

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.03.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No. 1934 of 2013 and
MP.No.1 of 2013

S.P.Shanmugam

...Petitioner

Vs

K. Parimala

...Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair and decretal order dated 11.02.2013 made in C.M.A.No.3 of 2012 on the file of the learned Subordinate Judge, Sathyamangalam confirming the fair and decretal order dated 19.07.2011 made in I.A.No.693 of 2010 in O.S.No.256 of 2010 on the file of the learned District Munsif Court, Sathyamangalam.

For Petitioner : Mr.N.Manokaran
For Respondent : No appearance

ORDER

The respondent filed a suit for declaration and consequential injunction in O.S.No.256 of 2010 before the learned District Munsif, Sathyamangalam. The suit was in respect of the undivided common half share of the respondent in the suit property. The petitioner filed written statement and contested the suit.

2. Before the trial Court, the respondent filed an interlocutory

application in I.A.No.693 of 2010 for grant of interim injunction during the currency of the suit. The respondent wanted the trial Court to restrain the petitioner from interfering with her peaceful possession and enjoyment of the property. The trial Court granted injunction. The order was upheld by the first appellate Court in CMA No.3 of 2012. Feeling aggrieved, the petitioner is before this Court.

3. The learned counsel for the petitioner contended that injunction was granted against the co-owner and that too with respect to half of the property, in respect of which the respondent claimed right and possession. According to the learned counsel, the trial Court was not correct in injuncting the petitioner, who is a co-owner.

4. None appeared on behalf of the respondent, in spite of printing the name of the respondent in the cause list.

5. The suit in O.S.No.256 of 2010 was instituted by the respondent, primarily for a declaration that she and the first defendant are the legal heirs of Thiru S.P.Kandasami, who died on 31 May 2010. The respondent made an interim prayer for injunction, restraining the petitioner herein from interfering with her peaceful possession and enjoyment of undivided common half share of the suit property in any manner. The trial Court without understanding the nature of relief claimed by the respondent, granted interim injunction. The

order was upheld by the first appellate Court.

6. There is no question of injuncting the petitioner from enjoying the common property, during the currency of the suit. The respondent claimed as if she is entitled to half share in the property. The said half share is yet to be ascertained. There is no question of granting injunction with respect to an undivided half share. I am therefore, of the view, that both the trial Court as well as the appellate Court have erred in granting injunction at the instance of the respondent.

7. The order passed by the trial Court dated 19 July 2011 in I.A.No.693 of 2010 and the related first appellate Court judgment in CMA No.3 of 2012 dated 11 February 2013 are set aside.

8. The learned trial Judge is directed to dispose of the civil suit in O.S.No.256 of 2010 as expeditiously as possible and in any case, within three months from the date of receipt of a copy of this order.

The civil revision petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2017

K.K.SASIDHARAN,J.

Gms

To

1. The Subordinate Judge, Sathyamangalam
2. The District Munsif Court, Sathyamangalam.

C.R.P.(P.D.) No. 1934 of 2013

28.03.2017

<http://www.judis.nic.in>