

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2016

Coram

The Hon'ble Mr.Justice M.DURAI SWAMY

CRP(NPD)No.2562 of 2016
CMP.No.13113 of 2016

1.V.V.A.Palani Chegttiar
2.P.Sujatha

..Petitioners

Vs

1.C.R.Sathiyamoorthy
2. J.Devi

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order passed in I.A.No.56 of 2016 in A.S.No.41 of 2016 dated 13.04.2016 on the file of the I Additional Subordinate Judge, Villupuram.

For Petitioners : Mr.N.Suresh
For Respondents : Ms.R.Meenal

ORDER

Challenging the fair and decreetal order dated 13.04.2016 passed in I.A.No.56 of 2016 in A.S.No.41 of 2016 on the file of the I Additional Subordinate Court, Villupuram. the defendants in O.S.No.152 of 2007 on the file of the Principal District Munsif Court, Villupuram, have filed the above Civil Revision Petition.

2. The 1st respondent/plaintiff filed a suit in O.S.No.152 of 2007 for declaration and permanent injunction. The petitioners/defendants filed their written statement and contested the suit. The trial Court, taking into consideration the oral and documentary evidences let in by the parties, dismissed the suit on 18.12.2015. Against the Judgment and decree passed in O.S.No.152 of 2007, the 1st respondent/plaintiff filed an appeal in A.S.No.41 of 2016 on the file of the I Additional Subordinate Court, Villupuram. In the said appeal, the 1st respondent/plaintiff, took out an application in I.A.No.56 of 2016 under Order 39 Rule 1 and 2 of Code of Civil Procedure, praying for interim injunction. The petitioners/defendants filed their counter and opposed the application. The lower Appellate Court, taking into consideration the case of both parties, allowed the application and granted an order of interim injunction till the disposal of the appeal. Aggrieved over the same, the present Civil Revision Petition is filed.

3. Heard Mr.N.Suresh, learned counsel for the petitioners and Ms.R.Meenal, learned counsel for the respondents and perused the materials available on record.

4. Before the trial Court, the 1st respondent/plaintiff filed an application in I.A.No.440 of 2007 in O.S.No.152 of 2007 seeking for interim injunction. The Trial Court also had granted an order of interim injunction in the said

application on 27.04.2007. Against the order passed in I.A.No.440 of 2007, the petitioners/defendants filed an appeal in C.M.A.No.1 of 2007 before the I Additional Subordinate Court, Villupuran and the lower Appellate Court confirmed the order passed in I.A.No.440 of 2007 and dismissed the appeal on 08.10.2010. Therefore, it is clear that the 1st respondent/plaintiff had the benefit of injunction through out the pendency of the suit in O.S.No.152 of 2007. Ultimately, the suit was dismissed by the trial Court on 18.12.2015.

5. The lower Appellate Court while allowing the application in I.A.No.56 of 2016 in A.S.No.41 of 2016 found that as there was temporary injunction in favour of the 1st respondent/plaintiff till the disposal of the suit, that the plaintiff had approached the lower Appellate Court immediately after the suit property was purchased by the 2nd respondent and that he alleges that a mistake had crept in, in the Survey No., the plaintiff has made out a case for grant of temporary injunction. Further, the lower Appellate Court found that the balance of convenience is in favour of the plaintiff.

6. No doubt, the suit in O.S.No.152 of 2007 filed by the plaintiff for declaration and permanent injunction was dismissed by the trial Court on 18.12.2015. However, the plaintiff had the benefit of an order of injunction through out the pendency of the suit from the year 2007 till 18.12.2015. The present application i.e., I.A.No.56 of 2016 in A.S.No.41 of 2016 was allowed by the lower Appellate Court on 13.04.2016. Since the plaintiff had the benefit of

injunction for more than eight years, the grant of injunction by the lower Appellate Court is just and proper. In these circumstances, I do not find any reason to interfere with the order passed by the lower Appellate Court.

7. The learned counsel on either side submitted that the lower Appellate Court may be directed to dispose of the appeal in A.S.No.41 of 2016 within a stipulated time.

8. Having regard to the submissions made by the learned counsel on either side, I direct the I Additional Subordinate Judge, Villupuram, to dispose of the Appeal in A.S.No.41 of 2016 on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order, without being influenced by any of the observations made in I.A. No.56 of 2016 in A.S.No.41 of 2016 or by this Court in this Civil Revision Petition.

With these observations, the Civil Revision Petition is dismissed. No costs. Connected miscellaneous petition is closed.

22.08.2016

rg

To
I Additional Subordinate Court, Villupuram.

M.DURAISWAMY,J

rg

CRP(NPD)No.2562 of 2016

22.08.2016