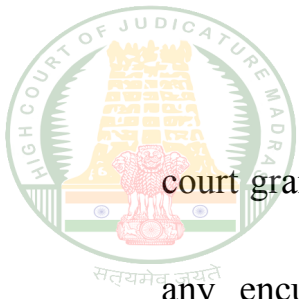
4. Upon receipt of summons, the defendants 1 to 3 appeared and filed their objections. They contended that the suit property is part of a layout now known as "Taj Majestic City," comprising 55 house plots, out of which 10 plots had already been sold. They asserted that they are the absolute owners of the



entire layout and that the market value of the property has appreciated significantly.

5. However, the 4th defendant (2nd respondent herein) filed a counter-statement admitting that he had received an advance amount of Rs. 47 lakhs from the plaintiff. He explained that due to delays in obtaining DTCP approval, disputes arose concerning his share in the property. He further stated that he had already executed a separate document in favour of the 5th respondent (4th appellant) and that he has no objection to executing the sale deed in favour of the plaintiff.

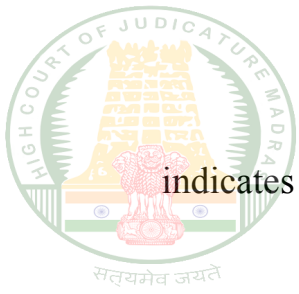
6. Considering all submissions, the learned trial judge held that the relief of specific performance is based on equitable principles. Given the existing disputes between the parties, including the admission of the sale agreement by one of the defendants and the pendency of complaints before the police, the court observed that any encumbrance or alienation of the suit property by the defendants would result in multiplicity of proceedings. Accordingly, the trial



court granted the temporary injunction restraining the defendants from creating any encumbrance or transferring the suit property, by allowing the said application.

7. Challenging this order, the defendants have preferred the present appeal. The learned counsel for the appellants submits that the temporary injunction granted by the trial court is contrary to the facts and evidence on record. He contends that the first respondent/plaintiff failed to establish a prima facie case or demonstrate the balance of convenience in his favour. Moreover, the plaintiff did not prove that he would suffer any irreparable injury if the injunction was not granted. Hence, the interim order is legally unsustainable and liable to be set aside.

8. The counsel further argues that the suit for specific performance was filed by the plaintiff, who can be granted relief only upon establishing his case at trial. Until then, he has no vested right or interest in the property. The plaintiff has also sought an alternative remedy for refund of the advance amount, which



indicates that the claim is compensable in monetary terms.

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9. Additionally, the learned counsel points out that the sale agreement dated 01.08.2012, on which the plaintiff relies, is part of a series of transactions where the plaintiff claims to have paid several large sums as advance on different dates. However, there is no prima facie material to substantiate such payments, and in fact, the entire series of agreements arose out of loan transactions.

10. The counsel further submits that the DTCP approval for the entire layout, including the suit property, has already been obtained, and some of the plots have been sold. The loan amount was also fully discharged by the plaintiff. Suppressing all these facts, the plaintiff approached the court, and the trial court erroneously appreciated the facts while granting the temporary injunction. Hence, the learned counsel prays that the findings of the trial judge be set aside.

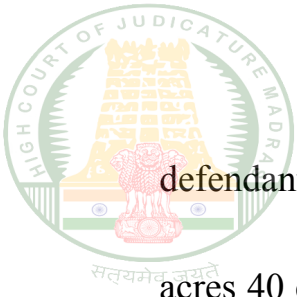


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11. By way of reply, the learned counsel for the first respondent submitted that a sale agreement was entered into in the year 2012, and subsequently, the plaintiff paid a substantial amount as advance. However, without adhering to the terms of the agreement, the appellants attempted to encumber the property. Therefore, the plaintiff filed a suit for specific performance along with an interim application.

12. It is admitted that around 10 plots have already been sold. If the appellants are allowed to continue alienating the remaining plots, it would result in multiplicity of proceedings and defeat the plaintiff's rights under the agreement. The plaintiff has furnished prima facie material, and both a prima facie case and irreparable injury have been established. Considering these facts, the trial court rightly granted the relief of temporary injunction, which does not warrant any interference. Hence, the counsel prayed for dismissal of the appeal.

13. On considering the submissions from both sides, the facts reveal that the first respondent/plaintiff filed a suit for specific performance against the



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defendants 1 to 5/appellants in respect of lands measuring 1 acre 67 cents and 2 acres 40 cents, collectively referred to as "Taj Majestic City." Some of the plots in this layout have already been sold, and the remaining plots are the subject matter of the suit.

14. The appellants/defendants contested the claim, asserting that they are the absolute owners of the property. However, due to certain family circumstances, they had borrowed a loan and executed the alleged sale agreement as a security arrangement, thereby disputing the plaintiff's claim for specific performance.

15. Both parties admit that the suit property is currently part of the layout named "Taj Majestic City" and that it has been converted into house plots. Since some of these plots have already been sold, and if the remaining plots are also alienated, the plaintiff would suffer irreparable loss. Therefore, the trial court granted a temporary injunction restraining the defendants from encumbering or alienating the remaining plots.

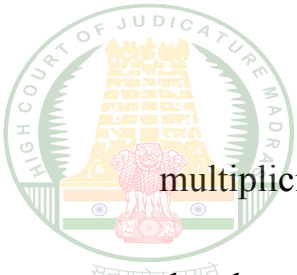


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16. At the time of argument, the learned counsel for the appellants submitted that if they are not permitted to sell the house plots, they would face undue hardship. He also pointed out that the plaintiff has claimed an alternative remedy for refund of the alleged advance amount. Therefore, according to the appellants, selling the property would not prejudice the plaintiff.

17. However, the first respondent/plaintiff seeks specific performance for the entire extent of the suit property. Furthermore, two individuals, Mohammed Abdul Kadhar and R. Mohammed Ali, filed I.A. No. 165 of 2021, seeking to implead themselves as necessary parties to the suit, claiming to be the real owners of the suit property. The learned trial judge allowed the said application, finding them to be necessary parties.

18. In addition, these two individuals had already filed O.S. No. 178 of 2017 seeking a declaration of their right and title over the suit property against the present appellants. Therefore, the title to the property is also in dispute. If the property is alienated during the pendency of such disputes, it would lead to



multiplicity of proceedings. Considering these facts, the findings rendered by

the learned trial judge require no interference. **Accordingly, this Civil**

Miscellaneous Appeal is dismissed. Consequently, the connected

miscellaneous petition is closed. There shall be no order as to costs.

19. However, taking into account that many of the appellants are senior citizens and pardanashin ladies, the trial court is directed to dispose of the suit within six months from the date of receipt of a copy of this order.

20. Both suits are directed to be tried jointly, as the parties and subject matter involved are the same. In order to avoid further complications and to prevent multiplicity of proceedings, this Court directs that both suits be heard and disposed of together. The learned trial judge is instructed to proceed with the matter on merits, providing fair opportunity to all parties concerned.

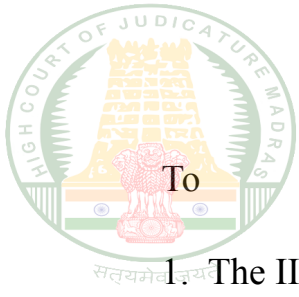
07.07.2025

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

1. The II Additional District Judge,
Chidambaram.

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T.V.THAMILSELVI J.
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