

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.2523 of 2015
and
MP.Nos.1 and 2 of 2015
and
CMP.No.18945 of 2017

Indhumathi

... Appellant

v.

1.The Deputy Registrar of Co-operative Societies,
R.M.S. Complex,
Namakkal.

2.The Sales Officer,
O/o.The Deputy Registrar,
Namakkal Region,
R.M.S. Complex,
Trichy Road, Namakkal.

3.The Secretary,
Anaipalayam Co-operative Primary
Agricultural Co-operative Society,
Anaipalayam, Rasipuram Taluk.

4.The President,
Anaipalayam Co-operative Primary
Agricultural Cooperative Society,
Anaipalayam, Rasipuram Taluk,
Namakkal District.

... Respondents

Appeal filed under Order 43 Rule 1(r) of Code of Civil Procedure against the fair and decreetal order dated 07.09.2015 made in I.A.No.489 of 2015 in O.S.No.171 of 2015 on the file of the Principal District Court, Namakkal.

For Appellant : Mr.N.Manokaran
For R1 & R2 : No appearance
For R3 & R4 : Mr.R.Nalliyappan

JUDGMENT

Challenging the order dated 07.09.2015 passed by the learned Principal District Judge, Namakkal in I.A.No.489 of 2015 in O.S.No.171 of 2015, the plaintiff has filed the above appeal.

2.The plaintiff has filed a suit in O.S.No.171 of 2015 for partition and separate possession and also for permanent injunction restraining the defendants 6 to 9 from bring the plaintiff's 1/12th share in the suit schedule properties for auction.

3.In the said suit, the plaintiff has also filed an Interlocutory Application in I.A.No.489 of 2015 under Order 39 Rules 1 and 2 CPC seeking for interim injunction restraining the defendants 6 to 9 from

bringing the suit schedule properties for auction. In the affidavit filed in support of the said application, the plaintiff contended that the defendants 6 to 9 are taking steps to bring the suit schedule properties for public auction for the dues payable by the first defendant in the recovery proceedings. The plaintiff further contended that she is not liable to pay any amount and therefore, if the suit schedule properties are bringing for auction, she would be put to irreparable loss and hardship.

4. On 07.09.2015, the trial Court has passed the following order in the said application:

"Petitioner side heard. Petitioner argued that the value of the property of her share is Rs.10,00,000/-. The petition is allowed on condition (Auction is stay). The petitioner is directed to deposit the amount within a month. Call on 5.10.2015."

5. From the above, it could be seen that the trial Court has granted an order of interim stay on condition that the plaintiff shall deposit a sum of Rs.10,00,000/- within a months time. On a perusal of the affidavit filed in support of the said application, this Court finds that in the prayer portion, the plaintiff sought for interim injunction in

respect of her 1/12th share, whereas, in the petition filed along with the affidavit, she sought for interim injunction in respect of the entire suit schedule properties. Even in the order, which is impugned in this appeal, the trial Court has recorded that the plaintiff sought for interim injunction in respect of the suit schedule properties, including her 1/12th share.

6. During the course of arguments, Mr.N.Manokaran, learned counsel for the appellant/plaintiff submitted that the appellant would be satisfied, if the order of interim injunction is restricted to her 1/12th share alone.

7. Mr.R.Nalliyappan, learned counsel for the respondents 3 and 4/ defendants 8 and 9 submitted that one Dhanabakkiyam, who is the sister of the first defendant and is also the aunt of the plaintiff, has filed an Interlocutory Application in I.A.No.472 of 2015 in I.A.No.334 of 2013 in O.S.No.175 of 2011 seeking for an order of interim stay, in respect of the same properties in O.S.No.171 of 2015 and the said application was ultimately dismissed by the learned Principal District Judge, Namakkal, by order dated 05.10.2015.

8.This Court is of the view that since the prayer made in the application was only to grant an order of interim injunction in respect of the plaintiff's 1/12th share, the trial Court ought to have granted an order of interim injunction in respect of the said share alone and directed the defendants 6 to 9 to proceed with the auction proceedings in respect of the remaining 11/12th share in the suit schedule properties. That apart, the condition imposed by the trial Court is onerous.

9.In such view of the matter, the order dated 07.09.2015, passed by the trial Court in I.A.No.489/2015 in O.S.No.171 of 2015 is modified by granting the order of interim injunction in respect of 1/12th undivided share in the suit schedule properties alone. However, the right of the plaintiff in respect of the alleged 1/12th share shall be decided in the suit, after completion of the trial. The defendants 6 to 9 are at liberty to proceed against the remaining 11/12th undivided share in the suit schedule properties in accordance with law.

With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No
rk

28.11.2017

NOTE: ISSUE ON 04.12.2017

M.DURAISWAMY, J.

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To

- 1.The Principal District Court, Namakkal.
- 2.The Deputy Registrar of Co-operative Societies,
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