



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.05.2017

CORAM:

**THE HON'BLE MR.JUSTICE P.N.PRAKASH**

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C.M.A. (MD) No.402 of 2017 & C.M.P. (MD) No.4375 of 2017

Mothi Periyakaruppannan @ M. Maharajan

...Appellant/Petitioner/Plaintiff

vs.

1 Malaichamy

2 M. Gnanasekaran

...Respondents/Respondents/Defendants

Civil Miscellaneous Appeal filed under Order XLIII Rule 1 CPC seeking to set aside the order dated 28.04.2017 passed in I.A. No.267 of 2017 in O.S. No.11 of 2014 on the file of the V Additional District Court, Madurai.

For appellant :Mr. V. Meenakshisundaram

For R2/caveator :Mr. R. Suriyanarayanan

#### **JUDGMENT**

This Civil Miscellaneous Appeal has been preferred calling in question the legality and validity of the order dated 28.04.2017 passed by the V Additional District Court, Madurai (for brevity "the Trial Court") in I.A. No.267 of 2017 in O.S. No.11 of 2014.

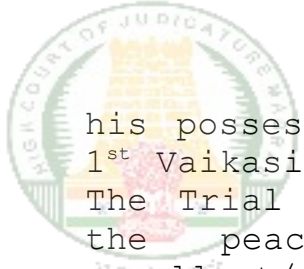
**2** The gist of the relief sought by the appellant/plaintiff in O.S.No.11 of 2014 is as under:

a Division of "A", "B" and "C" schedule properties into three equal shares and allotment of one such share to the appellant/plaintiff by metes and bounds and for mesne profits;

b Permanent injunction restraining the respondents/defendants from alienating the "A", "B" and "C" schedule properties; and

c Declaration that the appellant/plaintiff is entitled to manage Mothi Periyakaruppannan Ambalam Trust by enjoying the "D" schedule properties once in twelve years.

**3** During the pendency of the suit, the appellant/plaintiff filed I.A.No.345 of 2016 seeking an order of interim injunction restraining the second respondent/second defendant from disturbing



his possession and enjoyment of the "D" schedule properties from 1<sup>st</sup> Vaikasi of *Durmukhi* year to 30<sup>th</sup> Chithirai of *Heyvilambi* year. The Trial Court, after hearing both sides and finding that, for the peaceful functioning of pooja and customs, the appellant/plaintiff is entitled to interim injunction as sought by him, allowed the said Interlocutory Application vide order dated 29.04.2016, the operative portion of which reads thus:

"11 The petitioner is entitled to get the D schedule property as a trustee only from 13.05.2016. I make it very clear that any observation made in this petition is only for the purpose of deciding whether the interim injunction has to be granted or not. It shall not any way influence the final judgment in the suit.

In the result, the petition is allowed restraining the second respondent/second defendant from disturbing the petitioner's possession and enjoyment of the plaint schedule D property from Tamil month of 1<sup>st</sup> Vaikasi Turmugi year to 30<sup>th</sup> Chitrai Yevilambi year."

4 The aforesaid order was challenged by the second respondent/second defendant in C.M.A. (MD) No.414 of 2016 before this Court and this Court, finding that trial had already commenced and that the suit is posted for defendants' evidence and that the second defendant claims right to manage the property by virtue of the will dated 02.03.2007, directed the parties to maintain status quo, till the disposal of the original suit and allowed the Civil Miscellaneous Appeal vide order dated 08.08.2016 by setting aside the order impugned therein, viz., order dated 29.04.2016 passed by the Trial Court in I.A. No.345 of 2016.

5 While so, the appellant/plaintiff filed I.A. No.267 of 2017 seeking an order of interim injunction restraining the second respondent/second defendant from disturbing his possession and enjoyment of the "D" schedule properties till 14.05.2017.

6 The Trial Court, pertinently pointing out that this Court has directed the parties to maintain status quo by order dated 08.08.2016 passed in C.M.A.No.414 of 2016 and in view thereof, any order passed in I.A. No.267 of 2017 is tantamount to defiance of the High Court's order, dismissed the said Interlocutory Application, which order is put to assail in this Civil Miscellaneous Appeal by the plaintiff.

7 This Court perused the order impugned and is of the considered opinion that the aforesaid reasoning assigned by the Trial Court in rejecting the appellant/plaintiff's prayer is perfectly justified warranting no interference.



As a sequitur, this Civil Miscellaneous Appeal fails and stands dismissed accordingly. No costs. Connected C.M.P. is closed.

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Sd/-  
Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To:

1 The V Additional District Judge  
Madurai

+1cc to M/S.D.Nallathambi, Advocate, SR.No.55800/17

C.M.A. (MD) No.402 of 2017  
04.05.2017

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