

In the Court of the Principal District & Sessions Judge, Pudukkottai

Present : Thiru.A.Abdul Kadhar, B.A., B.L.,

Principal District Judge.

Monday the 29th day of August, 2022

I.A.No.242/2022 in O.S.No.108/2022

Rajkumar

... Petitioner / Plaintiff

//Versus//

Kamaleshwari

... Respondent / Defendant

This Petition coming before this court on 29.08.2022 for final hearing in the presence of Thiru.K.Anbalagan, Advocate for the Petitioner and Thiru.C.Sureshkannan, Advocate for the Respondent and upon hearing the arguments of both sides, and on perusing the records and having stood over till this date for consideration, this court delivers the following :

ORDER

This Interlocutory Application has been filed by the petitioner/plaintiff under Order 39 Rule 1 & 2 of Code of Civil Procedure praying for interim injunction restraining the respondent / defendant, their men and agent from making any kind of transfer of the suit property and also from executing sale deed infavour of any

one pending disposal of the suit and ad interim injunction exparte in the like terms even before notice till the disposal of this petition.

2. The averments in the petition are briefly as follows :

The petitioner is the plaintiff in the suit. The petitioner submits that on 06.02.2022, the defendant had contracted to sell to him the suit schedule property for a sum of Rs.15,00,000/-. By then she had received from him a sum of Rs.7,00,000/- as advance and promised to execute necessary sale deed in favour of the plaintiff within a month or two shortly after possession is recovered. However she could not get possession as expected and also could not deliver the original documents of title relating to the said property to him as promised. On 01.05.2022, the defendant had executed a pledge Muchalikai whereby she had promised and agreed to deliver the documents of title and possession of the suit property to him within 3 months therefrom and to receive the balance of price after the completion of registration of sale deed and sale of the suit property to him. The petitioner was always been ready and willing to perform his part of the suit contract for sale with necessary funds of which the defendant also had full notice. He had been applying to the defendant repeatedly to perform her part of the suit contract specifically. By pleading inability to recover the physical possession of the suit property and to deliver the same to him, the defendant had managed to protracted the time for the

specific performance of her part. However she had assured that she would execute sale deed in his favour for suit property as per the suit contract for sale and as promised by her in her Muchalikai. When the petitioner approached the defendant on 13.08.2022 and demanded specific performance, she had been motivated to demand additionally a sum of Rs.5,00,000/- for the execution of sale deed as per the suit contract for the sale. By then she had openly asked him to get back the advance of Rs.7,00,000/- if unwilling to pay Rs.5,00,000/- in addition. The said conduct of the defendant is not fair, just and proper. Under such circumstances he had been left with no other option except to move this court with this suit for specific performance. On 15.08.2022, the defendant openly told him that there are several persons willing to purchase the property for Rs.20,00,000/- and she would sell the suit property to such person if he is not ready to pay Rs.5,00,000/- in addition within 30.08.2022. He came to know from reliable sources, the respondent had been in a very hurry to dispose the suit property to stranger under an evil design to make unlawful gain and to defeat him under the suit contract for sale. Thus there is an imminent threat of sale of the suit property by the defendant to strangers and to defeat his contractual rights under the suit contract for sale. He had a prima facie case. Balance of convenience is also in his favour. In these circumstances if an order of interim injunction restraining the defendant and her agent from selling the suit property is not granted pending disposal of the suit the

defendant will execute sale deed and defeat the very purpose of the suit and also his right under the suit contract for sale and will put him to suffer irreparable loss and hardship. To avoid multiplicity of proceedings interim injunction has to be granted.

