

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA  
AND  
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

O.S.A. NOS. 127 & 133 OF 2006

N.Thangamani .. Appellant in both appeals

- Vs -

S.Duraivelu .. Respondent in both appeals

O.S.A. Nos.127 of 2006 filed against the order dated 7<sup>th</sup> March, 2006, passed by learned single Judge in Original Application No.5256 of 2005 in C.S. No.797 of 2005 as stated therein.

O.S.A. Nos.133 of 2006 filed against the order dated 7<sup>th</sup> March, 2006, passed by learned single Judge in Original Application No.878 of 2005 in C.S. No.797 of 2005 as stated therein.

For Appellant : Mr.R.Thiagarajan

For Respondent : Mr. T.V.Ramanujun, SC, for  
Mr. T.V.Krishnamachari

COMMON JUDGMENT

S.J.MUKHOPADHAYA, J.

The appellant/plaintiff filed suit for specific performance in C.S. No.797/05. Pending the suit, he filed O.A. Nos. 5256 and 878/05 seeking an interim injunction restraining the respondent/defendant from interfering or disturbing with the peaceful possession and enjoyment of the suit schedule property described in the schedule by the plaintiff in any manner by trespassing, alienating, encumbering or otherwise dealing with it or any part thereof pending disposal of the suit. By impugned order dated 7<sup>th</sup> March, 2006, learned single Judge passed the following interim order :-

i) The plaintiff has been allowed to continue in the shop, in which he is a tenant, but he has been directed to pay the rent of the shop till the disposal of the suit;

ii) Insofar as the interim injunction is concerned,

the Court granted interim injunction restraining the defendant from alienating the property; and

iii) The defendant has also been restrained from interfering with the possession of plaintiff in respect of shop in which plaintiff is the tenant.

So far as the other shops are concerned, the defendant complained that the plaintiff has locked them after passing of the interim order. In this background, the Court directed the plaintiff to remove the lock and to hand over possession of the other shops to the defendant immediately.

2. According to plaintiff, an agreement was entered into between the plaintiff and defendant on 10<sup>th</sup> Oct., 2003 in respect of the building consisting of four shops. Consideration amount of Rs.22 Lakhs was fixed. On the date of agreement, the plaintiff was a tenant in respect of one shop and a sum of Rs.10 lakhs was paid. Subsequently, another agreement was entered into between the parties on 10<sup>th</sup> March, 2005 in respect of the same property and for the same consideration pursuant to which possession of another shop was also handed over to the plaintiff and, thus, he remained in possession of two shops. Further case of plaintiff was that in order to purchase the defendant's property, he had to sell his property apart from taking loan from provident fund account for making advance payment. In spite of this, according to the plaintiff, he was willing to pay the balance consideration in order to show his bona fide and he deposited a sum of Rs.10 Lakhs as directed by the Court while interim injunction was granted.

It was alleged that during the pendency of the suit, attempts were made by defendant to interfere with the possession of the plaintiff and, thus, he apprehended that the defendant is likely to alienate the property. If the property is allowed to be alienated, even after decree for specific performance is passed, he will not get the fruit of it. This will lead to multiplicity of proceeding and so he sought for interim injunction.

3. The case of the defendant before the trial court as also before this Court is that the agreement dated 10<sup>th</sup> March, 2005, relied on by plaintiff was obtained by coercion and undue influence. The question relating to validity of agreement, which would lead for granting relief for specific performance, is required to be decided at the time of trial and not at the initial stage.

Learned counsel for the respondent/defendant submitted that the building consisting of four shops and that plaintiff is a tenant in one of the shops. The plaintiff, in fact, locked the other shops after interim injunction was granted by this court. It was denied that possession was handed over to plaintiff

pursuant to agreement dated 10<sup>th</sup> March, 2005, which was alleged to have been obtained by coercion and undue influence.

4. Learned counsel appearing on behalf of the appellant/plaintiff referred to clause (7) of the agreement dated 10<sup>th</sup> March, 2005 to suggest that vendor had permitted the purchaser (plaintiff) to have physical possession of the remaining two shops let out on rent. Reliance was also placed on last portion of last paragraph of the advocate's notice dated 13<sup>th</sup> Aug., 2005, issued on behalf of the defendant, whereby the plaintiff was informed that the defendant is the sole owner of the property and cautioned the plaintiff to vacate the premises immediately, particularly 100 sq. ft. and 200 sq. ft., which was occupied by him as per sale agreement dated 10<sup>th</sup> March, 2005. It was submitted that the aforesaid two documents clearly suggests that the defendant had handed over the possession of two shops in favour of the plaintiff.

