

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2015

CORAM

THE HONOURABLE Mr. JUSTICE N. KIRUBAKARAN

C.M.A.No.989 of 2015

and

M.P.No.1 of 2015

1.K.Ramar
2.Murugavalli

... Appellants/Plaintiffs

.vs.

1.Panchali Ammal
2.Errammal
3.Kuppammal
4.Valarmathi

... Respondents/Defendants 4 & 8

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1(R) of C.P.C., against the order and decree dated 11.03.2015 made in I.A.No.651 of 2014 in O.S.No.155 of 2014 on the file of the Court of the Principal District Judge, Cuddalore, Cuddalore District.

For Appellants : Mr.S.V.Jayaraman
Senior Counsel for
Mr.T.Dhanasekaran

For Respondent : Mr.P.Valliappan

JUDGMENT

This appeal has been preferred against making order of injunction in I.A.No.651 of 2014 absolute restraining the appellants herein in any manner putting up construction in the suit property, pending disposal of the partition suit in O.S.No.155 of 2014 filed by the respondents against the appellants herein and other defendants.

2.Heard Mr.S.V.Jayaraman, the learned senior counsel appearing for the appellants and Mr.P.Valliappan, the learned counsel appearing for the respondents.

3.It is admitted fact that the property, which is situated in Anguchettipalayam village comprised in Ayan punja Survey No.94/3 measuring to an extent of 0.46 cents out of 0.54 cents belongs to Kuppusamy and after his death, his children. It is contended that the appellants purchased 13 cents from one Mrs.Saradhambal the second defendant in the suit in O.S.No.155 of 2014. After purchasing of the property, the appellants started putting up construction to run a school. However, the same is objected by the respondents herein stating that an order of interim injunction is there in O.S.No.38 of 2010 filed by one Sarathambal and others namely defendants 2 to 6 in O.S.No.155 of 2014. The said suit is for partition. In the meanwhile, the respondents have also filed a partition suit in O.S.No.155 of 2014 showing that Jagathambal and 8 others as party and the same is pending. In the said suit only, the respondents filed injunction application restraining the appellants from raising construction in the suit property and the said injunction application was allowed. Against the said order only, the present appeal has been filed.

4.It is seen from the records that O.S.No.38 of 2010 was already filed by Sarathambal and others. In the said suit, I.A.No.219 of 2010 was filed for an order of interim injunction restraining the Jagathambal and the appellants herein from executing any sale deed in terms of the alleged agreement dated 27.01.2010 allegedly executed between the appellants and Jagathambal. Injunction was granted on 17.02.2010. When the order of interim injunction in I.A.No.219 of 2010 in O.S.No.38 of 2010 is in force, the appellants, after knowing about the dispute deliberately purchased the property. Therefore, the possession of the property itself is illegal and they can not be permitted to put up construction. Therefore, purchase of the property by the appellants is also in violation of injunction order passed. Therefore, the plea for equity relief cannot be granted, especially to the persons, who violated the court order and getting the sale deed in their favour. No one can take advantage of his own mistake or wrong. Moreover, the share of appellants vendor has to be determined and allotted in the partition suit. Without identifying the portion of the appellants' vendor, the appellants cannot choose a portion on their own and raise construction.

5.Merely because the appellants are running a school in a different property and Education Authorities are insisting the appellants to shift the school to a building with concrete terrace, that cannot be a ground for the appellants to put up construction and seek for vacation of interim injunction granted in favour of the respondents.

6.The trial Court considered the entire issue thoroughly and found that the property belongs to Kuppusamy gounder, when the dispute is pending before the Court between the family members, the appellants purchased the property. Moreover, the trial Court has noted the construction is being made in the pathway, which is also reflected in the Advocate Commissioner's Report.

7.Whether there was an oral partition or not, has to be decided only at the time of trial. It may not be out of place that the plea of oral partition is not reflected in the sale deed executed by Jagathambal in favour of the appellants herein and in any event it is matter for trial. Therefore, the injunction granted in favour of the respondents is based on legal parameters and factual position. As already observed, the appellants in violation of Court order purchased the property and they cannot be granted permission to put up construction by vacating the order of injunction granted by the trial Court in favour of the respondents. Therefore, the appeal fails and the same is dismissed. Consequently, the connected Miscellaneous Petitions is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Court,
Cuddalore.

+1cc to Mr.P.Valliappan, Advocate, S.R.No.27858

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.27981

C.M.A.No.989 of 2015
and

M.P.No.1 of 2015

TEJ(CO)
CA(26/06/2015)

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