

(2008) 08 MAD CK 0007

In the Madras High Court

Case No : Original Application No. 548 of 2008 and Application No. 3837 and 3633 of 2008 in C.S. No. 488 of 2008

K. Rajasekaran

APPELLANT

Vs

K. Sakunthala and Others

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Citation : (2009) 1 CivCC 476 : (2009) 5 RCR(Civil) 340

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : V. Salvaraj for M/s. Devadasan and Mr. Sagar, for the Appellant; V. Subramanian for Respondent Nos. 1 to 4 and Mr. N.R. Chandran, for Respondent Nos. 5 to 10, for the Respondent

Judgement

M. Jeyapaul, J.—Original Application No. 548 of 2008 is filed seeking an order of interim injunction restraining the respondents from

creating any encumbrance over the Plaint A and B schedule properties pending disposal of the Suit.

2. Application No. 3633 of 2008 is filed by defendants 1 to 4 and Application No. 3837 Of 2008 is filed by defendants 5 to 10 seeking to vacate

the ex parte order of interim injunction granted to the applicant/plaintiff on 30.04.2008.

3. The applicant/plaintiff has contended that on 06.02.2008, an agreement of sale was entered between the applicant and the respondents at the

office of the sixth respondent in Chennai for a sale consideration of Rs. 87,04,000/-. The applicant also paid a sum of Rs. 20,00,000/- as advance

at the time of execution of the agreement. The respondent also agreed to execute a separate sale deed in respect of the property described in B

schedule which exclusively belongs to the fourth respondent. Two draft sale deeds were prepared. One for 2 acre and 14 cents described in A schedule to be executed by respondents 1 to 10 and another for 14 cents of land described in B schedule to be executed by respondents 4 to 6, for approval. Though the applicant was ready and willing to perform his part of the contract as agreed in the agreement, there was no positive response from the respondents. As the respondents were making attempt to create documents resiling from the agreement, the applicant requested the respondents to honour the commitment. Telegrams were sent followed by notice by the counsel to the respondents asking them to execute the sale deeds, but, the respondents did not turn up to the Registrar's Office for registration on 04.04.2008. Alleging that the respondents are attempting to create encumbrance to defeat the claim of the applicant, the applicant has sought for an order of injunction.

4. Separate Applications were filed by Respondents 1 to 4 and respondents 5 to 10 seeking to vacate the order of interim injunction. They have contended that though Caveat Petition No. 891 of 2008 was already filed before the Court, the applicants, who were aware of the pendency of the Caveat Petition filed by the respondents, suppressed the same and obtained an order of injunction against the respondents. The Suit itself suffers from factual infirmities. The applicants never contacted any of the respondents. He also did not hand over the copies of the draft sale deeds to the respondents on 31.03.2008 as claimed by the applicant. The applicant never contacted any of the respondents on 03.04.2008 asking the respondents to have the registration of the sale deeds on 04.04.2008. The applicants did not have the capacity to pay the balance of sale consideration of Rs. 67,04,000/-. With mala fide intention to prolong the transaction detrimental to the interest of the respondents and in blatant breach of the obligation cast upon him under the said agreement, the present Suit has been filed. On 04.04.2008, one of the representative of the applicant, who was mediating the transaction between them called the respondents over phone and informed them that the applicant had planned for registration of sale of the schedule mentioned property in the afternoon on the same day. But, the representative of the applicant came with a Pay Order for Rs. 42,80,000/- and informed that he was ready to pay the balance of sale consideration of Rs. 24,24,000/-. But, to the shock and

surprise of the respondents, the applicant did not turn up on 04.04.2008 to the Sub Registrar's Office. Two months time contemplated under the

agreement had expired as on 06.04.2008. The respondents have been automatically relieved of their obligations and the agreement dated

06.02.2008 stands cancelled. Therefore, the respondents have prayed for vacating the order of interim injunction.

