

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY
C.M.A.NO.459 OF 2016 &
C.M.P.NO.3509 OF 2016

R.Thamizh Selvan

... Appellant/2nd Defendant

1.Thamizh Aruvi

2.R.Valliammal

3.r.Thamizh Mani

4.R.Tamizh Venthan

5.Periyadharshini

6.Minor Santhos

Rep. by his mother N.F.Valliammal

... 1st Respondent/Plaintiff

.. Respondents 2 to 6/
Defendants 2,3 to 6

(The 6th respondent herein exonerated
in the lower court and hence given up in this
CMP as well as CMA)

... Respondents

Civil Miscellaneous Appeal filed under section XLIII Rule 1
(r) of Code of Civil Procedure against the fair and decreetal
order dated 07.01.2016 passed in I.A.No.9 of 2015 in O.S.No.13
of 2015 on the file of the III Additional District Judge,
Vellore at Tirupattur.

For Appellant : Mr.S.Subbiah

For Respondents : Mr.AR.L.Sundaresan, Sr. Counsel
for Ms.A.L.Gandhimathi - for R1

No appearance for R2 to R6

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J U D G M E N T

Challenging the fair and decreetal order passed in
I.A.No.9 of 2015 in O.S.No.13 of 2015 on the file of III
Additional District Court, Vellore at Tirupattur, the 2nd
defendant has filed the above Civil Miscellaneous Appeal.

2. The plaintiff filed the suit in O.S.No.13 of 2015 for

partition, separate possession and for permanent injunction. The 2nd defendant filed his written statement and is contesting the suit.

3. In the said suit, the plaintiff filed an application in I.A.No.9 of 2015 praying for an order of temporary injunction restraining the defendants from alienating or encumbering the suit properties in any manner whatsoever. The 2nd defendant filed his counter and contested the application.

4. The Trial Court, after taking into consideration the case of both the parties, directed the defendants to maintain status quo with regard to 1/6th share of the plaintiff till the disposal of the suit.

5. Aggrieved over the order passed by the Trial Court, the 2nd defendant has filed the above appeal.

6. Heard, Mr.S.Subbiah, learned counsel appearing for the appellant and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the 1st respondent.

7. In the affidavit filed in support of the application in I.A.No.9 of 2015, the plaintiff has contended that the 2nd defendant is taking steps to encumber the suit properties and if he is allowed to do so, the plaintiff's valuable right would be lost.

8. Since the plaintiff has filed the suit for partition and separate possession, the Trial Court directed the defendants to maintain status quo in respect of 1/6th share till the disposal of the suit. The suit has been filed by the plaintiff for partition claiming 1/6th share in the suit properties. Therefore, if the 2nd defendant is allowed to encumber the entire suit properties, the purpose of filing the suit for partition claiming 1/6th share would be lost. Taking note of all these aspects, the Trial Court, has rightly granted an order of status quo in respect of plaintiff's 1/6th share.

9. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Miscellaneous Appeal is devoid of merits and is liable to be dismissed. It is brought to the notice of this court that the suit is ripe for trial and the Trial Court may be directed to dispose of the suit, within a time frame. In view of the above, I direct the III Additional District Judge, Vellore at Tirupattur, to dispose of the suit in O.S.No.13 of 2015, on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order and report the same to the Registry of this court.

With these observations, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Rj

To

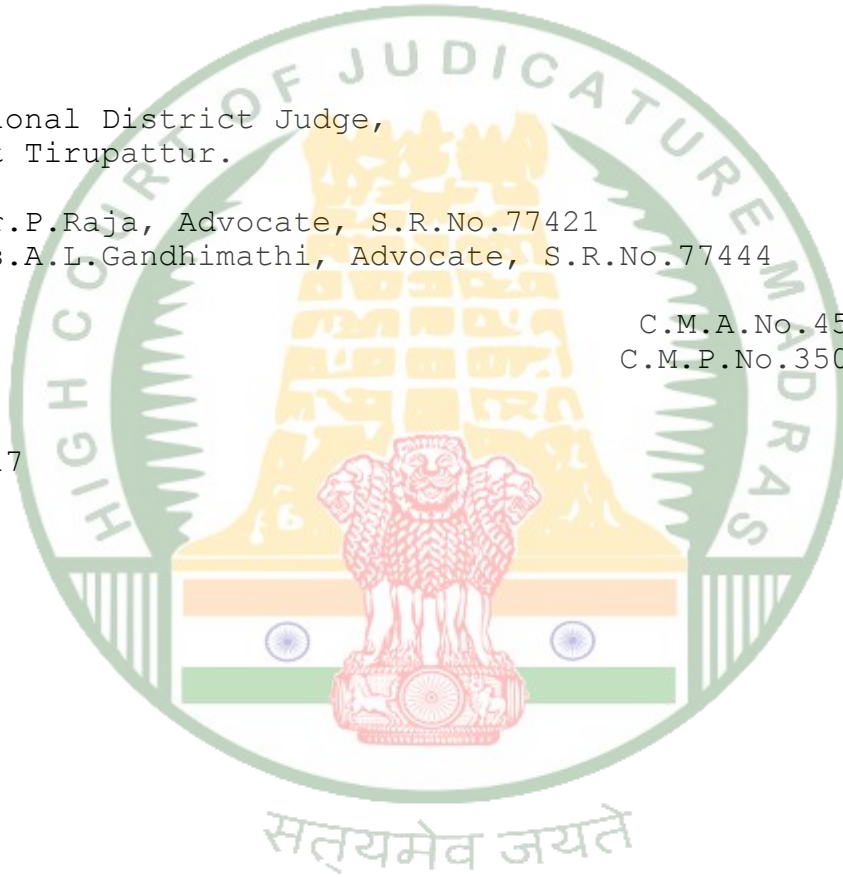
III Additional District Judge,
Vellore at Tirupattur.

+1cc to Mr.P.Raja, Advocate, S.R.No.77421

+1cc to Ms.A.L.Gandhimathi, Advocate, S.R.No.77444

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CS/03/11/17



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