



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)
Monday, the Fifth day of June Two Thousand Seventeen

PRESENT

WEB COPY

The Hon`ble Mr.Justice N.SESHASAYEE

CMP(MD) No.4684 of 2017
IN
SA(MD) No.251 of 2014

1 MARUTHAI (DIED)
2. M. KANNAN

... PETITIONERS/APPELLANTS

Vs

1 VISLAKSHI AMMAL
2 T. KESAVARAJ
3 V. SOMA SUNDARAM
4 G. RENGARAJAN
5 S. SRIDHARAN

..1ST RESPONDENT/RESPONDENT

... RESPONDENTS 2 TO 5/ RESPONDENTS 2 TO 5

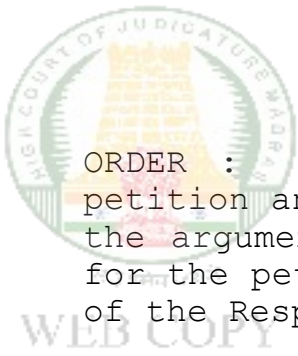
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of interim injunction restraining the respondents herein, their man, agents or servants or any body claiming any right through them from interfering with the peaceful possession and enjoyment over the property marked in red colour in the final decree plan towards my share in I.A.No.719/97 in O.S.No.775 of 1997 dated 25/02/2003 which is more fully described in the schedule of property annexed in the petition, pending disposal of the above second appeal.

Schedule of Properties:

The property comprised in S.No.1335/1 to 5 measuring an extent of 73 cent in Thirummarayam Samuthiram Village, Srirengapuram, Trichy District and out of 73 cent, 24 cents marked in red colour on the western side of the suit 1st schedule property as mentioned in the final decree plan.

Prayer in SA(MD) No.251 of 2014

To allow this Second Appeal by setting aside the judgment and decree made in AS.No.28/2012 dated 18.12.2013 on the file of the II Additional District Judge, Tiruchirappalli confirming the final decree and the judgment made in IA.No.719 of 1997 in OS.No.775 of 1997 dated 25.02.2003 on the file of the Principal District Munsiff Court, Thiruchirappalli and thus render justice.



ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.THIRUNAVUKKARASU for V.B.SUNDARESWAR, Advocate for the petitioner and of M/S.K.S.SHANKAR MURALI, Advocate on behalf of the Respondents the court made the following order:-

This application is filed by the petitioners/appellants seeking an order of injunction restraining the respondents from interfering with the peaceful possession and enjoyment over the property marked in red colour in the final decree plan towards their share in I.A.No.719 of 1997 in O.S.No.775 of 1997, dated 25.02.2003, which is more fully described in the schedule of property annexed in the petition. Today first respondent filed the counter.

2.Heard the learned counsel for the petitioners and the learned counsel for the first respondent. Hearing is confined to facts necessary for disposal of this petition.

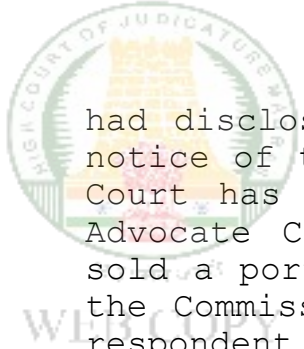
3.The first respondent has filed a suit for partition, in which a preliminary decree for partition of 1/3rd share of the plaintiff was passed by the trial Court on 31.10.1989 and it has become final. Thereafter, the first respondent/plaintiff had filed an application in I.A.No.719 of 1997 before the trial Court, to pass a final decree. The Advocate Commissioner had gone to the property and suggested the mode of division with the aid of plans that he had prepared.

4.There is one fact that both sides concurred:

At one point during the pendency of the final decree application before the trial Court, the plaintiff and the defendants had filed a joint memo of compromise but for some reasons that has not been accepted by the trial Court. Subsequently, the trial Court has passed a final decree allotting specific plot to the three co-sharers. Challenging the same, the defendants 1 and 8 have preferred the first appeal in A.S.No.28 of 2012 before the District Court, Trichy and the same was dismissed on 18.12.2013. The present second appeal was preferred against the decree of the District Court, as stated above.

5.The learned counsel for the petitioners/appellants contended that even when a final decree application is pending before the First Appellate Court, the first respondent had sold the property to the respondents 2 to 5, on 15.12.2011 and the property sold is described as undivided 1/3rd share in the suit property. He would further argue that this is contrary to even the final decree under which the first respondent claims title to specific plot and based on this sale deed the purchasers viz., respondents 2 to 5 are interfering his possession of other plots.

6.The learned counsel for the first respondent argued that in the sale deed he has not suppressed any material facts and that he



had disclosed the pendency of the appeal. He also brought to the notice of this Court that while passing the final decree, the trial Court has not taken into consideration the plan suggested by the Advocate Commissioner, since as on that date, the appellants had sold a portion of the property to strangers, which portion, as per the Commissioner's report, should have to be allotted to the first respondent.

7.Replying the same, the learned counsel for the petitioners/appellants argued that he has not made any sale regarding the second schedule property in the plaint, and the property involved in the present contest is the first schedule item of property in the plaint regarding which, he has not effected any sale.

8.Considering the rival submissions, this Court deems it fit to limit the rights and enjoyment of the parties to the plots allotted respectively to them as per the final decree now under challenge. Therefore, there shall be an order of status quo as to possession and enjoyment of the property, in accordance with the final decree passed by the trial Court in I.A.No.719 of 1997 and confirmed by the first Appellate Court in A.S.No.28 of 2012.

sd/-
05/06/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1.THE II ADDITIONAL DISTRICT JUDGE, TIRUCHIRAPPALLI.

2.THE PRINCIPAL DISTRICT MUNSIFF , THIRUCHIRAPPALLI

+1. C.C. to M/S.V.B.SUNDARESWAR Advocate SR.No.23100.
+1. C.C. TO M/S. K.S.SHANKAR MURALI, Advocate, SR NO.23169

ORDER
IN
CMP(MD) No.4684 of 2017
IN
SA(MD) No.251 of 2014
Date :05/06/2017

MS/CM.MSA/SAR.2/06.06.2017/3P.5C