5. Learned Counsel appearing for the applicant would contend that the voluminous documents produced on the side of the applicant would go to

show prima facie that the applicant was ever ready and willing to perform his part of the contract. Despite the fact that the applicant was ready

with the Pay Order and the cash to make the payment of the balance of sale consideration, the respondents did not turn up and therefore, there

was no execution of the sale deed prior to the date of expiry of the agreement entered into between the parties. The very fact that the applicant

could pay a sum of Rs. 20,00,000/- at the time of execution of the agreement and the Pay Order obtained for Rs. 42,80,000/- would go to show

that he had wherewithal to clinch the sale transaction. The caveat was also lodged by the respondents only after the applicant had filed the suit for

specific performance of the agreement of sale. It is his further submission that though the property is situated outside the jurisdiction of the Court,

as the material part of the cause of action had arisen within the jurisdiction of this Court and no relief for recovery of possession was sought in the

Suit for specific performance of the agreement of sale, the leave has been rightly granted by this Court. Therefore, he would submit that the order

of injunction granted by this Court will have to be made absolute.

6. Learned Counsel appearing for respondents 1 to 4 would submit that in a Suit for specific performance of agreement of sale, the Suit will have

to be laid only within the jurisdiction where the property relating to the specific performance is located. Therefore, this Court has no territorial

jurisdiction to deal with the Suit. It is his further contention that the very fact that the applicant could not clinch the sale transaction within the time

frame fixed in the agreement would go to establish that the applicant had no wherewithal to pay the balance of sale consideration. Therefore, he

would submit that the order of injunction already granted is liable to be vacated.

7. Learned Senior Counsel appearing for R5 to R10 would contend that the caveat

lodged by the respondents was suppressed by the applicant and the order of injunction was obtained behind the back of the respondents even without serving any notice of the Application. Nothing has been whispered in the Suit that the applicant was ready and willing to perform his part of the contract which is the main ingredient for laying a Suit seeking specific performance of the agreement of sale. He would also submit that the very fact that a Pay Order was obtained only for a sum of Rs. 42,80,000/- would go to show that the applicant was not prepared on the alleged date when he came to the Sub-Registrar's Office with a draft sale deed, to pay the entire balance of sale consideration. Therefore, the Application seeking order of injunction deserves to be dismissed.

8. Let me first take up the disputed question whether the order of ad interim injunction was obtained by the applicant/plaintiff behind the back of

the respondents wantonly suppressing the pendency of the caveat alleged by the respondents. It is relevant to refer to Section 148 A of the CPC

which reads as follows:

Right to lodge a caveat.- (1) Where an Application is expected to be made, or has been made, in a Suit or proceeding instituted, or about to be

instituted in a Court, any person claiming a right to appear before the Court on the hearing of such Application may lodge a caveat in respect

thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the

caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the Application has been, or is

expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any Application is filed in any Suit or proceeding, the Court shall serve a notice

of the Application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator, at the caveator's expense, with a copy

of the Application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the

Application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on

which it was lodged unless the Application referred to in sub-section (1) has been made before the expiry of the said period.

9. A person may apprehend that his adversary who has no case may come to the Court and obtain an order of interim injunction without any

foundation for his claim outwitting him. A person who expects that such an eventuality may occasion behind his back, approaches the Court

invoking the provisions u/s 148-A of the CPC and lodge a caveat putting the Court on notice that before ever any order is passed in an

Application that is going to be filed or was already filed in a Us which was already instituted or about to be instituted, he shall be heard. Such a

caveat will have to be entered in the relevant register maintained by the Registry. Once a caveat is lodged, a duty is caused upon the caveator to

serve a notice of the caveat on his adversary who is expected to file an Application or who has already filed an Application. This is a mandatory

provision which will have to be necessarily complied with by the caveator. Once it is established that a notice of the caveat was not served on the

adversary, the adversary can approach the Court to revoke the order passed behind his back. A caveator who had not complied with the

mandatory provision cannot legally seek to sustain the order of ad interim injunction granted in his favour.

