

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2548 of 2016

1. C.Kuppusamy
2. Mithula, W/o C.Kuppusamy
3. Minor M.K.Mayur Rithvik
rep.by his father/next friend/guardian
C.Kuppusamy ... Appellants

-Vs-

1. Govindasamy
S/o Chinnusamy Gounder
2. C.Rathinambal
3. C.Baby
4. C.Devilakshmi ... Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Order 43, Rule 1 of the Civil Procedure Code, against the fair and decretal order dated 13.08.2016 made in I.A.No.634 of 2015 in O.S.No.230 of 2015 on the file of the learned Second Additional District Judge, Erode.

For Appellants : Mr.M.V.Venkateshan

JUDGMENT

This civil miscellaneous appeal has been directed against the impugned decretal order dated 13.8.2016 passed in I.A.No.634 of 2015 in O.S.No.230 of 2015 by the learned Second Additional District Judge, Erode, complaining that when the first respondent/plaintiff filed the suit for partition, separate possession, declaration, permanent injunction and other reliefs, during the pendency of the partition suit, the Court below, while entertaining the interlocutory application under Order 39, Rules 1 & 2 read with Section 151 of the Civil Procedure Code by the first respondent/plaintiff, has wrongly granted an order of ad-interim injunction stating that the first appellant/second defendant has ventured to execute settlements in favour of the appellants 2 & 3/defendants 5 & 6 and unless the appellants 1 to 3/defendants 2, 5 & 6 are restrained by an order of ad-interim injunction, they might create documents in favour of third parties which will lead to multiplicity of proceedings, on this basis, while allowing the I.A.No.634 of 2015, granted an order of ad-interim injunction restraining the appellants 1 to 3/defendants 2, 5 & 6 from in any manner alienating or encumbering the suit properties till the disposal of the suit. Taking advantage of the interim order, the appellants are sought to be dispossessed from the suit properties. Adding further, he submitted that when the suit has been filed for partition, there

cannot be an order of injunction against the co-owners, especially when the settlements are between the inter se parties. Therefore the finding of the Court below for granting an order of ad-interim injunction is wholly unsustainable in law, he pleaded.

2. This Court hardly finds any justification to entertain the appeal. Admittedly, the appellants 1 to 3 are the defendants 2, 5 & 6 in the suit. No doubt, when the suit for partition is pending consideration, the first respondent/plaintiff has moved the petition under Order 39, Rules 1 & 2 read with Section 151 of the Civil Procedure Code seeking an order of ad-interim injunction restraining the appellants/defendants from in any manner alienating or encumbering the suit properties till the disposal of the suit. While considering the said petition, the Court below has come to the conclusion that on perusal of the case records, the first appellant/second defendant has executed a Will said to have been executed by his father. But the said Will was not produced before the Court. However, a stand was taken in the written statement that the Will was lost and that when a criminal complaint was given, the police have also given a non-traceable certificate. Even that certificate was not produced. When the first respondent/plaintiff claims half share and the contesting first appellant/second defendant has admitted that the first respondent/plaintiff has got half share, the first appellant/second defendant has failed to show before the Court that he has settled only the undivided share in favour of the appellants 2 & 3/defendants 5 & 6. When the wife of Mr.Chenniyappan has admitted that she has executed a settlement deed in favour of the defendants 5 & 6, the same also was not produced. On the contrary, the first respondent/plaintiff has pleaded that the first appellant/second defendant had executed the settlement deed as if he is absolutely entitled to all the properties of Mr.Chenniyappan. In view of the above facts and circumstances of this case, the Court below has come forward to restrain the appellants 1 to 3/defendants 2, 5 & 6, by an order of ad-interim injunction, from in any way alienating or encumbering the suit properties till the disposal of the suit. Therefore this Court is not able to find any infirmity in the impugned decretal order. However, the learned counsel for the appellants submitted that taking advantage of the interim injunction not to alienate the suit properties, the first respondent is trying to dispossess the appellants. Hence, this Court is inclined to make it clear that the order of ad-interim injunction not to alienate the suit properties shall be maintained without resorting to dispossession of the appellants/defendants 2, 5 & 6. With this observation, the civil miscellaneous appeal is dismissed. Consequently, C.M.P.No.18183 of 2016 is also dismissed.

Sd/-

Assistant Registrar(CS V)

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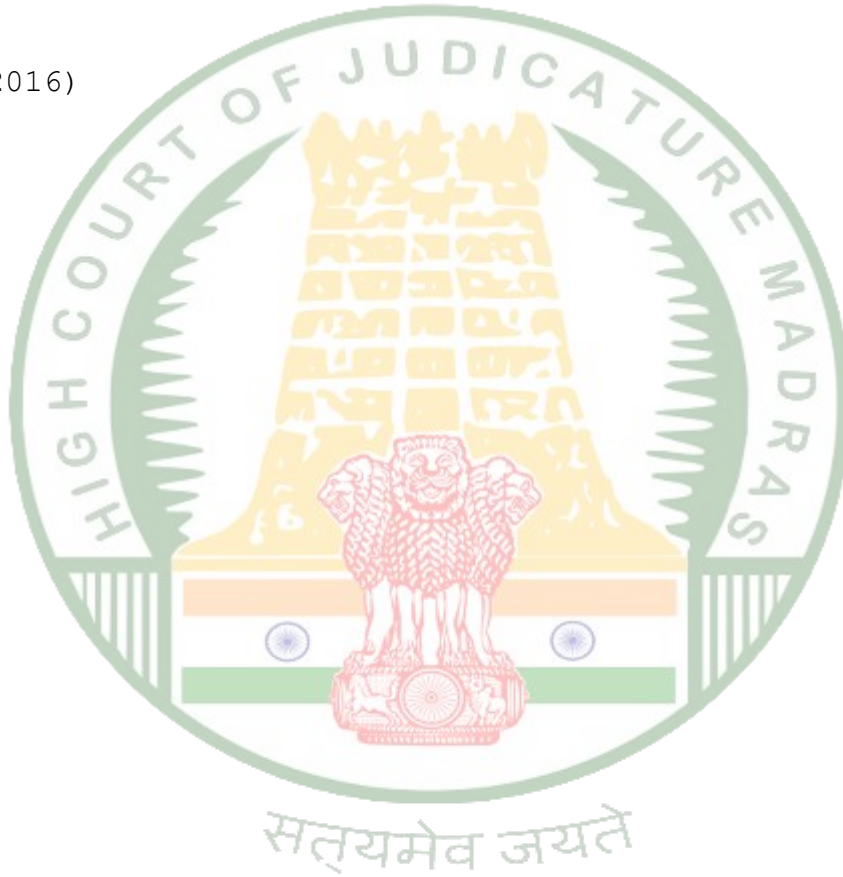
To

The Second Additional District Judge,
Erode.

+lcc to Mr.M.V.Venkataseshan, Advocate, S.R.No.68614

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CP (CO)
CA(19/12/2016)



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