



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2015

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THE HONOURABLE MR.JUSTICE P.DEVADASS

C.M.A.No.438 of 2015

and M.P.(MD) No. 1 of 2015

P.Banumathi

..Petitioner/Petitioner/Appellant

Vs.

G.Uthaman

..Respondent/Respondent/Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of Civil Procedure Code, 1908 against the order dated 11.02.2015 made in I.A.NO.346 of 2014 in A.S.NO.92 of 2014 on the file of the Sub Court (Incharge), Pudukkottai.

For Appellant : Mr.A.Arumugam
For Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal arises out of the order passed in I.A.No.346 of 2014 in A.S.NO.92 of 2014 by the learned Chief Judicial Magistrate, Pudukkottai while he was holding Additional Charge as Sub Judge, Pudukkottai.

2. The plaintiff sued the defendant in O.S.No.226 of 2007 for declaration and injunction in the Court of District Munsif, Pudukkottai. She lost her case. She preferred the Appeal Suit in A.S.No.92 of 2014 in the Sub Court, Pudukkottai.

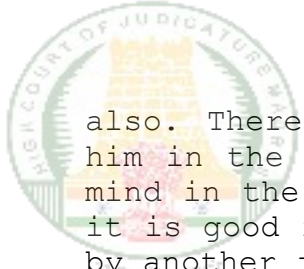
3. Pending disposal of the appeal, the plaintiff filed I.A.No.346 of 2014 seeking injunction. It was contested by the respondent/defendant.

4.The said I.A. was dealt with like an Appeal Suit. The work that the Sub Judge could devote in a Appeal Suit has been devoted in the Interlocutory Application itself. The Chief Judicial Magistrate prejudged the issues, which were to be considered in the main Appeal.

5. In this case, the appeal has been preferred. Thus, already there is a judgment of the trial court and its correctness has been assailed. During this stage, the I.A seeking injunction has been filed.

6.Consideration for grant of injunction in an Interlocutory Application before the trial court may different from consideration for grant of injunction in an Interlocutory Application before the Appellate Court. The reason being the Appellate Court is yet to pronounce judgment. The principles governing grant of injunction before the trial court no doubt will also apply to the Interlocutory Applications filed before the appellate court seeking injunction but there is some more aspect. The appellate court has to be satisfied that the appellant who seeks injunction has got arguable points in the appeal. It is like prima facie case for grant of injunction before the trial court.

7. Now, in this case as the learned Chief Judicial Magistrate, Pudukkottai almost prejudged the issues. In such circumstances, it would not be fair to ask the learned Judge to hear and dispose of the appeal



also. There is possibility of he being influenced by the view taken by him in the Interlocutory application and the same may cloud his judicial mind in the final disposal of the appeal. Therefore, in fairness and also it is good for both sides that the appeal should be heard and disposed of by another judicial mind/judge.

8. In the circumstances, ordered as under:

WEB COPY i) A.S.No.92 of 2014 is transferred from the file of the learned Sub Judge, Pudukkottai to the file of the learned Principal District Judge, Pudukkottai

ii) The learned Principal District Judge, Pudukkottai will dispose of A.S.No.92 of 2014 within two months from the date of receipt of a copy of this order.

9. Accordingly, this Civil Miscellaneous Appeal is disposed of.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal District Judge, Pudukkottai.
- 2.The Subordinate Judge,Pudukkottai,
- 3.The Registrar(Judicial),Madurai Bench of Madras High Court,
Madurai.

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