

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

C.M.A.No.1918 of 2015

and

M.P.No.1 of 2015

1. Shanmugham
2. Perumal
3. Muthulakshmi
4. Saravanan

...Appellants/Defendants

Versus

1. Kasthuri
2. Venkatesh @ Suman

...Respondents/Plaintiffs

This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (r) of Code of Civil Procedure praying to set aside the impugned fair and decretal orders of the learned Additional District Judge at Dharmapuri dated 04.08.2015 in I.A.No.39 of 2014 in I.A.No.3 of 2014 in O.S.No.6 of 2014 and dismiss the petition in I.A.No.39 of 2014 in I.A.No.3 of 2014 in O.S.No.6 of 2014.

For Appellants	:	Mr.S.Sudharshan
For Respondents	:	Mr.Kanimozhi Murthi

JUDGMENT

1.1. This appeal is preferred challenging an order for contempt initiated under Order 39 Rule 2A of Civil Procedure Code for an alleged violation of an interim order of injunction passed in I.A.No.39 of 2014 in O.S.No.6 of 2014 dated 04.02.2014.

1.2. The respondents herein as plaintiffs, have laid a suit in O.S.No.6 of 2014 before the Additional District Court, Dharmapuri for partition. There are seven defendants in the aforesaid suit, of who the fourth defendant is their father. Defendants 1 to 3 and 5 are the siblings of the fourth defendant. Defendants 6 & 7 are first defendant's wife and son. There are 10 items of properties scheduled to in the suit and according to the plaintiffs. They originally belonged to Govindasamy, who is the grandfather of the plaintiffs and father of the defendants 1 to 5, that the suit properties are ancestral

properties, and on this foundation the suit is laid for partition. In the suit the plaintiffs had filed an application in I.A.No.3 of 2014 in which they have obtained an ex parte order of interim injunction that the respondents shall not alter the physical features of the suit properties. Alleging violation of the said order of interim injunction, the first defendant and defendants 5 to 7 put up construction in S.No: 15/6B, the plaintiffs have taken out I.A.39/2014 for contempt and the same was ordered by the trial court. This appeal is directed against it.

2. In Items 10 & 7, a School functions, and according to the appellants, the school buildings are in Item 10, and the playground is in Item 7. According to the plaintiffs, the School and the playground are in Item 7 of the suit property.

3. A Commissioner was also appointed by the Court who visited the property on 12.04.2014 and filed an interim report. Again, the Commissioner has made another visit and filed his final report on 19.03.2015. It is seen from the interim report, that the Commissioner had visited the property where the school is functioning and observed the existence of unplastered, three storeyed building. It is not denoted in the interim report whether the school was functioning in Item 10 of suit property or in Item 7. In his final report, the Commissioner indicated that he has visited the property in Survey No.15/6B (described in Item No.7) and found a three storeyed building which was not plastered for 2/3rd portion, and that the rest of the building was plastered and white washed.

4. The learned counsel for the appellants would contend that the buildings are constructed at least three years prior to the filing of the suit, and are not recent constructions and at no time was there a violation of an interim order of injunction.

5. What is important is whether any construction was made after the passing of the interim order of injunction. The order of interim injunction was passed on 04.02.2014, and it is mentioned in the impugned order that the same was served on the appellants on 05.02.2014. Now, unless it is established that the buildings are constructed after 05.02.2014, it cannot be stated with a degree of certainty that the order of interim injunction was violated. Admittedly, the commission was not taken as on the date of passing of the interim order and till 12.04.2014. Going by both the interim and final reports of the Commissioner, he has noted in the interim report about a three storeyed building without plastering, and going by the final report, the same continued to remain unplastered for more than 2/3 portion. This implies that at least between the report of the Commissioner's first visit and final visit there does not appear to be any

structural alteration in the building available. Eventually, this Court does not have any material to suggest whether there was any violation of an order of injunction from 05.02.2014 till the visit of the Commissioner on the first instance, and between the two dates of Commission visit, there was no proof of violation of the order of interim injunction.

6. What is critical here is, the exact character of the Item No.7 of the suit property as on the date of passing of the injunction order. Here there is a factual dispute as to when exactly it was built. The material in the form of commissioner's report is not conclusive on this aspect to enable the Court to come to any final decision on it. It may be stated, that inasmuch as an action for contempt of Court carries penal consequences, the standard of proof required is higher than the one suggesting a finding on a mere preponderance of probability. Since the proof in aid of alleged Commissioner's report is inadequate and inconclusive, this Court considers that it may not be appropriate for the Civil Court to initiate an action.

7. The Appeal is hence allowed and the order of the learned Additional District Judge at Dharmapuri dated 04.08.2015 in I.A.No.39 of 2014 in I.A.No.3 of 2014 in O.S.No.6 of 2014 initiating an action for contempt is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mrr

To

The Additional District Judge,
Dharmapuri.

Copy TO
The Record Keeper,
VR Section, High Court,
Madras.

+1cc to Mr.S.Subramanian, Advocate SR.No.37616

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PA(CO)
GN(01/08/2018)