10. Next comes the mandatory duty caused upon the Court. After lodging a caveat, if any Application is moved before the Court, the Court is

bound to serve a notice of the Application on the caveator. In other words, once the Court is apprised of the fact that a caveat has already been

lodged by a party, the Court cannot grant any relief to the applicant behind the back of the caveator. There is a further duty cast upon the applicant

who was served with a notice of caveat to supply the caveator a copy of the Application made by him along with the copies of other documents

filed in support of his Application.

11. Coming to the fact situation of this case, I find that the Suit was filed on 08.04.2008. The Suit was assigned with C.S.S.R. No. 12724 of

2008. In other words, the suit was not taken on file as on 08.04.2008. The registry, having found that there were some defects in the presentation

of the Suit, returned the Suit papers for compliance on 11.04.2008. Thereafter, the respondents filed a Caveat Petition No. 891 of 2008 on

15.04.2008. The present O.A. No. 548 of 2008 in C.S. No. 488 of 2008 was moved by the applicant only on 30.04.2008. The Suit was taken

on file by the registry on 29.04.2008 following the leave to sue granted by this Court on 24.04.2008.

12. On a perusal of the Judge's summons found appended with the affidavit in O.A. No. 548 of 2008, it is found that the counsel for the applicant

has made an endorsement as follows:

No caveat served on the petitioner. No caveat also entered in the caveat register.

Though the aforesaid endorsement does not bear the date, in all probability, the said endorsement should have been made by the Learned Counsel

appearing for the applicant on the day when the O.A was presented along with the Suit on 08.04.2008 and not on 30.04.2008 when the

application was moved before this Court seeking interim relief. A separate register called caveat register is maintained by the registry. If the

applicant makes an endorsement on the Judge's summons on the date when the Application is presented, I find that it may mislead the Court as to

what actually transpired as on the date of moving the Application for interim orders.

13. The purpose of insisting for such an endorsement by the applicant is to screen the fraud that is played upon the Court by moving an Application

surreptitiously suppressing the factum of pendency of the caveat. The purpose will not be served if such an endorsement is made by the applicant

on the Judge's summons on the date when the Application was presented long prior to moving the Application seeking interim order. Therefore, it

is made clear that the applicant, who moves for interim relief, shall verify the caveat register maintained by the registry on the date when he moves

the Application seeking such a relief as to whether a caveat has been lodged by the adversary and make relevant endorsement. He shall also state

as to whether notice of caveat was served on him. This will go a long way to address the grievance of the caveator who prefers to lodge a caveat

after the Suit was filed.

14. It has been held in Reserve Bank of India Employees Association and Another Vs. The Reserve Bank of India and Others, as follows:

There is no doubt that the requirements of sub-sections (1), (2) and (4) of Section 148A of the CPC are fully satisfied in this case by the caveator

as well as the plaintiffs. In fact in the case of sub-section (4) they were even over fulfilled by the applicants. But it is the Court that failed to act in

compliance with the statutory requirements of Section 148-A, sub-section (3). Under sub-section (3) of Section 148 A where a caveat had been

lodged, it becomes the duty of the Court to serve a notice of that Petition on the caveator. The precise question that is now raised is whether the

aforementioned failure of the Court to act in accordance with the requirements of subsection (3) of Section 148A is a failure relating to its

jurisdiction or merely its procedure.

If it is a jurisdictional fault, the order passed by the Court ignoring the requirements of sub-section (3) of Section 148A would be a void order and

would not be allowed to be operative for any purpose. On the other hand, if it is a procedural error, the order stands till it is set aside in an

appropriately constituted legal proceeding.

Having thus observed, the High Court of Andhra Pradesh in the aforesaid judgment has held that the order passed by the Court below despite the

fact that there was a caveat pending, is not an order without jurisdiction.

15. After all, the procedural mandates found u/s 148A of the CPC have not been properly adhered to by this Court on account of the fact that the

pendency of the caveat was not brought to its notice. Had the endorsement been made by the counsel for the applicant verifying the caveat register

on the date when he moved the said Application, such an error would not have cropped up. Only in such circumstances, the order came to be

passed without issuing notice on the Application moved by the applicant. However, the order was passed by this Court not on the mere ground

that no caveat was filed, but, on the strength of the Application moved by the applicant. Such an order cannot be termed as an order which is void.

