

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

C.M.A.No.1207/2017  
and  
C.M.P.Nos.6118 & 6119/2017

Indirani ...Appellant/Petitioner

vs.

1. Iyyanar  
2. Arumugam ...Respondents/Respondents

Prayer: This appeal is filed under Order 43 Rule 1 (r) of CPC against the fair and decretal order dated 02.02.2017 made in IA.No.1422 of 2016 in A.S.No.8 of 2015, on the file of the Principal District Judge, Pondicherry.

For Appellant : Mr.N.Anand Venkatesh

For Respondents : Mr.K.Balu

JUDGMENT

The appeal is against the order dismissing the application filed by the appellant seeking an order of injunction restraining the respondents from changing the physical features of one of the items of the suit properties. The said suit in O.S.No.152/1998 was filed by the appellant for partition and allotment of 1/6th share in the items 1 to 9 and 1/12th share in the items 10 to 14 of the suit properties. The said suit was resisted by the respondents/defendants setting up a Will said to have been executed by the mother of the plaintiff on 28.10.1986. The trial Court dismissed the suit upholding the claim of the defendants in the suit.

2. Aggrieved by the said judgment and decree of the trial Court, the appellant has preferred an appeal in A.S.No.8/2015. Pending the said appeal, the present application is filed seeking interim injunction as aforesaid. In the counter affidavit filed to the said application, the respondents have categorically stated that the said item of the property has become dilapidated and unfit for occupation and

therefore, the entire property was demolished even before the application was filed and in the said counter affidavit, the respondents have stated as follows:

"Under these circumstances this Hon'ble Court may be pleased to permit the respondents to continue the construction work in the petition schedule mentioned property and the respondents hereby undertake that they will not make any preferential claim or right over the said property or over the superstructure or any equity in their favour in case the petitioner is granted the relief of partition."

3. In view of the above categorical statement made, the trial Court had dismissed the application holding that no prejudice would be caused to the petitioner/appellant if a fresh construction is put up by the respondents in the said property. I see no ground to interfere with the discretion exercised by the trial Court.

4. Hence, the appeal is dismissed confirming the order of the trial Court. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

kak/kp

To

The Principal District Judge,  
Pondicherry.

+1cc to M/S.K.Balu, Advocate Sr. 50019

C.M.A.No.1207/2017

NRI (CO)  
VR(17/8/2017)