

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N. SESHASAYEE

CMA.No.1417 of 2018
and
CMP.No.11339 of 2018

1. N. Geetha
K. Annammal (died)
(Cause title Accepted vide Court
order dated d25/06/2018 made
in CrI.A.SrNo.80388 of 2015) ... Appellants/Plaintiffs
- Vs.
1. Natarajan
2. Nagarajan
3. Santhi
4. Vijayarani
5. Amudha ... Respondents/Defendants

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1
(d) of CPC against the fair and decreetal orders dated
18.06.2015 passed in I.A. No.53 of 2014 in O.S. No. 20 of 2014
on the file of the District Court, Tiruvannamalai.

For Appellants : Mr. P. Mani
For Respondents : Mr. B. Jawahar

JUDGMENT

The present appeal is preferred against the order dismissing the
I.A. No.53 of 2014 in O.S. No.20 of 2014 on the file of the
District Court, Tiruvannamalai.

2. The learned counsel for the appellant submitted that the
suit was laid by the appellant for partition and the aforesaid
Interlocutory Application is filed to restrain the defendant
from alienating the suit property. This was dismissed by the
trial court on the ground that no injunction would lie against a
co-sharer.

3. Heard the learned counsel for the Caveator/ respondent.

4. So far as reasoning of the trial court goes, this Court
finds it difficult to subscribe to the same view, since an
injunction seeking to restrain the co-sharer from alienating the

property cannot be equated to an injunction excluding the co-sharer from joint enjoyment of the property. Having said that, atleast two aspects become significant:

- a) A co-sharer has got right to alienate his share, and there cannot be any restriction against such an alienation. Any injunction therefore can be only against such alience of the co-sharer from interfering with the joint enjoyment of the other co-sharers ;
- b) Secondly, in all these matters doctrine of lis pendens would operate and therefore the appellant need not be under any undue apprehension about violation of any of her subsisting rights.

5. It is submitted the suit has since been transferred to the newly constituted District Court, Arakonam, where it has been taken on file in O.S. No. 60 of 2017. The pleadings in the suit are complete and the suit is ready for trial.

6. To conclude, this Court finds that the apprehension of the appellant that her right is in peril, is misconceived. Therefore, this appeal is liable to be dismissed. However, in as much as the suit itself is ready for commencement of trial, this Court directs the trial court to dispose of this matter within three months from the date of receipt of a copy of this order.

7. Accordingly, the appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

avr
To

- 1.The District Judge,Tiruvannamalai.
- 2.The District Judge, Arakonam.

+1cc to Mr. P. Mani, Advocate sr.44965 [16/08/2018]

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