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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2016

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THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

CMA (MD) No.414 of 2016

and

CMP (MD) No.5616 of 2016

Gnanasekaran

: Petitioner/Petitioner/Plaintiff

Vs

1.Mothi.Periyakaruppan @ M.Maharajan: 1st respondent/Petitioner/Plaintiff

2.Malaichamy

: 2nd respondent/1st respondent/
1st defendant

Prayer: Civil Miscellaneous Appeal is filed under Order XLIII Rule 1 CPC, against the ex-order and fair order, dated 29.04.2016 made in I.A.No.345 of 2016 in O.S.No.11 of 2014 on the file of the V Additional District Judge, Madurai.

For Appellant : Mr.R.Suriya Narayanan

For 1st respondent : Mr.V.Meenakshisundaram

O R D E R

This appeal is directed against the order of the 5th Additional District Judge, Madurai passed in I.A.No.345 of 2016 in O.S.No.11 of 2014, dated 29.04.2016.

2.The appellant and the respondents are sons of one M.Mothi.Ayyan Ambalam. The first respondent as plaintiff, filed a suit in O.S.No.11 of 2014 against the appellant and the 2nd respondent for the reliefs that:-

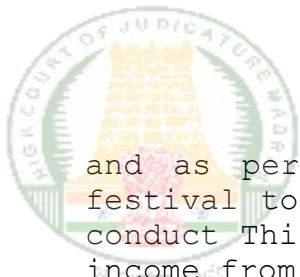
(a)by diving the 'A', 'B' and 'C' schedule properties into three equal shares and to allot one such share to the plaintiff by metes and bounds and for mesne profits thereon;

(b)Granting permanent injunction restraining the defendants their men and agent from alienating the 'A', 'B' and 'C' schedule properties;

(c)By declaring that the plaintiff is entitled to manage the trust namely Mothi Periyakaruppanan Ambalam Trust by enjoying the 'D' schedule properties once in twelve years; and

(d)By directing the defendants to pay the costs of the suit.

3.The case of the plaintiff is that the properties in Schedule A, B and C are joint family properties and he is entitled for 1/4th share and D schedule property belongs to Mothi Periyakaruppanan Ambalam Private Trust, by virtue of a registered trust settlement deed, dated 18.06.1970



and as per the deed, during the visit of Lord Kallalagar on Chitra festival to adorn the Lord at item 1st of the D schedule property and to conduct Thirukkan and other poojas and to conduct the said festival, the income from the items 1 to 4 of the D Schedule has to be utilised.

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4.The plaintiff filed an application in I.A.No.345 of 2016 for interim injunction restraining the appellant/2nd defendant from disturbing his possession and enjoyment of the D schedule properties contending that the order of management of the trust has been enumerated in the settlement deed and accordingly, the plaintiff who is eldest son of the family is entitled to conduct the festival on 30th Chitrai Yevilambi year and he is entitled to be in possession of the property from 13.05.2016.

5.The application was resisted by the appellant stating that the plaintiff has filed the suit for declaration declaring that he is entitled to manage the trust, namely Mothi Periyakaruppanan Ambalam Private Trust by enjoying D schedule property once in 12 years and unless, his right is decided in the suit, he is not entitled for possession of the property.

6.It is also contended that as per the Will, dated 02.03.2007 their father, who is having every right to deviate the line of management, appointed the appellant as trustee and he alone is entitled to manage the trust during his tenure. The learned District Judge allowed the application. Aggrieved over the order, the present appeal is filed.

7.Mr.R.Suriya Narayanan, learned counsel appearing for the appellant submitted that the trial had already commenced and now the suit is in part-heard stage and unless, the right of the plaintiff is decided, he is not entitled for interim injunction.

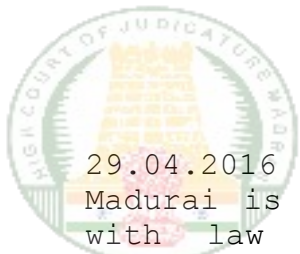
8.Per contra, Mr.V.Meenakshi Sundaram, learned counsel appearing for the 1st respondent would submit that the parties cannot challenge the line of succession from the trust settlement deed, dated 18.06.1970 and the conditions stipulated therein have to be respected and obeyed by the parties. It is further submitted that the first respondent is ready to cooperate for the early disposal of the suit.

9.Heard the rival submissions and perused the materials placed before this court.

10.It is seen that the suit was filed in the year 2014 for partition and declaration of the plaintiff's right to manage the trust property and for performing pooja and customs. It is not in dispute that the trial already commenced and the suit is posted for defendants evidence. At that juncture, the application for interim injunction was filed by the plaintiff. The second defendant/appellant claims right to manage the property by virtue of the Will, dated 02.03.2007. Considering the above facts, this court is of the opinion that the parties can maintain status quo till the disposal of the suit.

<https://hcservices.ecourts.gov.in/hcservices/>

11.In view of the above findings, this appeal is **allowed** and the order passed in I.A.No.345 of 2016 in O.S.No.11 of 2014, dated



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29.04.2016 is set aside. The learned 5th Additional District Judge, Madurai is directed to dispose of the suit on merits and in accordance with law as expeditiously as possible preferably on or before 31.08.2016. The parties are directed to extend their cooperation for early disposal of the suit. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To

The V Additional District Judge,
Madurai.

+1cc to M/S.R.Suriyanarayan, Advocate in SR.No.42736

+1cc to M/S.D.Nallathambi, Advocate in SR.No.42856

Judgment in
CMA(MD) No.414 of 2016
08.08.2016

er
PA/GSV-PM/SAR III/08.08.2016/2P/4C (IT)