

IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
DHARMAPURI.

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Thursday, this the 7th day of December 2023.

I.A.No.3/2023
in
O.S.No.52/2022
(CNR No.TNDP010004782022)

Kunjappan

...Petitioner/plaintiff

/versus/

1. Kadhar Basha @ Kadhar Ali
2. Kathan Bi
3. Mashood Ahamad

...Respondents/defendants

This petition is coming on 2.12.2023 for final hearing before me in the presence of Thiru.M.Tamilarasan, Advocate for petitioner and Thiru.K.Kabilan, Advocate for the respondents and upon hearing both side arguments and on perusal of the entire case records and having stood over till this day, this court pronounced the following:

ORDER

This is a petition filed under Order-39, Rule-1 and 2 and section 151 of CPC to grant temporary injunction till the disposal of the suit.

2. The case of the petitioner in brief is as follows:

According to petitioner, the first defendant and second defendant are parents of third defendant and suit properties belong to defendants and they agreed to sell the

suit properties to plaintiff for their family expenses and to settle sundry debts and executed a Sale agreement dated:3.2.2019 in the presence of panchayatars and sale price was fixed as Rs.37,000/- per cent, Rs.10 lakhs was paid as advance and for payment of balance sale consideration of Rs.12,94,000/-, three months period was fixed. The petitioner was always ready and willing to perform his part of contract, however defendants stated that the first defendant's health condition was not well and there were family disputes and assured to execute the sale deed within one or two weeks and were postponing the same. In spite of petitioner's repeated demands for execution of sale deed in April 2019, May 2021 and Legal notice dated:30.12.2021, defendants failed to execute sale deed. The petitioner is ready to deposit the balance sale consideration in the court. Hence the defendants should be restrained from creating any documents in respect of the suit properties.

3. The averments in the counter in brief is as follows:

The respondents resisted the petition by contending that all the allegations in petition are not correct. The suit properties were never given in lease to plaintiff. The plaintiff and first defendant were long time friends. The plaintiff approached the defendant stating that he is going to start retail petrol bunk business and assured that he would make the defendants as partners. He further stated that license for the petrol bunk would be taken in the name of plaintiff and the defendants have to execute agreement for permitting the plaintiff to start retail petrol bunk. He further represented that when the Government officials are visiting the suit properties in order to prove that he has right over it, he need documents and obtained signatures of

the defendants in blank Rs.20/- stamp papers. After that plaintiff did not start petrol bunk. When defendants insisted for handing over blank stamp papers, he stated that he misplaced it and he would search and give it and he would get license and documents would be kept in his possession. He further stated that if the defendants are selling the properties, he would purchase it. However the defendants denied the offer. Sale agreement was never entered between the plaintiff and defendants. Upon receiving the legal notice, when the defendants approached the plaintiff in person, plaintiff stated that he issued notice only for the reason that defendant should sell the properties only to him and assured that he would not take any further legal action. Hence defendants did not give any reply. The defendants did not take any action, as they belong to minority community and as plaintiff has got political and men power . There are coconut trees in the suit properties and 30 fodder crops. As there are nearby other properties belonging to plaintiff with well, defendants were purchasing water from the plaintiff's well and cultivating the crops. Only to grab the suit properties the plaintiff is preventing the defendants from entering into suit properties. Hence the petition has to be dismissed.

4. The point for consideration:

Whether the petition is liable to be allowed or not?

5. No oral or documentary evidence adduced on both side. Heard both side arguments.

6. Point:

a) The petitioner alleges that the defendants have executed unregistered Sale

agreement dated:3.2.2019 and received Rs.10 lakhs as advance and for payment of balance of sale consideration of Rs.12,94,000/- , period of performance has been fixed as three months. In spite of repeated demands and Legal notice dated:30.12.2021, defendants failed to execute sale deed. Hence the defendants should be restrained from creating any encumbrance in respect of the suit properties.

b) The respondents deny the validity and execution of the suit agreement and alleged that the same is a created one and they never intended to sell the suit properties to plaintiff.

c) In this case, respondent denies validity of suit agreement and oral sale agreement. This court is of view that there are triable issues involved in this suit and same can be decided only at the time of trial.

d) The question for consideration in this case is whether the petitioner has a legal right to restrain the respondents from alienating suit property by obtaining an order of temporary injunction. It is well settled that an agreement to sell creates a right in personam and it does not create any right in the property. An agreement to sell gives a right to the proposed purchaser to bring a suit for specific performance of contract to sell but he cannot claim any interest in the property till his suit for specific performance is decreed. An agreement to sell creates a right in person and not in the estate such right created against a vendor to obtain specific performance can ultimately bind any subsequent transferee till, therefore, a decree of specific performance is obtained the vendor or a purchaser is not entitled to full enjoyment of

the property, even if a decree for specific performance of contract is obtained and no sale deed is actually executed and it cannot be that held any interest in the property is passed.

e) The petitioner alleges that there is written sale agreement . In the instant case there is a complete denial on the part of the respondents as regards execution of the any Agreement of Sale. This court is of view that genuineness of Agreement of Sale, and passing of consideration under it is to be decided during full fledged trial only, but at this stage only prima-facie case is to be considered and under the circumstances, the plaintiff has to establish the prima-facie case in his favour.

f) This court relies upon the **Judgment of Hon'ble Apex Court in Ambalal Sarabhai Enterprise Limited vs K.S.Infraspac LLP Limited and another**, wherein the Hon'ble Apex Court had considered and laid down the conditions for grant of Temporary Injunction or otherwise under Order 39 Rule 1 and 2 of C.P.C. in a suit for specific performance of contract for sale. The Hon'ble Apex Court categorically held that the relief under Specific Relief Act for specific performance of contract of sale is itself a discretionary relief, and therefore, the criteria for considering the grant of temporary relief under Order 39 Rule 1 and 2 of C.P.C. falls on a different footing in suits for specific performance as compared to temporary reliefs under Order 39 Rule 1 and 2 of C.P.C. in other suits. In para No.21 of the Judgment, the Hon'ble Apex Court has stated that when the existence or otherwise of the contract between the parties is itself a matter of trial to be decided on the basis of

the evidence that may be lead, the Interim Injunction may not be granted. In the present case, no single averment in the plaint has been admitted by the Defendant/Respondent. Execution of Agreement of Sale, has not been admitted.

g) In view of foregoing deliberations, this court concludes that petitioner has no prima facie case or balance of convenience in favour of petitioner for the grant of temporary injunction. For the reasons aforesaid, there is no merit in this petition. Hence, point for consideration is answered against the petitioner.

In the result, the petition is dismissed. However, it is made clear that any activities of the Respondent/Defendant in respect of suit property shall be subject to result of the suit and in the event of failing in the suit, he cannot pray for equities. There shall be no order as to costs.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 7th day of November 2023.

Additional District Judge,
Dharmapuri.

Petitioners Side Evidence, Exhibits: Nil

Respondents Side Evidence, Exhibits: Nil

Additional District Judge,
Dharmapuri.

Fair Order

I.A.No.3/2023 in

O.S.No.52/2022

Dated:7.12.2023.