



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) No.1529 of 2016

and

C.M.P (MD) No.7441 of 2016

D.MUTHIAH KONAR

.. PETITIONER/PETITIONER/
PLAINTIFF

Vs

1 NACHIAR AMMAL
2 KOTHAI NAYAKI
3 SANKARASUBRAMANIAN
4 SUNDARAVALLI

.. RESPONDENTS/RESPONDENTS/
DEFENDANTS 1 TO 4

Prayer: Petition filed under Article 227 of Constitution of India to set aside the order dated 27.07.2016 passed in I.A.No.733 of 2016 in O.S.No.241 of 2016 on the file of the Subordinate Judge, Tuticorin in not extending the order of interim injunction is concerned, by allowing this Civil Revision Petition.

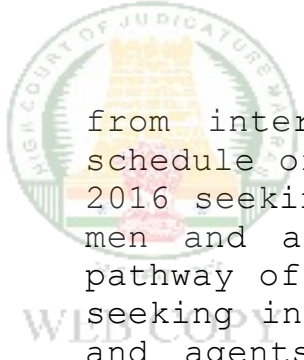
For Petitioner : Mr.S.Subbiah
For Respondents : Mr.H.Arumugam

ORDER

This Revision arises out of the order passed by the Subordinate Court, Tuticorin in I.A.No.733 of 2106 in O.S.No.241 of 2016.

2. Heard, Mr.S.Subbiya, learned counsel for the petitioner and Mr.H.Arumugam, learned counsel for the respondents and perused the records.

3. The petitioner filed the suit in O.S.No.241 of 2016 against the respondents for partition claiming 1/3 share in the suit property and for permanent injunction restraining the respondents



from interfering with his possession and enjoyment of the 3rd schedule of the property. The petitioner also filed I.A.No.732 of 2016 seeking interim injunction restraining the respondents, their men and agent from any way interfering with the usage of the pathway of the 3rd schedule of the property and I.A.No.733 of 2016 seeking interim injunction restraining the respondents, their men and agents from any way putting up construction in the first schedule of the suit property.

4. The Trial Court granted ad-interim injunction in both the applications on 18.07.2016, till 27.07.2016. Subsequently, when the applications were listed for hearing on 27.07.2016, the learned Subordinate Judge while extending the interim order in I.A.No.732 of 2016, was not inclined to extend the interim order in I.A.No.733 of 2016. Challenging the order, the present Revision is filed.

5. The learned counsel for the petitioner would submit that when the petitioner filed the earlier suit in O.S.No.69 of 1997 for declaration and recovery of possession based on the oral partition, the defendant Adhi Narayana Konar, one of the co-owners resisted by stating that there was no oral partition and the suit was dismissed, accepting the defence. Hence, the present suit was filed for partition and injunction. It is further submitted that when the suit was filed, there was no construction in the 1st schedule of the property and the interim order granted in I.A.No.733 of 2016 was not extended without assigning any reasons and therefore it has to be set aside.

6. Per contra, Mr.H.Arumugam learned counsel for the respondents would submit that the suit property was purchased by three persons in the year 1980 and the other two sharers have already put up constructions in their respective properties and the respondents have almost completed the construction and at that juncture, the suit was filed suppressing the earlier oral partition and the construction put up by the respondents. It is further submitted that on 27.07.2016, when the applications were listed for hearing, they filed their counter affidavit and also produced photographs to show that the construction was almost over. The Trial Court after analysing the materials, was not inclined to extend the interim order in I.A.No.733 of 2016.

7. The learned counsel placing reliance on the Judgment reported in **2008 (4) CTC 360, (Mandali Ranganna V. T.Ramachandra)**, would contend that when the respondents have almost completed the construction, it would not be proper to stop the further constructions and the respondents will abide the final result in the suit and that the respondents would not claim any equity. The Honourable Supreme Court in decisions cited supra has observed as follows:-



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" 23. Rightly or wrongly constructions have come up. They cannot be directed to be demolished, at least at this stage, Respondent No.7 is said to have spent three crores of rupees. If that be so, in our opinion, it would not be proper to stop further constructions.

24. We, therefore, are of the opinion that the interest of justice would be subserved if while allowing the respondents to carry out constructions of the buildings, the same is made subject to the ultimate decision of the suit. The Trial Court is requested to hear out and dispose of the suit as early as possible. If any third party interest is created upon completion of the constructions, the deeds in question shall clearly stipulate that the matter is subjudice and all sales shall be subject to the ultimate decision of the suit. All parties must co-operate in the early hearing and disposal of the suit. Respondents must also furnish sufficient security before the learned Trial Judge within four weeks from the date which, for the time being, is assessed at Rupees One Crore."

8. In reply the learned counsel for the petitioner would submit that after institution of the suit, the respondents have hurriedly put up construction and they can be permitted to complete the same however, they should not claim any equity later. Further, they should not put up any other construction till the disposal of the suit.

9. The learned counsel for the respondents would submit that the construction of the building was already completed and plastering in the front portion of the building was also over and they have to put up a small shed for installing the generator and they undertake that they will not put up further construction in the suit property. It is further submitted that the respondents/defendants even have no objection for passing a preliminary decree.

10. Considering the above said submissions and in the digest of decision of the Hon'ble Apex Court, the Civil Revision Petition is disposed of, with the following directions:

1) The respondents are permitted to complete the construction, however, the further construction shall be subject to the result of the suit.



2) *The respondents should not claim any equity in the suit.*

Consequently, connected Miscellaneous Petition is closed. No costs.

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sd/-
Assistant Registrar (AS)

Sub Assistant Registrar

pmu

To
The Subordinate Court, Tuticorin.

+1CC to Mr.S.Subbiah, Advocate Sr.No.44905
+1CC to Mr.H.Arumugam, Advocate Sr.No.44300

GJM/SS3/19.9.16-4p-4c

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