



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A. (MD) No.1283 of 2015

Gopi @ Gopi (died)

1.Gangadharan

Sankiliammal (died)

2.Jeya

3.Susila

4.Lalitha

Padma (died)

5.Iyyammal

6.Subbiah

7.Minor Ashok

8.Minor Malavika

(Appellants 7 and 8 are represented
through his father Subbiah/A6)

.. Appellants

Vs.

T.Rajaram

.. Respondent

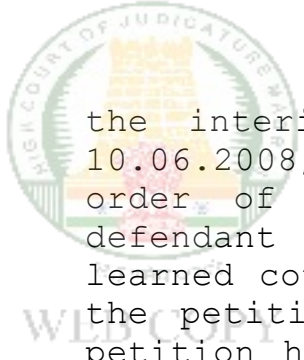
Prayer:- Appeal filed under 43 Rule 1(C) of Code of Civil Procedure, to set aside the petition and order passed by the I-Additional District Judge, Madurai in I.A.No.185 of 2008 in O.S.No.59 of 2008 dated 12.11.2008.

For Appellants : Mr.S.Sukumar
For Respondent : Mr.R.Rajamohan

JUDGMENT

The appellants herein are the defendants in the suit. The respondent is the plaintiff. It appears that the respondent has filed a suit in O.S.No.59 of 2008 as against the appellants seeking the relief of specific performance of contract of sale. Along with the suit he had also filed an application in I.A.No.185 of 2008 seeking the relief of ad-interim injunction. That application as well as the suit were filed on 29.04.2008 and on the same date an order of ad-interim injunction was granted in I.A.No.185 of 2008 till 10.06.2008.

2. As it appear from the order dated 29.04.2008, the respondent/plaintiff was directed to deposit the balance sale consideration in the trial court within one week, failing which



the interim order granted would be vacated automatically. On 10.06.2008, when the petition came up for hearing, the conditional order of the trial Court was not complied with. The first defendant in the suit remained ex-parte and Mr.V.Ramakrishnan learned counsel had filed vakalat for the defendants 2 to 8. Then the petition along with the suit was posted on 08.07.2008. The petition had been crossing several hearings. In all the hearings the defendants 2 to 8 had not chosen to file their counter statement. Even the matter stood posted on 12.11.2008, the respondents 2 to 8 had never bothered about filing of their counter. Since they had not appeared, when the petition was called, they were set as ex-parte and the petition was ordered to be allowed. This order has been challenged in this appeal.

3. Mr.S.Sukumar, learned counsel contends that the respondent herein, being the plaintiff ought to have complied with the conditional order passed by the trial court dated 29.04.2008, by depositing the entire balance sale consideration. But this was not done. Since the order itself says that if the conditional order is not complied with, the interim order granted would be vacated automatically. The petition itself ought to have been dismissed as the respondent/plaintiff had not deposited the balance of sale consideration, instead of that, the petition was ordered to be allowed, and the order itself is absolutely in total negation of the earlier conditional order of the trial court dated 29.04.2008.

4. Only on this ground this appeal is filed and the learned counsel Mr.S.Sukumar has suggested that the impugned order might be set aside and the petition also might be dismissed, as the conditional order was not complied with.

5. Mr.Rajamohan, learned counsel appearing for the respondent has argued that he has fairly admitted that the conditional order was not complied with by the respondent/plaintiff and he has also submitted some limited time might be given to the trial court to dispose of the suit. It is also brought to the notice of this Court that in view of the order passed in Tr.O.P.No.13 of 2009, the suit which was originally pending on the file of the learned I-Additional District Judge was subsequently transferred to the file of the learned VI-Additional District Judge, Madurai.

6. Therefore in view of the facts and circumstances, this Court finds that the ends of justice would be met, if the order of the trial court dated 12.11.2008 is set aside. Accordingly the Civil Miscellaneous Appeal is allowed. The impugned order dated 12.11.2008 is set aside and the petition in I.A.No.185 of 2008 is dismissed as the respondent/plaintiff has not complied with. The learned VI-Additional District Judge, Madurai is directed to dispose the suit in O.S.No.59 of 2008 along with the suits in O.S.No.185 of 2008 and



O.S.No.174 of 2008 by the end of April, 2016 without loss of further time. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

/True copy/

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Sub Assistant Registrar

PJL

To

1.The VI-Additional District Judge, Madurai.

Copy to:

The Principal District Judge, Madurai.

+one cc to M/s.S.Sukumar, Advocate in SR.No.72177/15

+one cc to M/s.R.Rajamohan, Advocate in SR.No.71665/15

CSL/SKS-RR/02.02.2016

3P/5C

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