5. Learned counsel appearing on behalf of the defendant referred to Section 53 of the Transfer of Property Act to suggest that the agreement is void having obtained by coercion and undue influence. Reliance was also placed on Section 17-A of the Registration Act, 1908 to suggest that no such sale deed could be registered. However, as the aforesaid issues are required to be determined by the trial court, we are not inclined to give any finding either in regard to the agreement or on the question whether it can be registered.

6. So far as the one shop is concerned in which the plaintiff is the tenant of the defendant, there being no dispute, learned single Judge has passed interim injunction and defendant has also been directed not to dispossess the plaintiff. In respect of the suit property is concerned, the defendant has also been restrained from making alienation of the entire property, which is the subject matter of specific performance suit. Further direction has been issued on defendant restraining him from interfering with the plaintiff's possession in respect of one of the shop of which he is the tenant.

So far as the other shop is concerned of which the plaintiff claims to be in possession pursuant to the agreement dated 10<sup>th</sup> march, 2005, and the defendant disputed the same except the fact that it has been locked by the plaintiff after the original interim injunction order was passed. We are of the view that the learned single Judge could not have decided such question of fact at that stage and rightly passed the impugned order. So far as the opening of the lock of the other shops is concerned, as the plaintiff is not tenant of the said property and has put the lock after the interim order of injunction passed by this Court, there appears to be no error if learned single Judge directed to open the same.

7. In the circumstances, no interference is called for with the impugned order dated 7<sup>th</sup> March, 2006, passed by learned single Judge in O.A. Nos.5256 and 878 of 2005 in C.S. No.797 of 2005. There being no merit, both the appeals are dismissed. But there shall be no order as to costs.

GLN

Sd/  
Asst.Registrar

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Sub Asst.Registrar

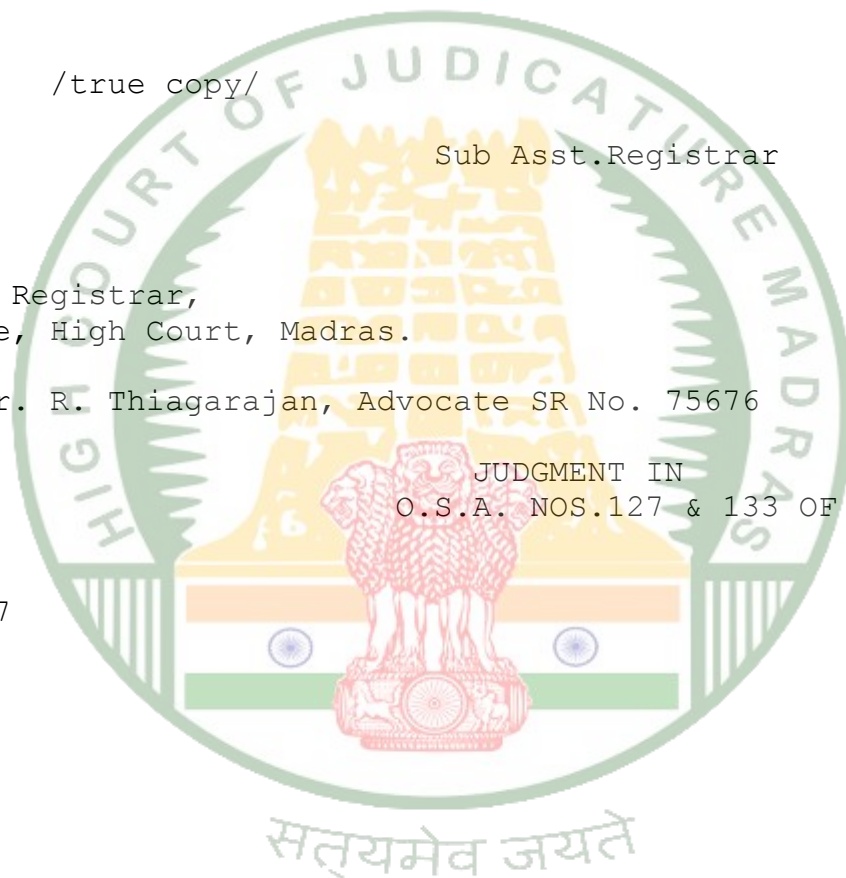
To

The Sub Asst Registrar,  
Original Side, High Court, Madras.

+ 2 ccs to Mr. R. Thiagarajan, Advocate SR No. 75676

JUDGMENT IN  
O.S.A. NOS.127 & 133 OF 2006

MDR (CO)  
SR/27.12.2007



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