

(2009) 02 MAD CK 0010

In the Madras High Court

Case No : O.A. No's. 936 and 937 of 2008 in C.S. No. 811 of 2008

R. Palanisubramanian

APPELLANT

Vs

Trans Medica (India) Ltd. and Another

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Registration Act, 1908 — Section 17(1A)
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 2009 Mad 110 : (2010) 8 RCR(Civil) 2625

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : P. Shivakumar, for the Appellant; C. Uma Shankar, for the Respondent

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—These applications are filed seeking interim injunction restraining the respondents from interfering with the peaceful

possession and enjoyment of the suit property by the applicant/tenant of the applicant and also from alienating the suit property to third parties.

2. The applicant would contend that he had entered into an agreement of sale dated 29.9.2005 with the first respondent who was the owner of the

flat bearing door No. 20, Vasan Street, T. Nagar, Chennai. The sale consideration was fixed at Rs. 12,00,000/-. A sum of Rs. 10,00,000/- was

paid as sale advance by the applicant to the first respondent so as to enable the first respondent to obtain the original title deeds of the suit property

from Indian Overseas Bank by clearing the equitable mortgage by them. The first respondent also put the applicant in possession of the property.

The agreement also permits the applicant either to use the property for his own purpose or to lease out the same to any third party. In July 2007,

the applicant leased out the suit property to one Dr. V. Ramakrishnan. He has been in possession and enjoyment of the same as a tenant. There

was an attempt on 7.5.2008 to dispossess the tenant from the suit property. The applicant made enquiries and came to know that the first

respondent had sold the suit property to the second respondent on 11.4.2008, completely suppressing the subsistence of the sale agreement with

the applicant. The applicant has already paid 85% of the sale consideration and he has always been ready and willing to pay the balance sale

consideration. After the sale of the suit property by the first respondent to the second respondent, the respondents are making attempts to

dispossess the tenant inducted by the applicant in the suit property. They are also planning to alienate the suit property in favour of third party with

a view to create further third party interest in the suit property. Hence, the reliefs as sought for.

3. In the common counter filed by the first respondent on behalf of both the respondents, it is contended that the first respondent, who is a Public

Limited Company was the owner of the suit property. The first respondent was in absolute possession and enjoyment of the property till

11.4.2008. When the same was sold to the second respondent, the first respondent Company delivered vacant possession of the suit property to

the second respondent on the date of sale. No agreement for sale was entered into between the applicant and the first respondent Company on

29.9.2005. The advance sale consideration of Rs. 10,00,000/- was not received by the first respondent from the applicant. The question of

dispossessing the alleged tenant through rowdy elements on 7.5.2008 did not arise as the possession of the property was given by the first

respondent to the second respondent on 11.4.2008 itself. The applicant is making attempts to obtain an order from this Court by creating

fabricated documents. The suit in O.S. No. 3332 of 2008 on the file of the XI Assistant Judge, City Civil Court, Chennai was filed by Dr. V.

Ramakrishnan claiming to be the tenant of the applicant. I A. No. 8107 of 2008 seeking an interim injunction was dismissed on 16.6.2008 after

hearing both the parties. Therefore, the respondents pray that the present applications may be dismissed.

4. Learned Counsel appearing for the applicant would vehemently submit that the first respondent, who received a hefty advance of sale

consideration and delivered vacant possession to the applicant has now backed out and executed sale deed in favour of the second respondent.

As the possession was already delivered to the applicant by the first respondent and the applicant has produced documents to show that he is in

possession of the suit property through his tenant, the respondent will have to be restrained from interfering with the peaceful possession and

enjoyment of the suit property and they shall also be restrained from alienating the suit property to any third party. Referring to various documents

produced on the side of the applicant, the learned Counsel appearing for the applicant would further submit that the execution of the agreement for

sale, delivery of possession to the applicant by the first respondent and the possession of the suit property in the hands of the tenant of the

applicant stood established before this Court. Therefore, he would submit that the applicants are entitled to the relief sought for.

