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C.M.A.(MD)No.1729 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.1729 of 2024
and C.M.P(MD) No.18655 of 2024

Kavitha Eswaran

... Appellant

vs.

Esther Obed

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section Order 43 Rule 1 of C.P.C, to call for the records of the Fair and Decreetal order dated 16.10.2024 passed by the II-Additional District Court, Thoothukudi in I.A.No. 2 of 2023 in O.S.No.69 of 2023 and set aside the same as illegal.

For appellant	: Mr.M.C.Swamy for Mr.G.Rajaraman
For Respondent	: Mr.N.Dilip Kumar

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the plaintiff against the fair and decreetal order passed in I.A.No.2 of 2023 in O.S.No.69 of 2023 by the II- Additional District Court, Thoothukudi .



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2. Heard the arguments of the learned counsels for the appellant and the respondent.

3. Originally, a suit was filed in O.S.No.69 of 2023 before the II- Additional District Court, Thoothukudi by one Kavitha Eswaran wife of Eswaran Baskaran of Saliagramam, Chennai against one Esther Obed daughter of Philip Jeyasingh for the relief of specific performance or in alternate for return of advance amount of Rs.56,19,110/- and the suit property comprised in Survey No.775/1 ad measuring 0.98 cents and in Survey No.978/1 ad measuring 3.71 acres in Kattrimangalam Village, Ambalachery, Anandapuram post, Sathankulam Taluk, Thoothukudi District, totalling 4.69 acres with buildings (Factory Hall ACC Sheet, 564.88 sq.mtr. with machineries.

4. During the pendency of the suit, the plaintiff took out an application under Order 39 Rule 1 of Civil Procedure Code (CPC) for grant of interim injunction restraining the respondent / defendant from alienating the suit property till the disposal of the suit. It has been averred in the interim application that the suit property belonged to the respondent and she has been running a factory in the name and style of M/s Ebe Liza Enterprises

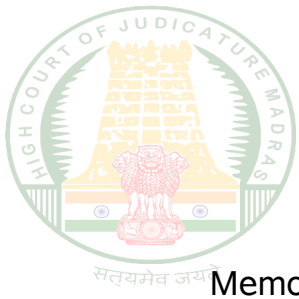


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and for the same, she availed a loan amount of Rs.65,00,000/- from TIIC. As the respondent was in financial constrain, in order to repay the loan amount, the respondent sought financial help from the petitioner. The petitioner advanced a sum of Rs.46,19,110/- between the period covering October 2016 to March 2017. Subsequently, in the month of July 2021, the respondent requested the petitioner to give Rs.30,00,000/- in order to pay the above loan as an one time settlement and assured to convey the suit property in favour of the petitioner. The draft agreement was sent to the petitioner from the respondents father's e-mail. As the respondent did not come forward to execute the sale deed by sending Ex.P3 - Letter called upon the respondent to execute the sale deed, upon receiving Rs.25,00,000/-. Upon receipt of false reply, she instituted the suit for specific performance

5. Resisting the contents of the application, the respondent filed a counter contending that she never intended to sell the suit property to the petitioner. The petitioner obtained the signature of the respondent in the sale agreement on the representation that the same is required to show the persons in abroad, who financed the business. Therefore, Ex.P1 - Sale Agreement was not executed by the respondent with the intention to alienate the suit property. The petitioner has acted against the terms of Ex.R1 –



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Memorandum of Understanding and obtained GST registration.

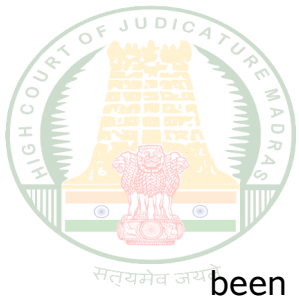
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6. Upon consideration, the Trial Court held that the prima facie case was not established by the plaintiff and the question of considering the balance of convenience and irreparable loss does not arise and chose to dismiss the petition.

