

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.55 of 2018
and C.M.P.No.724 of 2018

Sasi Kumar

... Appellant

Vs.

1. Madhu @ Manokaran
2. Kalpana
3. Periya Pappa
4. R.Sundararaman
5. K.Pugal
6. Chinnasamy
7. Petchikrishnan
8. R.Shanmugam
9. Tamilselvam
10. Jayaraman
11. Suresh
12. Xavier
13. K.Sathish
14. Karthikeyan
15. P.Dhandapani
16. K.Selvam

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code, against the fair order and decretal order dated 20.12.2017 in I.A.No.133 of 2017 in O.S.No.47 of 2013 passed by the Additional District Judge, Dharmapuri.

For Appellant : Mr.B.Harikrishnan

For Respondents : Mr.C.Prabakaran
for RR1 to 3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the fair and decretal order dated 20.12.2017 in I.A.No.133 of 2017 in O.S.No.47 of 2013 passed by the Additional District Judge, Dharmapuri.

2. In a suit for partition and injunction to restrain the defendants from alienating the property, the plaintiffs filed an application in I.A.No.133 of 2017 in O.S.No.47 of 2013 for injunction pending trial. The trial Court has also based on report filed by the Advocate Commissioner, granted the order of interim injunction from continuing the construction activities by the respondents therein. Aggrieved over the interim injunction granted by the trial Court dated 20.12.2017, the appellant/27th defendant has come before this Court with this Civil Miscellaneous Appeal.

3. The learned counsel for the respondents would submit that the trial Court has granted injunction to restrain defendants 16 to 29 from putting up further construction on 20.12.2017. Despite that order, they have continued the construction activities. Therefore, a Contempt Petition was filed before this Court for disobedience of the order passed by the Trial Court. During the pendency of the Contempt Petition, the appellant has approached this Court. Therefore, this Civil Miscellaneous Appeal is sought to be dismissed.

4. Per contra, the learned counsel appearing for the appellant denied the allegation that the appellant has violated the interim order. In fact, he has been handicapped by the interim injunction granted against him as he could not proceed with the construction activities and that he suffered irreparable injury.

5. Heard the learned counsel appearing for both parties.

6. From a perusal of the pleadings, it is seen that the appellant has filed a reply statement as early as 20.04.2015, wherein, the alienation to the third parties prior to the suit has clearly been averred. Even in the counter affidavit, it is pleaded that the construction activities are not going in the suit property, which is in S.No.314/3, but it is going on in S.No.314/2 and S.No.321/1, which has no connection to the suit property. The trial Court at the stage of completion of plaintiffs' side evidence has entertained the application for Advocate Commissioner as well as the application for injunction. The application does not disclose any specific date, which gives the cause of action for the petitioner to seek for emergent orders.

7. From the Advocate Commissioner's report, it could be seen that the construction activities were going on for a long time and many buildings were at the stage of construction of 1st floor.

8. In such circumstances, the trial Court should have

restrained itself from granting interim order restraining the parties to put up any construction. The balance of convenience on the part of respondents therein was not taken into consideration and without any prima facie case, the interim injunction has been granted for the reasons best known. The trial Court should have completed the trial and rendered the judgment on merits in the suit itself.

9. Therefore, this Court finds that the order of interim injunction granted by the trial Court is not based on valid reasons, and without considering the balance of convenience on the part of the respondents. It does not discuss about the objection raised by the appellant in his counter also. In such circumstances, the order of interim injunction granted in I.A.No.133 of 2017 in O.S.No.47 of 2013 dated 20.12.2017 is set aside.

10. The learned counsel for the respondents would submit that it is fair to direct the trial Court to complete the trial within a stipulated time. Considering the submission made by the learned counsel appearing for the respondents, the trial Court is directed to complete the trial within a period of six weeks from the date of receipt of a copy of this order.

11. With the above observations and directions, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge,
Dharmapuri.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.5091
+1cc to Mr.B.Harikrishnan, Advocate, S.R.No.4947

C.M.A.No.55 of 2018
and C.M.P.No.724 of 2018

GMR(CO)
CS/28/02/18