

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.683 of 2018

and

C.M.P.No.5955 of 2018

1. S.Prabakaran

2. S.Poonkodi .. Appellants/Respondents/Defendants

Vs

S.Sudhakar .. Respondent/Petitioner/Plaintiff

Prayer : Civil Miscellaneous Appeal is filed under Order 43 Rule 1(d) of C.P.C., against the Fair and Decreeal order dated 22.11.2017, made in I.A.No.40 of 2016 in O.S.No.26 of 2016 on the file of the Additional District and Sessions Judge, Ariyalur.

For Appellants : Mr.C.Prabakaran

For Respondent : Mr. P.Valliappan
Assisted by Ms.K.R.V.Rohini

JUDGMENT

The appellants herein are the respondents in I.A.No.40 of 2016 in O.S.No.26 of 2016 on the file of the Additional District and Sessions Judge, Ariyalur. The suit is laid for partition of both movable and immovable properties.

2. The plaintiff/respondent and the 1st defendant are the sons of the second defendant both of who are the appellants herein. According to the plaintiff, the movable and immovable properties scheduled in the plaint are the estate of his father Sivapatham and on his demise, the properties devolved on the parties and seek partition of his share.

3. In this suit, he came up with I.A.No.40 of 2016, seeking an order of interim injunction against the defendants/appellants herein for restraining them from alienating, or otherwise transferring any of the suit properties. This was ordered by the trial court. Challenging the said order, this appeal is preferred.

4.1 The learned counsel for the appellants submitted that the suit properties are already divided, even during the lifetime of Sivapatham, under whom the parties herein claim their right, that the plaintiff/respondent has another

sibling, whose existence the plaintiff has suppressed, and he has also admitted the properties that he had been allotted under the oral partition referred to earlier. Subsequently, few of the movables such as automobiles have been sold.

4.2. Ms.K.R.V.Rohini, learned counsel appearing for the respondent/plaintiff would argue that the appellants have filed their written statement and inasmuch as their contention was that an oral partition had taken place, it is necessary that the matter went for trial, and till such time, it is important to preserve the property available for partition.

5.1 There is merit in the submissions of both sides. At the end of the day, it is important that the Court preserves the property for the benefit of the parties to this partition suit. So far as the immovable properties are concerned, the order of injunction passed by the trial court has to be confirmed.

5.2 So far as the order of injunction passed as regards the movable properties are concerned, there will be a partial modification of the order in that the defendants/appellants would be entitled to operate items 1 to 8, 10 and 11 in B-schedule property for which they will be entitled to approach appropriate authorities for necessary permission.

6. Subject to the modification as indicated above, this appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

ssn

To:

1. The Additional District and Sessions Judge,
Ariyalur.
2. The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr. P. Valliappan, Advocate Sr.47859
+ 1 cc to Mr. C. Prabakaran,

C.M.A.No.683 of 2018
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C.M.P.No.5955 of 2018

MR (CO)
<https://hcservices.ecourts.gov.in/hcservices/>
EU (28/08/2018)