

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 28.08.2017****CORAM :****The Hon'ble MR.JUSTICE R.SUBRAMANIAN****C.M.A.No.2284 of 2017**

Vellingiri

.. Appellant

-VS-

1.Arukkaniammal

2.Renugadevi

.. Respondents

Appeal filed under Order 43 Rule 1 (r) of CPC against the order dated 12.08.2016 made in I.A.No.1044 of 2014 in P.O.P.No.373 of 2014 on the file of Principal District Judge, Coimbatore.

For Appellant : Mr.C.Deivasigamani

For Respondents : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

सत्यमेव जयते

J U D G M E N T

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This appeal has been filed challenging the order of the learned Principal District Judge, Coimbatore, dismissing an application in I.A.No.1044 of 2014 in a Probate O.P.No.373 of 2014. The Probate

O.P.No.373 of 2014 has been filed by the appellant seeking grant of probate for the Wills dated 08.06.2011 and 10.06.2011 said to have been executed by one Palanisamy. Pending the said original proceedings for grant of probate, the appellant filed I.A.No.1044 of 2014 purportedly under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (CPC) seeking an order of injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property. The said application was resisted by the respondents contending that the application filed under Order XXXIX Rules 1 and 2 CPC itself is not maintainable and it was also contended that the applicant has already sought for an injunction in the civil Court and the same was not granted. The learned District Judge, concluded that the probate proceedings being proceedings of a limited jurisdiction and there being no property in dispute, the provisions of Order XXXIX Rules 1 and 2 CPC cannot be invoked by the appellant. Aggrieved by the same, the petitioner has come forward with this appeal.

2.I have heard Mr.C.Deivasigamani, learned counsel for the appellant and Mr.S.Mukund, learned counsel appearing for the respondents.

3.Mr.C.Deivasigamani, learned counsel, would invite my attention to the judgment of this Court in **Namagiri Ammal vs. Subba Rao** reported in **1947 (60) LW 697** and contend that under certain circumstances, the Probate Court has got jurisdiction to grant an order of injunction. He would also rely upon a judgment of the learned Single Judge of Bombay High Court in **Rupali Mehta vs. Tina Narinder Sain Mehta**, reported in **AIR 2007 Bombay 62**. It could be immediately point out that both the said judgments make it clear that an order of injunction cannot be granted under Order XXXIX Rules 1 and 2 CPC in a probate proceedings. It will be useful to extract the following portion of the judgment of the Hon'ble Mr.Justice Rajamannar (as he then was) in the judgment in **Namagiri Ammal's** case (supra):

".. I do not propose to deal with the merits of this application because in my opinion this application is not sustainable. The application purports to be under O.39, Rr.1 and 2 of the Code of Civil Procedure though the omnibus S.151 has also been added. As the appeal is against a decree of the lower Court granting probate to the respondent, the provisions of O.39 R.1 will have no application to the case. In probate proceedings it is not correct to say that any property is in dispute. O.39, R.2 has obviously no application. .."

Even in the judgment of the Bombay High Court, the learned Single

Judge has, in paragraph 13, observed as follows:

"13. It is thus clear that the Supreme Court has held that the proposition of law which is laid down by the Division Bench of the Patna High Court in its judgment in Kashi Nath Singh case is undisputable. The Supreme Court has also observed that the testamentary Court has no jurisdiction to go into the question of title of the deceased to the property mentioned in the Will. It is thus clear that in a testamentary suit, the property which is mentioned in the Will or property which may be or may not be left behind by the deceased is not the subject matter of the testamentary suit, and therefore, in my opinion, in exercise of its power under Civil Procedure Code, the Court would not be entitled to make any interim order in relation to protection of the property, unless, an order is required to be made by the Court in the peculiar circumstances under part-VII of the Act."

4. It is not shown that the appellant has sought for appointment of an Administrator under Section 247 of the Indian Succession Act, 1925, or has sought for interim protection under Section 192 or 193 of the Indian Succession Act, 1925. Therefore, I do not see any illegality or irregularity in the order of the learned District Judge in dismissing the application for grant of injunction filed under Order XXXIX Rules 1 and 2 CPC.

5.Hence, this Civil Miscellaneous Appeal is dismissed. No costs.
Consequently, C.M.P.Nos.12238 and 12239 of 2017 also stand dismissed.

28.08.2017

Index : No
Website : Yes
Speaking order

sra

To

1.The Principal District Judge, Coimbatore.



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R.Subramanian, J.

(sra)



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