5. Learned Counsel appearing for the respondents would contend that the tenant set up by the applicant failed to convince the City Civil Court in

an application moved by him seeking interim order of injunction restraining the respondents from interfering with his possession. Of course, the

order passed by the learned XI Assistant Judge, City Civil Court, Chennai is under challenge before the appellate forum. The agreement for sale

has been fabricated. Further, the agreement for sale which contemplates delivery of possession shall be registered u/s 17(1-A) of the Registration

Act. The unregistered agreement which contemplates delivery of possession cannot be looked into by this Court. A Public Limited Company is not

supposed to receive cash from a third party. Therefore, he would submit that the applications deserve dismissal.

6. The applicant has produced the agreement for sale dated 29.9.2005 entered into between the applicant and the first respondent. Of course, the

execution of the said agreement is under serious challenge by the first respondent. On a perusal of the aforesaid document, it is found that there is a

specific Clause which refers to the equitable mortgage already created by the first respondent company. It also speaks about the handing over of

certified copies of the title deeds along with Memorandum of Articles of Association and other connected documents of the first respondent.

Creation of equitable mortgage of the suit property by the first respondent Company would be in its exclusive knowledge. It is found that the

agreement for sale refers specifically the equitable mortgage created by the first respondent on the subject property.

7. The applicant cannot have possession of the certified copies of the title deeds relating to the suit property and the Memorandum and Articles of

Association of the first respondent unless those documents were handed over by the first respondent. Those documents specifically referred to in

the agreement for sale have been produced for perusal before this Court by the applicant. No explanation has been given by the first respondent as

to how those documents landed in the custody of the applicant.

8. Of course, there is a Clause found in the agreement for sale that the possession of the subject property was delivered to the applicant and the

same can be used by the applicant or the same can be leased out to any third party.

9. Section 53A of the Transfer of Property Act, 1882 would read that where a person agrees to transfer for consideration any immovable

property in writing signed by him, the owner of the property or any person claiming under him is debarred from claiming against the agreement

holder any right in respect of the property, in case the latter, in part performance of the contract, has taken possession of the property. Of course,

the said provision shall not affect the right of a transferee for consideration who has no notice of the contract or of the part performance thereof. As

per Section 17(1-A) of the Registration Act, an agreement for sale relating to any immovable property, for reaping the benefits of Section 53A of

the Transfer of Property Act, 1882, shall be registered. In other words, an intending purchaser, who enters into an agreement for sale with the

owner of the property and got delivery of possession of the property, cannot claim the benefits u/s 53A of the Transfer of Property Act unless the

deed of agreement for sale which contemplates such delivery of possession is registered.

10. The applicant has not even vaguely referred to the statutory right conferred on the prospective purchaser who has been put in possession of the

property by virtue of an agreement for sale u/s 53A of the Transfer of Property Act, 1882. He simply says that he has been put in possession of

the property by virtue of agreement for sale and the said possession, now being enjoyed through his tenant, has to be protected. It is not as if all

the agreements for sale referring to the instance of delivery of possession shall be compulsorily registered u/s 17(1-A) of the Registration Act. Only

when an agreement for sale as such speaks about delivery of possession is filed to claim the benefit of the concept of ""part performance"" as

contemplated u/s 53A of the Transfer of Property Act, the court will have to find whether the document was registered or not. If such a document

was not registered, then, the benefit of Section 53A of the Transfer of Property Act cannot be claimed by the prospective purchaser of the

property.

11. In the instant case, the applicant has not set up his claim on the ground of part performance as contemplated u/s 53A of the Transfer of

Property Act. Therefore, there is no legal embargo to rely upon the unregistered agreement for sale which specifically speaks about the delivery of

possession of the property to the prospective purchaser.

12. Coming to the forgery alleged against the applicant, the court finds that there is a similarity in the signature found in the agreement for sale and

the signature found in the vakalat and counter-affidavit filed by the first respondent. Of course, there is some difference in the later part of the

strokes of the signature found in the disputed documents and the admitted signature found in the vakalat and counter-affidavit. Here is a case

where the first respondent comes forward with a case that he has not put his signature in the disputed document. The parties are at loggerheads for

sometime even prior to the suit laid by the applicant. Therefore, there is every possibility for the first respondent to put his signature in the vakalat

and counter-affidavit in a slightly different fashion. The admitted signature of the first respondent found in any other document which came into

existence during the regular course of transaction prior to the execution of the disputed agreement for sale will have to be considered for comparing

the disputed signature found in the agreement for sale entered into between the applicant and the first respondent. No such document was

produced by the first respondent to compare his admitted signature with the disputed signature found in the agreement for sale. On mere oral

assertion of the first respondent, the court cannot jump to a conclusion that the signature found in the disputed document is a forged version of the

signature of the first respondent. Therefore, at the stage of disposing of these

applications, the court is not inclined to accept the plea of the first respondent that the agreement for sale was forged by the applicant.

