



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2017

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No. 867 of 2017

and

C.M.P. (MD) No. 9276 of 2017

1. Veeraswamy
2. Pradeep Kumar
3. Nagappan

... Appellants/Respondents/Defendants

Vs.

Kamalam

... Respondent/Petitioner/Plaintiff

Prayer: Appeal filed under Order 43 Rule 1(r) of C.P.C to set aside the fair and decreetal order passed in I.A.No.256 of 2016 in O.S.No.53 of 2016 dated 19.10.2016 on the file of the Learned District Judge, Kanyakumari District at Nagercoil.

For Appellants : Mr.G.Ramanathan

For Respondent : Mr.S.Sivakumar

JUDGMENT

The respondent herein filed O.S.No.53 of 2016 on the file of the District Judge, Kanyakumari District at Nagercoil, seeking the relief of declaration and injunction in respect of the suit property. The appellants in this civil miscellaneous appeal are defendants in the said suit.

2.The respondent's husband Ramasamy and the 1st appellant herein are brothers. They jointly filed O.S.No.279 of 2003 on the file of the District Munsif, Kuzhithurai, seeking relief of partition and separate possession. The suit schedule property in O.S.No.53 of 2016 was one of the items in the suit schedule property of O.S.No.279 of 2003. The husband of the respondent along with the 1st appellant Veerasamy sought allocation of 1/3rd share. Preliminary decree was passed in the said suit. Final decree was also passed on 04.12.2013. It is seen that thereafter the said Ramasamy executed settlement deed dated 09.09.2015 in favour of the respondent herein. Based on the said settlement deed, the present suit for declaration and injunction has been laid.

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

3.The case of the respondent herein is based on the assignment of the mortgage deed of the year 1976 in his favour. But there is



no whisper about the said mortgage, when the respondent's husband along with the 1st appellant filed the partition suit in the year 2003. But, the Trial Court took note of the fact that counter was not filed in spite of grant of sufficient opportunity. On this score, the interim injunction earlier granted was made absolute by order dated 19.10.2016. It is this that is challenged in this civil miscellaneous appeal.

4. Heard the learned counsel for the parties.

5. It is true that the appellants herein did not file any counter before the Court below. But on that sole ground, I am not inclined to sustain the order passed by the Trial Judge granting injunction in favour of the respondent herein.

6. I went through the materials on record. They are enclosed in the typed set. The authenticity of the same cannot be impeached. It is seen that the respondent's husband was a co-plaintiff with the 1st appellant herein. They have jointly filed the partition suit in O.S.No.279 of 2003. Final decree came to be passed on 04.12.2013. The subject matter of the present injunction application was one of the suit items which was partitioned. When the suit item had already been partitioned, the husband of the respondent could not have executed the settlement deed on 09.09.2015 after the final decree was passed. That apart the husband of the respondent and the 1st appellant herein are brothers. The 2nd respondent and the 3rd appellant are the sons of Thankaswamy, who was the defendant in O.S.No.279 of 2003. Thus originally they have been co-owners. Of course, after partition there has been severance of status of co-ownership. If the final decree in O.S.No.279/2003 is to be ignored, there cannot be an injunction against co-owners. If the said final decree is accepted, then the validity of the settlement deed dated 09.09.2015 becomes doubtful. The respondent is in a catch-22 situation. I have, therefore, no option, but to set aside the order dated 19.10.2016 made in I.A.No.256 of 2016 in O.S.No.53 of 2016.

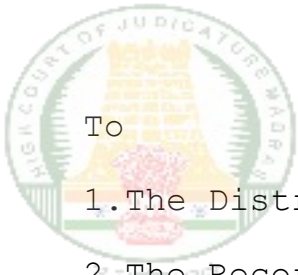
7. Accordingly, I.A.No.256 of 2016 in O.S.No.53 of 2016 stands dismissed. It is however made clear that the Trial Judge shall dispose of the suit uninfluenced by the reasoning or finding given in this order. The findings set out above are only for the limited purpose of deciding this I.A. With this clarification, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORD)

/True Copy/

Sub Assistant Registrar



To

1.The District Judge, Kanyakumari District at Nagercoil.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.RAMANATHAN Advocate in SR. No. 83649

+1cc to Mr.S.SIVAKUMAR Advocate in SR. No. 84162

TSG

JS/SV.MMS/SAR.2/23.11.2017/3P-5C

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