7. To substantiate the contentions of the petition, the petitioner has examined herself as P.W.1 and 16 documents were marked. On the side of the respondent, respondent has examined herself as R.W1 and 11 documents were marked.

8. No doubt, the plaintiff moved a suit for specific performance on the strength of the sale agreement executed by the defendant. The defendant has also admitted her signature found in the sale agreement and did not come forward to execute the sale deed with false contentions. Of course, these details have to be gone into in the trial.

9. As per Ex.P1-Sale Agreement, the plaintiff from 19.10.2016 to 10.03.2017 has given amounts to the tune of Rs.46,19,110/-, all through bank transfer to the account of defendant. In the sale agreement, it has



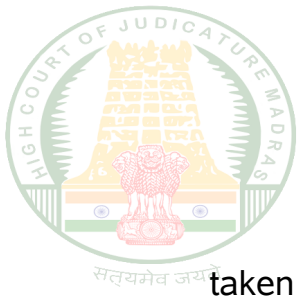
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been stated that she needs further amount of Rs.30,00,000/- towards settlement of loan with TIIC.

10. Section 52 of the Transfer of Properties Act (TP Act), 1882 provides protection to the parties from transfers *pendente lite*, in as much as it makes such transfers subservient to the decree that may be passed in the suit, but it does not come in the way of passing an order of temporary injunction restraining alienation of the suit property during the pendency of the suit on the applicant satisfying all the three ingredients of *prima facie*, balance of convenience and causing irreparable loss or injury in her favour.

11. The distinction between Section 52 of TP Act and Order 39 Rule 1 and 2 CPC is that an order of temporary injunction is of preemptive nature restraining the act of alienation by party to the suit, where there is such a danger. But, Section 52 of the TP Act comes into play after the alienation takes place during the pendency of the suit. Section 52 provides for the consequences of a transfer taking place pending litigation. To establish the *prima facie* case, the apprehension of the petitioner upon the respondent / defendant is suffice. If the respondent / defendant enters into any agreement or sale in respect to the suit property, then the petitioner / plaintiff is put to trouble. By way of abundant caution, the petitioner / plaintiff has



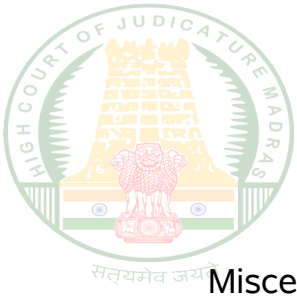
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taken out an application for an order of interim injunction not to alienate the suit property to the third parties as against the respondent / defendant. Definitely for trial, it will take some time.

12. It is also relevant to note that the petitioner / plaintiff has parted with the huge sum of amount of Rs.46,19,100/-. It is also learnt that the balance sale consideration of Rs.25,00,000/- is also deposited into Court. In these circumstances, this Court has no hesitation to hold that the petitioner / plaintiff has established a strong prima facie case, then the balance of convenience tilts in favour of the petitioner / plaintiff. If this petition is not ordered in favour of the petitioner / plaintiff, then she would sustain irreparable loss. In fact, no prejudice will cause to the respondent / defendant, if this petition is ordered in favour of the petitioner / plaintiff. In such a view of the matter, as the necessary ingredients are satisfied and the fact that, as per the written statement, the respondent / defendant has admitted the signatures found in the sale agreement. Therefore, necessarily the petitioner / plaintiff is entitled for an order of interim injunction against the respondent / defendant not to alienate the suit property till the disposal of the suit.

13. Based on the aforesaid observations and discussions, this Civil



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Miscellaneous Appeal is allowed. The trial court shall dispose of the case preferably within eight months from the date of receipt of copy of this judgment. Sequel to this, the fair and decreetal order passed in I.A.No.2 of 2023 in O.S.No.69 of 2023 on the file of the II-Additional District Court, Thoothukudi stands set aside. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No

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R.KALAIMATHI,J.,

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To

1. The II-Additional District Court, Thoothukudi

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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