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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2017

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A(MD)No.1065 of 2017

and

C.M.P(MD)No.10889 of 2017

N.Manikandan ... Appellant/3rd Respondent
3rd Defendant
Vs.

1.Muthaiyasamy ... 1st Respondent/Petitioner
Plaintiff

2.N.Chellam

3.N.Gnansekar

4.R.Navanithya

5.R.Goperundeivi ... 2 to 5 Respondents/1,2,4 & 5
Respondents/1,2,4,& 5 Defendants

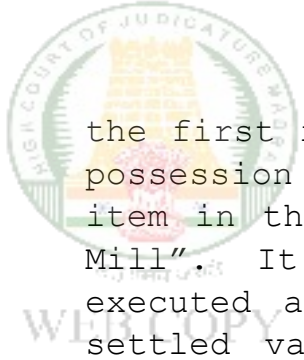
PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(R) of Civil Procedure Code, to set aside the fair and decreetal order dated 23.08.2017 passed in I.A.No.106 of 2017 in O.S.No.61 of 2017 on the file of the Additional District Judge (Fast Track), Tenkasi.

For Appellant : Mr.Meenakshi Sundaram
For R-1 : Mr.T.Lajapathi Roy

JUDGMENT

The first respondent herein filed O.S.No.61 of 2017 on the file of the Additional District Judge (Fast Track), Tenkasi.

2.The appellant, the second and the third respondents herein are all the sons of Thiru.S.K.R.Navaneethakrishna Pandian. One Ramasamy, other son of Thiru.S.K.R. Navaneethakrishna Pandian passed away on 14.08.2017. Navanithya and Goperundeivi/respondents 4 and 5 therein are the daughters of the said predeceased son. While so,

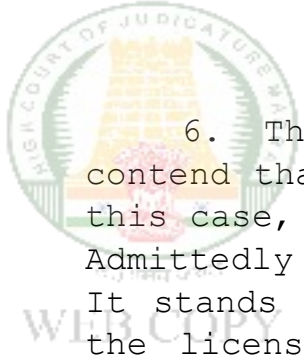


the first respondent herein sought relief of partition and separate possession in respect of the suit schedule properties. The main item in the suit schedule property is "Shri Venkatachalapathi Rice Mill". It was started by the late Navaneethakrishna Pandian and he executed a deed of settlement dated 18.08.2016, in which he has settled various items of properties in favour of all his legal heirs. The suit property Rice Mill has been mentioned as Item No.1 in the said settlement deed. As regards the said Item No.1, in the settlement deed, it is mentioned that Chellam, the wife of the late Navaneethakrishna Pandian, will be entitled to have life estate and that after her demise the surviving sons will take one share while the children of the pre-deceased son will take one share.

3. Mr.Meenakshi Sundaram the learned Counsel appearing for the appellant would place a different construction on the terms of the said settlement deed. According to him the settlor namely the late Navaneethakrishna Pandian settled only life estate in respect of one fifth share alone in favour of his wife. This aspect of the matter can be gone into in the main suit. This Court does not express any opinion with regard to the legal effect of the said recital in the settlement deed.

4. It is beyond dispute that the license in respect of the said Rice Mill stands in the name of Chellam, wife of Navaneethakrishna Pandian. The person who is having the license to run the rice mill is entitled to run the same without any let or hindrance. It is further seen that the mother of the contesting parties herein has permitted the plaintiff Muthaiyasamy to run the rice mill on her behalf. Since I wanted to know the stand of the mother of the contesting parties herein, I directed her to be present in person. Accordingly, she appeared before me in person. She told this Court that she is having the license to run the rice mill and that as per the wishes of her late husband, she has permitted the plaintiff to run the rice mill. She further complained that the appellant herein Manikandan, who is a practising Doctor, is causing deliberate obstruction in running of the Rice Mill. According to her, it was the wish of her late husband that the Rice mill should continue to be run. She specifically complained that the appellant even went to the extent of cutting the conveyor belts.

5. I am, therefore, of the view that there was a sufficient cause of action for filing the present I.A.No.106 of 2017 for restraining the appellant from interfering with the running of the



6. The learned counsel appearing for the appellant would contend that an injunction will not lie against a co-owner. But in this case, the issue is concerned with the running of the rice mill. Admittedly the license does not stand in the name of the appellant. It stands only in the name of the second respondent herein. When the licensor had expressed her wish that the plaintiff has been allowed by her to run the Rice Mill, a case for grant of interim injunction was clearly made out. The Trial Court took into account all the relevant aspects and only thereafter granted the interim relief of temporary injunction. The same does not warrant any interference. There is no merit in this Civil Miscellaneous Appeal.

7. This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, C.M.P(MD)No.10889 of 2017 is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge (Fast Track),
Tenkasi.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to Mr.D.NALLATHAMBI, Advocate in SR.No.92950

+1 CC to Mr.T.LAJAPATHIROY, Advocate in SR.No.92877

KMI

RJ/RP/SAR-3/13/07/2018 - 3P/6C

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and**

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