But, when the fact situation which culminates in non-issuance of any notice as contemplated u/s 148A of the CPC is brought to the notice of the

Court, the Court has to necessarily vacate the order and hear the Application on merit and pass necessary orders.

16. The Kamataka High Court in G.C. Siddalingappa v. G.C. Veeranna, AIR 1981 Kar. 242, was pleased to observe that once a caveat is filed,

it is a condition precedent for passing an interim order to serve a notice of the Application on the caveator who is going to be affected by the

interim order. Unless that condition precedent is satisfied, it is impossible for the Court to pass the interim order affecting the caveator.

17. In the instant case, the lodgment of the caveat subsequent to the filing of the Application was not noticed by the applicant who made an

endorsement honestly at the first instance itself to the effect that no caveat was filed as per the caveat register maintained by the register and the

Court also was persuaded by such an endorsement made innocuously by the applicant. There is no dispute to the proposition that once the

lodgment of the caveat is brought to the notice of the Court, the Court is bound to serve a notice of the Application on the caveator.

18. The Learned Counsel appearing for respondents 1 to 4 referred to an authority in C. Seethaiah Vs. Government of Andhra Pradesh and

Others, . That was a case where the applicant, even after notice of the caveat filed by the caveator, did not supply copies of the Application and

documents filed along with the Application, chose to obtain an ex parte order of injunction against the caveator. It has been held that the order

obtained behind the back of the caveator without issuing notice to him is without any jurisdiction and is in violation of the basic principles of law.

Therefore, invoking the extraordinary jurisdiction of the High Court under Article 227 of the Constitution of India, ad interim injunction passed ex

parte by the Additional District Judge was quashed and set aside. In the instant case, the applicant has believed bona fide that there was no caveat

pending at the time of moving the Application as nothing was noted that the lodgment of the caveat at the time when he presented the Application

seeking interim relief. Further, it is not as if the applicant, having come to know that caveat was already lodged, obtained an ad interim injunction

behind the back of the caveator. At any rate, when the lodgment of the caveat before or after the filing of the Application is brought to the notice of

the Court, the Court has to set aside the order and consider afresh, the Application purely on merit. It is not the case where a fraud has been

played upon the Court by the applicant, suppressing completely the lodgment of the caveat. The fact remains that at the time when he presented

the Application, there was no caveat entered in the caveat register and the said fact was scrupulously noted down by the counsel on the Judge's

summons. Even then, the Court has to set aside the order and consider the merit of the case and pass afresh an order on the Application.

19. this Court in Akbar Ali v. Alia Pitchai, 2000 AIHC 115, has observed as follows:

As rightly contended by Learned Counsel for petitioner when caveat has been entered through counsel, who has also given his address of service,

it is duty bound on the part of vacation Court to issue notice to the counsel. Even if notice has been ordered to party, order should not have been

passed without hearing counsel who has already informed his address of service.

That was a case where no notice was given to the counsel despite the fact that his address was found in the caveat register, but, notice was

ordered only to the party. In such circumstances, this Court held that, in all fairness, no order should have been passed without hearing the counsel

who has already left his address to the registry.

20. The respondents also have not produced any document to show that they served notice of the caveat on the applicant. Therefore, the

respondent also have not discharged their obligation as contemplated u/s 148A of the Code of Civil Procedure. Though there is no mistake on the

part of the applicant in informing the Court about the lodgment of the caveat by the respondents, the Court has no other option except vacating the

order of ad interim injunction already granted as it is brought to the notice of this Court that caveat was lodged subsequent to the filing of the

Application by the applicant. But, the Court is bound to consider afresh the entire Application on merit and pass necessary orders. The lodgment

of the caveat does not deprive the applicant of his right to canvass his prayer for interim relief on the strength of the merit of the case. Having

vacated the order of ad interim injunction granted behind the back of the caveator, the Application for interim injunction is taken up for disposal

afresh on its merit in the presence of both sides.

