



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )

Friday, the Second day of December Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN  
and  
The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD) No.9733 of 2016  
IN  
AS(MD) No.149 of 2016

1 M.KUMARAN  
2 M.SARAVANAN

... PETITIONERS

Vs

V.SIVAKUMAR

... RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay of all further proceedings of the judgment and decree dated 28.06.2016 made in O.S.No.35/2010 on the file of the Learned Additional District Court, Ramanathapuram pending disposal of the above First Appeal.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.G.EIHIRAJULU, Seionr Counsel for Mr.P.ARUN JAYATRAM, Advocate for the petitioner and Mr.J.BHARATHAN, Advocate Caveator for R1, the court made the following order:-

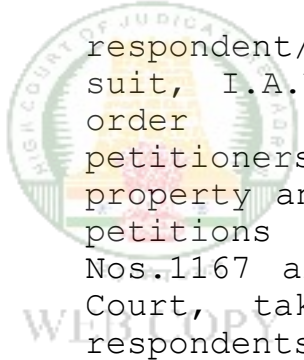
(Order of the Court was made by M.SATHYANARAYANAN,J.)

The defendants who suffered a decree for specific performance, vide judgment and decree dated 28.06.2016 made in O.S.No.35 of 2010 on the file of the Additional District Court, Ramanathapuram, are the appellants and pending disposal of the said appeal, pray for the stay of the operation of the impugned judgment and decree dated 28.06.2016.

2. Mr.G.Ethirajulu, learned Counsel appearing on behalf of Mr.P.Arun Jayatram, learned Counsel for the petitioners/defendants would contend that admittedly, the respondent/plaintiff has paid very meagre amount towards advance and has not exhibited his readiness and willingness to perform his part of obligation and the trial Court without properly appreciating the oral and documentary evidence as well as the legal position, has erroneously decreed the suit and therefore, prays for stay of the operation of the same.

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

3. Per contra, Mr.J.Bharathan, learned Counsel for the



respondent/plaintiff would contend that pending disposal of the suit, I.A.Nos.136 and 137 of the 2010 were filed praying for an order of ad-interim injunction restraining the petitioners/defendants from alienating or encumbering the suit property and also putting up any further constructions and both the petitions were dismissed and challenging the same, C.M.A.(MD) Nos.1167 and 1168 of 2010 were filed and a Single Bench of this Court, taking into consideration the submissions made by the respondents therein/petitioners herein/defendants that they have no intention to encumber or sell the suit property for the present, had thought fit to grant interim order and despite such an undertaking, based on which, C.M.A.(MD)No.1167 of 2010 came to be disposed of, the petitioners herein/defendants had alienated the suit schedule property in favour of one Alavudeen on 22.09.2013 in the form of a registered sale deed and in the light of the said conduct, the petitioners/defendants are not entitled to any relief and therefore, prays for the dismissal of this petition.

4. This Court paid it's best attention to the rival submissions and perused the materials available on record.

5. A perusal of the common order dated 26.08.2010 passed in C.M.A.(MD)Nos.1167 and 1168 of 2010 would reveal that the petitioners herein/defendants were arrayed as respondents in the said appeals and in paragraph 9 of the order, the learned Judge has taken note of the statements made by them that they have no intention to encumber or sell the suit property for the present, had dismissed the appeal in C.M.A.(MD)No.1167 of 2010, along with the connected appeal in C.M.A.(MD)No.1168 of 2010, which is preferred against the order in I.A.No.137 of 2010 in O.S.No.35 of 2010 on the file of the Principal District Court, Ramanathapuram. The petitioners herein/defendants contrary to the said undertaking had alienated the suit property in favour of the third party on 22.09.2013 in the form of a registered sale deed and in the considered opinion of this Court, it *prima facie* amounts to violation of their solemn undertaking given before this Court.

6. At this juncture, the learned Counsel for the petitioners/defendants would submit that the matter may be referred for mediation, so that, the possibility of amicable settlement can be arrived at. However, the learned Counsel for the respondent/plaintiff is not willing for the same.

7. It is a well settled position of law that a litigant who is approaching the Court with tainted hands is not entitled to get any equitable or other remedy before the Court and admittedly, despite the undertaking given, the petitioners/defendants had alienated the suit property in favour of a third party, vide registered sale deed dated 22.09.2013.

8. This Court, in the light of the facts and circumstances, is proposing to pass the following interim order:

There shall be an order of interim stay of operation of Clause No.4 of the decree alone and in other respects, the petitioners/defendants are not entitled to any interim orders.



9. In the result, this Civil Miscellaneous Petition is disposed of, accordingly.

sd/-  
02/12/2016

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/ TRUE COPY /

Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

THE ADDITIONAL DISTRICT JUDGE  
RAMANATHAPURAM

+1. C.C. to M/S. P.ARUN JAYATRAM Advocate SR.No.79285

+1cc to Mr.T.R.JEYAPALAM, Advocate Sr.No. 79331

JAM/08.12.16/DB/SAR 3/3P-4C

ORDER  
IN  
CMP (MD) No.9733 of 2016  
IN  
AS (MD) No.149 of 2016  
Date :02/12/2016