

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.3560 of 2011

and

M.P.No.2 of 2011

and

C.M.A.No.424 of 2012

and

M.P.No.2 of 2012

1.Kalaivani

2.Deepak

3.Deepika

.. Appellants in both the appeals
(Defendants 3 to 5)

Vs.

1.Palani Gounder (Deceased)

....Respondents/Plaintiffs

2.Natarajan @ Natesan (Deceased)

3.Ponnammal (Deceased)

4.Vasantha

5.R.Karthikeyan

.. Respondents in both the appeals
(Defendants 1 & 2 LR of R1)

(R3 is appointed as guardian

of R2 vide order of this Court

dated 24.1.2014 made in

M.P.No.2 of 2013 in

C.M.A.Nos.3560 of 2011

424 of 2012)

(RR2 to 3 died and recorded

vide order of this Court dated 08.09.2017

and made in Memo filed

dated 08.09.2017)

R5 brought on record as Legal Heir

of the deceased R1 vide order of this

Court dated 29.11.2013 made in

M.P.No.1 of 2013 in C.M.A.Nos.3560 of 2011

424 of 2012)

Common Prayer : Civil Miscellaneous Appeals filed under
Section 104 of C.P.C. Read With Order 43 Rule 1 of C.P.C.
against the Order and decretal Order in I.A.Nos.513 of 2011
& 382 of 2010 in O.S.No.150 of 2010, on the file of the
Principal District Court, Namakkal, dated 15.11.2011 and
30.10.2010 and prayed that the same may kindly be set aside.

For Appellant

: Mr.D.Shivakumaran

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

For Respondent

: Mr. T.S.Vijaya Raghavan

COMMON JUDGMENT

These twin appeals arise out of two different interlocutory orders passed by the learned Principal District Judge, Namakkal in O.S.150 of 2010, the details whereof are as follows:

- I.A.No.513 of 2011 in O.S.No.150 of 2010 for appointing receiver under Section 151 C.P.C. [related appeal in C.M.A.No.3560 of 2011].
- I.A.No.382 of 2010 in O.S.No.150 of 2010 for an order of prohibitory injunction seeking to restrain the defendants in the suit (widow and children of a certain Selvam) from collecting the rent from the suit property [related appeal in C.M.A.No.424 of 2012].

2. The brief facts that are necessary for the disposal of the case are: The suit property originally belongs to a certain Palani Gounder. He had admittedly executed a settlement deed in favour of one of his sons Selvam on 23.05.2007. About six months later, on 25.11.2007 to be precise, Selvam died, but not before he executed a Will in favour of his wife and children, bequeathing the property which he obtained under the settlement deed dated 23.05.2007. Thereafter, his father Palani Gounder had executed a document revoking the settlement made in favour of Selvam on 26.11.2009. In the meantime, Selvam's mother and sister, as plaintiffs have filed O.S.No.129 of 2008 on the file of the Principal District Judge, Namakkal for partitioning the property covered under the settlement deed referred to above, against the widow and children of Selvam. In the course of submissions made by the rival side, this Court was informed that an application was taken out on behalf of the plaintiffs in O.S.No.129 of 2008, for appointing a receiver for the property and the same was dismissed by the Court on 03.09.2009. It may be mentioned that only after the dismissal of the receiver application, Palani Gounder had revoked/cancelled the settlement deed he had earlier executed in favour his son Selvam.

3. Palani Gounder has a mentally challenged son namely Natarajan. After cancelling the settlement deed, Palani Gounder for himself and as guardian for his mentally challenged son Natarajan, had filed O.S.No.150 of 2010, again for partition of the same property, which is also the subject matter of the suit in O.S.No.129 of 2008. In the suit filed by Palani Gounder (O.S.No.150 of 2010) he had filed two applications (a) I.A.No.513 of 2011 for appointing receiver under Section 151 of C.P.C. and (b) I.A.No.382 of 2010 for an order of prohibitory injunction seeking to restrain the defendants in the suit (widow and children of Selvam) from collecting rent from the suit property. By the impugned orders, the learned Principal District Judge, allowed the petitions. So far as the injunction application is concerned,

the impugned order only directs the plaintiffs to collect the rent and deposit the same into Court. These two orders are now under challenge.

4. This Court perused the records and also the impugned orders and prima facie case finds that there are adequate materials to interfere with the same. This apart, when these two appeals are admitted and taken on file, this Court stayed the orders of the Principal District Court, Namakkal in I.A.No.513 of 2011 in O.S.No.150 of 2010 for appointing a receiver [CMA.No.3560 of 2011]. It is also informed that both O.S.No.129 of 2008 and O.S.No.150 of 2010 are pending trial before the Principal District Court, Namakkal.

5.1. The only aspect this Court is keen to highlight is that when a specific provision of law is available in Order XL CPC for appointing a receiver, it is not appropriate to grant an extreme relief of appointing receiver, almost as a matter of course under Section 151 CPC. Appointing receiver is a quia timet action, and the harshest known to the Civil Court. It should not be invoked merely because it is convenient, but it must also be just. A just circumstance, as has been judicially understood may be stated as one where the party in whose custody the property in litigation is, puts it to waste or depletion. It requires adequate pleading and sufficient materials tangible enough for the Court to take possession in custodia legis. If these parameters are checked for their existence in this case, this Court struggles to convince its conscience that the approach of the Court below was appropriate.

5.2. So far as the order in I.A.No.382 of 2010 filed for passing an order of injunction against the respondents, the Court below has granted relief in favour of the plaintiff by letting them collect the rent when there was not even a prayer made by the plaintiffs/petitioners/respondents and there is no reason adduced for moulding the reliefs either.

5.3. Thanks to the order of stay, the appellants continue to be in the same state of affairs as before. Since the suits themselves are ripe for trial, this as a circumstance should also has to be factored in, while disposing these appeals.

6. In the result, both the appeals are allowed and the orders in I.A.Nos.513 of 2011 & 382 of 2010 in O.S.No.150 of 2010, on the file of the Principal District Court, Namakkal, dated 15.11.2011 and 30.10.2010 are set aside. The Principal District Court, before which the suits are said to be pending, is directed to consolidate both the suits and proceed with the

trial of the cases and dispose of the matter within a period of three months from the date of receipt of copy of the order. Since the matter is pending for more than five years before the trial court, it is also instructed not to be lenient in the matter of granting adjournments. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssn

To
The Principal District Judge,
Namakkal.

Copy to: The Section Officer,
VR Section,
High Court, Madras (2copies)

+2cc to Mr.D.Shivakumaran, Advocate Sr.No.67474, 67475/17

SV(CO)
sm:22.1.2018

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and
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