



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. (MD) No. 45 of 2017

and

C.M.P (MD) No. 394 of 2017

Dr. Gurusankar,
represented through
his power of attorney,
K.R. Meenakshisundaram

... Appellant/
Respondent/20th Defendant

Vs.

1. B. Moorthy
2. B. Rajesh
3. Minor B. Matcha Raja
Represented through by his mother
& guardian Pandiammal
4. Sakthi
5. Vasanth
6. Pothum Ponnu alias Anitha
7. Kannan
8. Lakshmi
9. Aruvaham
10. Ponpadi

... Respondents/
Petitioners/Plaintiffs

PRAYER: Appeal filed under Order 43 Rule 1 of the Code of Civil Procedure, against the order dated 22.12.2016 made in I.A.No.333 of 2016 in O.S.No.406 of 2004 on the file of the I Additional District Court, Madurai.

For Appellant : Mr. G.R. Swaminathan

For Respondents : Mr. T.K. Gopalan

for Mr. PT. S. Narendravasan for R.7

Mrs. P. Krishnaveni

Advocate Commissioner

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order of injunction restraining the appellant herein from putting up further construction and to preserve status quo in the application taken out by the respondents herein in the suit filed by them seeking partition of the suit properties and for permanent injunction.

2. Heard Mr. G.R. Swaminathan, learned Counsel for the appellant and Mr. T.K. Gopalan, learned Counsel appearing on behalf of Mr. PT. S. Narendravasan, learned Counsel for the seventh respondent.

3. Though various contentions have been raised with regard to the rights of the parties, on appointment of an Advocate Commissioner, by a report, it is known that two blocks have

already been built up by the appellant, viz., one block consists of 10 floors and another consists of 8 floors.

4. At this stage, if the work is not allowed to be completed, irreparable loss would be caused to the appellant. However, at the same time, the rights of the respondents shall also be safeguarded.

5. When it is pointed out to the learned Counsel for the appellant, he undertook to file an affidavit stating that if the appellant is allowed to complete the construction, he will not plead the putting up of construction as a defence and there shall not be any equity in his favour.

6. Today, when the matter is called, an affidavit has been filed by the appellant and paragraph 2 is extracted hereunder:

"2. I respectfully state that the above CMA has been filed challenging the order dated 22.12.2016 made in I.A.No.333 of 2016 in O.S.No.406 of 2004 on the file of the 1st Additional District Judge, Madurai. As a result of the impugned order, the construction activities have come to a grinding halt. I therefore pray for setting aside the impugned order of injunction. However, I undertake to abide by the outcome of the suit proceedings. I specifically affirm that I shall not plead the putting up of construction as a defense. However, all other defenses may be allowed to be urged by me since I am now one of the impleaded contesting defendants in the suit. This Hon'ble Court may be pleased to record the undertaking that I shall abide by the outcome of the suit proceedings."

(extracted as such)

The affidavit filed by the appellant will take care of the interest of both the parties.

7. Recording the above affidavit filed by the appellant, dated 25.01.2017, the order dated 22.12.2016 made in I.A.No.333 of 2016 in O.S.No.406 of 2004 by the learned I Additional District Judge, Madurai, is set aside, with the above conditions and the rights of the parties have to be decided only at the time of the disposal of the suit in O.S.No.406 of 2004 on the file of the I Additional District Court, Madurai. Further, Rs.50,000/- (Rupees Fifty Thousand only) paid to the Advocate Commissioner by the appellant and the liability in this regard would be decided at the final disposal of the suit.

8. In the result, this Civil Miscellaneous Appeal is allowed and the affidavit filed by the appellant, dated 25.01.2017, shall form part of this judgment. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)



(*) XEROX COPIES OF AFFIDAVIT FILED BY THE APPELLANT ARE ENCLOSED

To

The I Additional District Judge, Madurai.

Copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to MR.G.R.Swaminathan, ADVOCATE, SR NO: 4611

+1 cc to MR.PTS.Narendravasan, ADVOCATE, SR NO: 4456

RSB

SVA/JM/10.02.2017/3P/5C

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