



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1138 of 2015

and

MP (MD) No.1 of 2015

N.Sermakani

... Appellant

Vs.

1.S.Shanmugam

2.V.Arumugam

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of Civil Procedure Code, to set aside the fair and decreetal order dated 15.07.2015 passed in I.A.No.33 of 2015 in O.S.No.19 of 2015 on the file of 4th Additional District Judge, Tirunelveli.

For Appellant

: Mr.S.Balasubramanian

For Respondents

: Mr.M.Saravanan

for Mr.R.Subramanian for R1

Mr.P.Subbaiah for R2

JUDGMENT

This appeal is directed against the grant of injunction in I.A.No.33 of 2015 in O.S.No.19 of 2015 on the file of 4th Additional District Judge, Tirunelveli.

2.The first respondent herein S.Shanmugam is the plaintiff in the said suit. The defendants in the suit are Arumugam, the second respondent herein and Sermakani, appellant herein. It is the case of the appellant that there was a sale agreement dated 29.12.2009 executed by Arumugam in his favour. Since the said Arumugam did not come forward to execute the sale deed, the appellant herein was constrained to file OS.No.309 of 2013 on the file of the Principal Sub Court, Tenkasi seeking the relief of specific performance. The said Arumugam was the sole dependent in the said suit. He remained exparte. As a result, an exparte decree came to be passed in favour of the appellant on 18.02.2014. Since the said Arumugam still did not execute the sale deed, the appellant filed E.P.No.48 of 2014. A sale deed in favour of the appellant was also executed on 09.01.2015 by the executing Court. When the appellant attempted to take delivery of the property, the first respondent Shanmugam filed EA.No.295 of 2015 raising



obstruction. The same is still pending. It is yet to be disposed of. At this stage, the first respondent filed OS.No.19 of 2015 seeking the relief of declaration and injunction. The Trial Court has granted interim injunction in favour of the first respondent herein.

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3.The said Arumugam interestingly had already sold the suit property in favour of the first respondent on 22.02.2010. It is admitted that the first respondent Shanmugam is in possession of the suit property also. The appellant herein did not make the first respondent as a defendant in O.S.No.309 of 2013. Even though the Shanmugam had already acquired the suit property and the suit filed by the appellant was subsequent point of time, the first respondent was not made as a defendant. Therefore, seeking the relief of declaration of his title and for possession, the said Shanmugam filed O.S.No.209 of 2015 before IV Additional District Judge, Tirunelveli. Subsequently, he also filed obstructor petition in E.A.No.295 of 2015 before the Executing Court at Tenkasi. The said EA filed by the first respondent herein has since been transferred to the IV Additional District Court at Tirunelveli to be tried along with OS.No.19 of 2015.

4.The principal contention raised by the learned counsel for the appellant is that an independent suit will not be maintainable. The learned counsel appearing for the first respondent fairly submitted that he shall have O.S.No.19 of 2015 dismissed as withdrawn and not pressed. The learned counsel appearing for the appellant in all fairness would submit that it is the first respondent who is in physical possession and enjoyment of the suit property. The appellant shall pursue his remedies in respect of the suit property only through legal process. This submission made by the appellant is placed on record. Since E.A.No.295 of 2015 in E.A.No.206 of 2015 in EP.No.303 of 2015 on the file of Sub Court, Tenkasi was transferred to 4th Additional District Court, Tirunelveli, the said execution application shall be re-transferred to Sub Court, Thenkasi. All The contentions are left open. The Executing Court namely Sub Court, Tenkasi shall decide EA.No.295 of 2015 in accordance with law.

4.This civil miscellaneous appeal stands disposed of as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar



SKM

To

1. The 4th Additional District Judge, Tirunelveli.

2. The Subordinate Judge, Tenkasi.

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3. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr. R. Subramanina, Advocate Sr.No. 88840

+1CC to Mr. T. Selvam, Advocate Sr.No. 89319

+1CC to Mr. K. Esakki, Advocate Sr.No. 89048

GJM/JC/SAR-I-26.2.18-3p-8C

C.M.A. (MD) No. 1138 of 2015
22.11.2017