21. Coming to the plea of the respondents that this Court has no territorial jurisdiction to determine the case filed by the applicant for specific

performance of the agreement of sale, it is held emphatically that the present suit which has been filed not for recovery of possession but for

specific performance of the agreement of sale simpliciter, cannot be termed as a suit for immovable property.

22. The Learned Counsel appearing for respondents 1 to 4 submitted an authority reported in U.P. State Road Transport Corporation Vs. State of U.P. and Another, Apex Court Judgments 610 (S.C.) : 2005 (3) Civil Court Cases 711 (S.C.) : AIR 2005 SC 446. Firstly, the Appeal in the said case has been filed as against the order passed by the learned Additional Judge, Delhi. Section 120 of the CPC restricts the Application of Sections 16, 17 and 20 of the CPC to the original civil jurisdiction of the High Court. As per Clause 12 of Madras High Court Letters Patent, a Suit for immovable property cannot be laid before the High Court of Judicature at Madras if at least one of the properties is not situated within the territorial jurisdiction of this Court. Further, it is found that in the aforesaid case, a relief of recovery of possession was also sought for alongwith the relief of specific performance of agreement of sale. In the instant case, as already pointed out by this Court, this is a case for specific performance of agreement of sale simpliciter. Therefore, the ratio laid down in the aforesaid case will not apply to the fact situation of this case. Therefore, the plea of respondents 1 to 4 that this Court has no territorial jurisdiction to deal with the present lis stands rejected.

23. On a careful perusal of the Application, it is found that the applicant has specifically alleged at para 14 of the affidavit that he was ready and willing to perform his part of the contract as agreed in the agreement. The Court is not concerned with the pleadings made in the Suit with respect to the readiness and willingness of the plaintiff to perform his part of the contract as the Court is grappled only with the merits of the Application and the counter filed before this Court.

24. As rightly pointed out by the Learned Counsel appearing for the applicant, the very fact that the applicant had paid a sum of Rs. 20,00,000/- at the time of entering into an agreement with the respondents and had taken a Pay Order for a sum of Rs. 42,80,000/- even before expiry of the time frame fixed under the agreement would show prima-facie that the applicant had the capacity to pay the balance of the sale consideration. At this stage, the version of the applicant that he came with the balance of sale consideration with cash cannot be ignored in the background of the facts and circumstances of the case. Two months has been stipulated in the agreement. Even before the expiry of the agreement, the applicant had

shown that he, having prepared a draft sale deed, was ready to perform his part of the contract. The Court also had to take note of the Pay Order

obtained by him for a sum of Rs. 42,80,000/- and kept ready for payment to the respondents. Having been frustrated with the attitude of the

respondents, he had sent a telegram and thereafter Advocate notice highlighting the indifference shown by the respondents in performing their part of the contract.

25. It is true that the respondents would deny that the applicant was ready with the entire balance of sale consideration when they came down to

the Registrar's Office. Such a dispute will have to be gone into after both the parties have led oral and other documentary evidence during the trial

of the lis. The applicant has shown prima facie that he was ready and willing to perform his part of the contract even before expiry of the agreement

of sale. The Pay Order for Rs. 42,80,000/- obtained by the applicant, the telegram and notice issued by him speak volume of the readiness on the

part of the applicant. Prima facie case has been established before this Court by the applicant. If the respondents are not restrained by way of an

order of injunction from encumbering the property, the valuable right of the applicants will be thwarted. Much hardship also will be caused to the

applicants apart from multiplicity of proceedings.

26. In view of the above, an order of interim injunction is granted afresh till the disposal of the Suit. The Application in O.A. No. 548 of 2008

stands allowed. As the Court has granted interim injunction till the disposal of the Suit in O.A. No. 548 of 2008, these two Applications in A. Nos.

3633 and 3837 of 2008 stand closed.