3. The contentions raised in the counter filed by the Respondent / Defendant is briefly as follows:

The petition filed by the petitioner is false, vexatious and not maintainable either in law or on facts and has to be dismissed in limine. All the allegations made in the petition are false except those that are expressly admitted herein and the petitioner is put to strict proof thereof. This respondent states that the allegations made in para no.2, 3 and 4 are false and misleading. This respondent has not made any agreement on 06.02.2022 and has not raised any pledge muchalikai on 01.05.2022 and has not received any amount regarding selling of property. The plaintiff has created forged document by putting the signature of this respondent and the said document is not valid and the respondent is having right to take criminal case against the petitioner. This respondent further states that he has no intention to sell his property to the plaintiff or anyone else. The fact is that the suit property is situated at Keeramangalam Bus stop and this respondent have a shop in that. The petitioner's brother one Selvarajadurai was a rental occupant of shop

No.24. The said Selvarajadurai had not paid the rent properly to this respondent and evading to vacate the shop. Hence this respondent had filed a suit in O.S.No.312/2018 on the file of District Munsiff, Alangudi for the relief of recovery of rent arrear and eviction of the said Selvarajadurai from the suit property and the case was decreed in favour of this respondent. Hence this respondent has filed the execution petition in E.P.No.6/2020 on 28.04.2022 and the same is allowed. In this situation, the petitioner / plaintiff has filed the false complaint in order to stop the eviction proceedings of his brother Selvarajadurai from shop No.24. It is false that this respondent is trying to sell the suit property to some other persons. Therefore it is prayed to dismiss the petition with costs.

4. Point for determination is:

Whether the petitioner / plaintiff is entitled for the relief as prayed for in the petition?

5. Point :-

The petitioner being the plaintiff in the suit for specific performance of the contract has filed the present petition for injunction in a suit for directing the defendant to specifically perform the contract dated 06.02.2022 on the premise that originally the suit property was agreed to be sold for a sum of Rs.15,00,000/- (Rupees Fifty Lakhs Only) on 06.02.2022 and Rs.7,00,000/- (Rupees Seven Lakhs Only) was paid as an advance. A Muchalika was entered into on 01.05.2022. This

is the suit for performance of contract. The respondent being the defendant in the suit have filed counter disputing the entire averments and contending the entire suit agreement is a concocted and cooked up document and he denies the entire execution.

6. He would further contend, the present suit and the order of injunction granted by this court is used as tool to stumble upon the execution proceedings in E.P.No.6 to 10 of 2020 on the premise that there was an injunction granted by this court. He would narrate that the execution proceedings are not concerned with the present suit but the execution proceedings are stalled only on the ground this court has granted injunction in respect of the suit property. Hence, the order has to be vacated as he is ready to give an undertaking that he will not sell the property pending disposal of the suit. Now the para no.7 of the counter statement specifically reads as follows :

“எதிர்மனுதாரர் / பிரதிவாதி மனு சொத்தினை பிறத்தியில் விற்க முற்படுவதாக மனுதாரர் / வாதி கூறியுள்ளது உண்மையல்ல. எதிர்மனுதாரர் / பிரதிவாதி மனுச்சொத்தினை அசல் வழக்கு முடியும் வரை எந்த வகையிலும் வில்லங்கத்திற்கு உட்படுத்தமாட்டார் என்று இந்த எதிருரை மூலம் உறுதியளிக்கிறார்.”

7. In view of the above specification by the learned counsel for the respondent that she will not alienate or encumber the property pending disposal of the suit. Whether the agreement is a forged or not need not be decided at this stage

and it can be decided at the stage of trial. Now whether the respondent has to be considered and having regard to the specific undertaking given by the respondent there is no order need to be passed injuncting the respondent from alienating the property. Hence by clarifying the issue that this suit or any order passed herein will not have any bearing over the result in E.P.No.6 to 10 of 2020 on the file of the District Munsif, Alangudi and the District Munsif, Alangudi is at liberty to proceed with the execution proceedings on its own merits in accordance with law. With the above stipulation the application can be disposed off by recording the undertaking.

8. **In fine,** the application stands disposed off by recording undertaking of the respondent that she will not alienate or encumber the suit property until disposal of the suit. No costs.

Dictated to the Steno-typist, transcribed, typed by her in computer, corrected and pronounced by me in open court on this the 29th day of August, 2022.

Sd/- A. Abdul Kadhar
Principal District Judge,
Pudukkottai.

Both side witness and exhibits:

-NIL-

**Sd/- A. Abdul Kadhar
Principal District Judge,
Pudukkottai.**