IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for an Injunction under and in terms of Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal
Case No: CA/INJ/06/2024

Vellupillai Subramaniam Muruhathas,
Malaivempadi Vethi,
Sakthi Vasam,
Suthumalai East,
Manipay
(*also of 8, Shakespeare Crescent, London E12 6LN, United Kingdom)*

Petitioner

Vs.

1. Iyathurai Sivapathasuntharam,

2. Sivapathasundaram Mayurathan

Both of

Muthukrishnar Lane,
Chunnakam Centre,
Chunnakam

Respondents

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Theekshana Pathirana

Instructed by Dilhara Arachchige

for the Petitioner

Supported on : 20/06/2024

Decided on : 27/06/2024

ORDER

R. Gurusinghe

The petitioner purchased the property (hereinafter referred to as the property) described in the schedule to the petition by the Deed of Transfer No. 2951 dated 23-04-2016, attested by A.M. Thiruvathavooran, Notary Public. A copy of that Deed of Transfer and the English translation are marked as P2 and X2. As the petitioner usually resides in the U.K., the petitioner appointed the 1st respondent as his Power-of-Attorney holder to manage the property by Power-of-Attorney dated 04-05-2006, marked P3.

After purchasing the property, the petitioner took steps to build a wedding reception hall on the property, and the building was completed in December 2017. Some photographs of the opening ceremony held in January 2018 were produced marked P5 (a) to (e). After that the 1st respondent commenced business operations of the wedding reception hall by accepting ceremony bookings on behalf of the petitioner. In addition, the 1st respondent took steps to rent out shops for food and clothing outlets, entering into rent agreements on behalf of the petitioner with the respective tenants.

The 1st respondent failed to remit the monthly earnings from the business operations to the petitioner, and when inquired about this, the 1st respondent cited several reasons, such as fewer bookings, no considerable profit, etc. The petitioner came back to Sri Lanka on 04-04-2024 with a view to finalising the issues revolving around the Power-of-Attorney given to the 1st respondent to manage the property. After that, the petitioner came to know that the 1st respondent fraudulently and without the knowledge of the petitioner and without consideration, transferred the property to his son, the 2nd respondent, by Deed of Transfer No. 3434 dated 25-10-2017, attested by A.M. Thiruvathavooran, Notary Public. A copy of that Deed and English translation marked P6 and X6(a). The petitioner averred that he never signed Deed No. 3434 or received any consideration.

The petitioner further stated that he learned that the 2nd respondent had executed a Power-of-Attorney, appointing the 1st respondent to act on behalf of the 2nd respondent, allegedly based on the said fraudulent deed marked

P6. The petitioner informed the 1st respondent by letter dated 06-05-2022 that the P3 Power-of-Attorney would be cancelled, and by Deed of Cancellation bearing No. 643 dated 07-05-2024, the Power-of-Attorney was cancelled.

The Valikamam South Pradeshiya Sabha of Chunnakam issued the Certificate of Ownership, Non-vesting and a Street Line dated 22-05-2024. That letter is marked P10. The Valikamam South Pradeshiya Sabha – Chunnakam by P10 certified that the petitioner is the owner of the property bearing assessment nos. 211, 213, 207, 205, Muganthiram Narayanar Veethy, Ward – 04 of Chunnakam Sub-Office of Valikamam South Pradeshiya Sabha as per Assessment Registers maintained by that office. This indicates that though the 1st respondent clandestinely executed a transfer deed in favour of his son, they have not informed the Pradeshiya Sabha that they are the owners of the property referred to in the petition, up to the date 22-05-2024.

The petitioner wrote a letter to the Pradeshiya Sabha informing them to cancel any business licenses issued to the 1st respondent for the property and M.M. Reception Hall. The Pradeshiya Sabha then issued the business licenses in the name of the petitioner by a letter dated 30-05-2024, for M.M. Reception Hall. The Pradeshiya Sabha, by letter dated 27-05-2024, informed the petitioner that the tax certificate for the year 2024 has not yet been issued to the 1st respondent.

The wife of the petitioner has taken steps to register a Caveat for her rights in the property according to the Thesawalamai Law in the Land Registry of Jaffna. A copy of that document is marked P16. A letter issued to the petitioner by the Central Environmental Authority dated 29-05-2024 is produced marked X18. Photographs captured from CCTV footage depicting wedding functions on 07-06-2024 and 09-06-2024 were produced marked P19 (a) to (c) and P20 (a) to (c).

WhatsApp conversations were sent by A.M. Thiruvathavooran, Notary Public to the petitioner, referring to threats to the life of the petitioner by the 1st respondent, are produced marked P24. He indirectly warned the petitioner not to visit Jaffna or fight for his property rights there.

We have considered the petition, affidavit, documents produced by the petitioner, and submissions made by Counsel for the petitioner. *Prima facie*, the petitioner is the rightful owner and possessor of the property described in the schedule to the petition. We are satisfied that the grounds pleaded by

the petitioner are sufficient to invoke the jurisdiction under Article 143 of the Constitution.

In the above circumstances, we grant and issue an injunction in terms of Article 143 of the Constitution, valid for three months from today or until the petitioner is able to bring an action in the District Court of Mallakam, whichever is earlier, as prayed for in prayer (a) of the amended petition restraining the 1st and 2nd respondents and/or their servants and/or their agents and/or their dependants and all persons claiming rights under them from entering the property described in the schedule to the petition and/or committing other acts disturbing for disputing the petitioner's ownership of the property and exclusive possession and enjoyment thereof and/or carrying out any other act interrupting the petitioner's ownership of the property and the exclusive possession and enjoyment whereof.

We further issue an injunction against the 1st and 2nd respondents as prayed for in prayer (b) of the amended petition.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.