



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE **G.R. SWAMINATHAN**

C.M.A(MD)No.757 of 2017
and
C.M.P. (MD)No.8154 of 2017

1.M/s.Jai Auto Industries
Rep. by its partners
D.P.Kohulji, M.P.Rajah
47, Bye Pass Road,
Madurai 16.

2.D.P.Kohulji
3.M.P.Rajah

... Appellants /Respondents/Defendants

Vs.

1.S.Pandurangan
2.S.Karuppuchami

... Respondents/Petitioners/Plaintiffs

PRAYER:- Civil Miscellaneous Appeal filed Order 43 Rule 1(r) Civil Procedure Code, against the order and decree in I.A.No.655 of 2017 in O.S.No.189 of 2015 dated 02.08.2017 on the file of VI Additional District Judge-Madurai.

For Appellants
For Respondents

:Mr.C.Godwin
:Mr.Prabhu Rajadurai
for Mr.M.Ponniah

J U D G M E N T

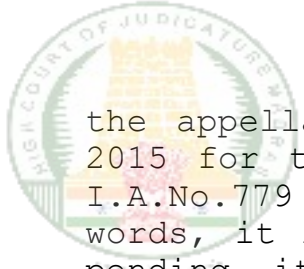
This Civil Miscellaneous Appeal is directed against the order dated 02.08.2017 made in I.A.No.655 of 2017 in O.S.No.189 of 2015 on the file of VI Additional District Judge, Madurai.

2. The said suit was filed by the respondents herein seeking relief of specific performance of the agreement dated 03.03.2008. The trial in the said suit has since commenced. At this stage, the plaintiff filed I.A.No.655 of 2017 for restraining the defendants from alienating the suit property till the disposal of the suit. The said I.A was allowed by the Trial Court. Aggrieved by the same, this Civil Miscellaneous Appeal has been filed.

3. Heard the learned counsel for the parties.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The principal contention urged by the learned counsel for



the appellants is that the respondents herein filed I.A.No.779 of 2015 for the very same relief now granted in I.A.No.655 of 2017. I.A.No.779 of 2015 was posted along with the main suit. In other words, it is still pending. When I.A for the same relief is still pending, it was not open to the respondents herein to file one more I.A for the very same relief. I.A No.655 of 2017 was clearly not maintainable.

5. The learned Trial Judge did not keep in view this aspect of maintainability, when he disposed of the said I.A. That apart, if an alienation or encumbrance is made by the defendants in the suit for specific performance, the said transaction would obviously be hit by the doctrine of lis pendens. The said doctrine is also statutorily recognized. On any event, the rights of plaintiff would not be prejudiced if an alienation takes place. Therefore, the Trial Court ought not to have granted the relief sought for in I.A.No.655 of 2017. The order dated 02.08.2017, made in I.A.No.655 of 2017 in O.S.No.189 of 2015 on the file of VI Additional District Judge, Madurai hereby is set aside. This Civil Miscellaneous Appeal is allowed. The Trial Judge is directed to dispose of O.S.No.189 of 2015 within a period of three months from the date of receipt of a copy of this order. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P & A)

/True Copy/

Sub Assistant Registrar

To,

1.The VI Additional District Judge, Madurai.

2.The Record Keeper,

Vernacular Section,

Madurai Bench of Madras High Court,

Madurai.

+1cc to Mr.C.GODWIN Advocate in SR. No. 81553

+1cc to M/s.M.PONNIAH Advocate in SR. No. 81518

PSD/RMI

JS/SKN/SAR.2/26.10.2017/2P-5C

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