13. Of course, a Public Limited Company is not supposed to receive a lumpsum in cash from a third party. But, that does not imply that there was no payment made by the applicant to the first respondent at the time of execution of agreement for sale. For very many reasons, a person who represents a Public Limited Company may receive consideration by cash from an innocent intending purchaser. Just because money dealings in lumpsum cash is not encouraged in the transactions clinched by the Public Limited Company, the plea of the applicant that there was money transaction by cash cannot be completely thrown away.

14. It is true that the tenant of the applicant could not convince the learned XI Assistant Judge, City Civil Court, Chennai while seeking an order of interim injunction as against the respondents herein, but, it is to be noted that such an order passed by the XI Assistant Judge, City Civil Court, Madras is now under challenge before the appellate forum. Further, filing of a suit by a tenant to protect his possession does not debar the agreement holder to file a separate suit to protect his interest in the suit property.

15. Coming to the documents produced on the side of the applicant, it is found that the applicant has submitted for perusal the certified copy of the sale deed in favour of the first respondent, the Memorandum of Articles of Association of the first respondent, certificate of change of name of the first respondent-Company and the list of Directors of the first respondent to establish prima facie that those documents were parted with by the first respondent at the time when the agreement for sale was clinched. As already pointed out by this Court, these documents would not have landed in the custody of the applicant unless there was really some deal between the applicant and the first respondent. Further, there is a specific reference as to the handing over of those documents by the first respondent to the applicant in the agreement for sale.

16. The applicant also has produced a deed of lease executed by the applicant in favour of Dr. V. Ramakrishnan. Normally, an agreement holder, though put in possession of the property, would not venture to lease out the premises till he completes the sale transaction. But, in the instant case, there is a specific Clause found in the agreement for sale that the applicant is at

liberty to lease out the property to any third party. In the background of the Clause found in the agreement for sale, the lease transaction between the applicant and his tenant will have to be decided by the court.

17. The applicant also has produced rental receipts to show prima facie the payment of rents by the tenant to him. It is also found that the applicant could produce electricity card and the electricity bill paid by him. Telephone bills also have been paid by the tenant in possession of the property.

Immediately after the sale by the first respondent to the second respondent, the applicant has complained to the Inspector of Police, Pondy Bazaar

Police Station and also the Deputy Commissioner of Police alleging an attempt of forcible dispossession at the hands of the respondent.

18. The aforesaid documents would prima facie establish that the applicant, who entered into an agreement for sale with the first respondent, paid

85% of the sale consideration and was also put in possession of the suit property. It has also been established prima facie that the applicant is in

possession of the suit property through his tenant Dr. V. Ramakrishnan. No document was filed to reject the voluminous evidence produced on the

side of the applicant to establish delivery of possession and also continuous possession of the property from the date of agreement for sale entered

into between the applicant and the first respondent.

19. Triable issues as to whether there was an agreement for sale entered into between the applicant and the first respondent and also whether there

was delivery of possession on the date of agreement of sale have been made out by the applicant. If the respondents are not restrained from

interfering with the peaceful possession and enjoyment of the property by the applicant through his tenant, the applicant and his tenant would face

much hardship. The balance of convenience is, therefore, only in favour of the applicant. Further, any alienation that may be made by the second

respondent would invite multiplicity of proceedings and the right claimed by the applicant under the agreement for sale and delivery of possession

would be the casualty. Therefore, the respondents and their agents are restrained from interfering with the peaceful possession and enjoyment of

the property by the applicant through his tenant Dr. V. Ramakrishnan and they are also restrained from alienating or encumbering the suit schedule

property in favour of any third party.

20. In the result, both the applications stand allowed. There is no order as to costs.