

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.M.A.Nos.698 and 699 of 2018
and C.M.P.Nos.6032 and 6033 of 2018

1.R.Karunakaran ... Appellants/1st & 2nd
Respondents/1st and 2nd Defendants
2.K.Senthil

Vs.

1.K.Saravanan ... 1st Respondent/Plaintiff
2.R.Parameswari ... 2nd Respondent/3rd defendant
in both CMAS.

COMMON PRAYER:- Appeals have been filed under Order 43 Rule 1(r) of C.P.C to set aside the fair and decretal orders dated 16.02.2018 made in I.A.Nos.15899 and 15900 of 2017 in O.S.No.6002 of 2017 on the file of the XVI Additional City Civil Court, Chennai.

For Petitioners : M/s.A.Thyagarjan
Senior Counsel,
for Mr.D.Senthil Kumaar

For Respondents : M/s.D.Geetha
for Mr.K.Saravanan

C O M M O N O R D E R

These Appeals are filed to set aside the fair and decretal orders dated 16.02.2018 made in I.A.Nos.15899 and 15900 of 2017 in O.S.No.6002 of 2017 on the file of the XVI Additional City Civil Court, Chennai.

2.The issues and the parties involved in both the Civil Miscellaneous Appeals are one and the same and therefore, they are disposed of by this common order.

3.The appellants are defendants 1 and 2, first respondent is the plaintiff and second respondent is the third defendant in O.S.No.6002 of 2017 on the file of the XVI Additional City Civil Court, Chennai. The first appellant is father of the first

respondent. The second appellant and second respondent are brother and sister of first respondent. The first respondent filed the said suit for partition and allotment of $\frac{1}{4}$ undivided share in the suit property and for permanent injunction restraining the appellants and second respondent from in any way alienating or encumbering the suit property and perpetual injunction restraining the appellants and second respondent from in any way demolishing the existing building and putting up new constructions over the suit property.

4. According to the first respondent, the property originally belonged to M. Shanmugam Naicker, his great grandfather. He executed a settlement deed, granting life interest to his son, S. Rajaram and thereafter to his five grand sons viz., R. Balasubramanian, R. Karunakaran (1st appellant), R. Palvannan, R. Panneer Selvam and R. Sureshbabu. The first appellant is the second grand son of M. Shanmugam. R. Balasubramanian was maintaining the suit property as kartha of joint family. After his death, the first appellant and one of his brothers R. Panneer Selvam filed O.S.No.2672 of 1997 on the file of the XVIII Additional City Civil Court (FTC II), Chennai for partition in respect of suit property and other joint family properties. The parties entered into a compromise dated 14.11.2003 and the compromise decree was passed on 09.01.2004. The suit property was allotted to the first appellant. The first respondent and second appellant by birth became co-parceners. The second respondent got married on 11.09.1995 and therefore, she is also a co-parcener. The appellants and first respondent mortgaged the property on 23.03.2007 and 18.03.2011 with Chennai Metropolitan Co-operative Housing Society and the same were discharged on 21.02.2011 and 26.09.2017 respectively. The first appellant claiming to be the absolute owner of the suit property, in collusion with second appellant is trying to alienate and encumber the suit property by entering into joint venture with the builders. In the circumstances, the first respondent filed the above suit. Along with the suit, the first respondent also filed two applications in I.A.Nos.15899 and 15900 of 2017 under Order XXXIX Rule 1 & 2 of C.P.C read with Section 151 of C.P.C for an interim injunction restraining the appellants and second respondent from alienating or encumbering the suit property and from in any way demolishing the existing building and putting up new construction over the suit property pending suit.

5. The appellants and first respondent filed counter affidavits and contended that as per the decree passed in O.S.No.2672 of 1997, the first appellant has become absolute owner of the suit property. The patta has been issued in his name and the property tax, water tax, Sewerage tax, service tax and EB connection stand in his name. The first respondent after marriage left the property and is residing separately. The

second appellant is taking care of the first appellant and his wife. There is no rental income from the property and the property is in dilapidated condition. The first appellant settled the suit property in favour of the second appellant by the settlement deed dated 23.11.2017. The suit property is very old and in dilapidated condition, the building was constructed in the year 1955 and the age of the building is 85 years and therefore appellants have decided to put up a new construction and entered into a joint venture agreement on 24.11.2017, whereby the builder agreed to allot one flat in the ground floor; one flat in the first floor; paid Rs.25,00,000/- and paying monthly rent of Rs.10,000/- till the project is completed. The appellants have vacated the premises and are residing in the rented premises and applied for building permission. The builder also paid the money and therefore, he is also necessary party in the proceedings and prayed for dismissal of both the applications.

6.Before the learned Judge, both the appellants and respondents did not let in any oral evidence. In I.A.No.15899 of 2017, the first respondent filed and marked 22 documents as Exs.P1 to P22 and the appellants and second respondent filed and marked 10 documents as Exs.R1 to R10. In I.A.No.15900 of 2017, no document was filed on either side.

7.The learned Judge considering the averments in the affidavits, counter affidavits and the documents filed by the appellants and first respondent in I.A.No.15899 of 2017, allowed both the applications and granted interim injunction for a period of six months on the ground that whether the suit property is a joint family property or absolute property of the first appellant can be decided only after the conclusion of trial and directed the appellants and respondents to conduct the trial within six months.

8.Against the said orders dated 16.02.2018 made in I.A.Nos.15899 and 15900 of 2017 in O.S.No.6002 of 2017, the appellants have come out with the present two Civil Miscellaneous Appeal.

9.Heard the learned Senior Counsel for the appellants as well as the learned counsel for the respondents and perused the materials available on record.

10.From the materials on record, it is seen that the contention of the first respondent is that he is a co-parcener along with appellants and second respondent; the suit property is a joint family property and he is entitled to $\frac{1}{4}$ share in the suit property. On the other hand, the contention of the first appellant is that as per the decree passed in O.S.No.2672 of

1997, the suit property was allotted to him and he is the absolute owner of the suit property and the patta has been issued in his name and all the records stand in the name of the first appellant. The first appellant is paying all the statutory dues to the Government. The learned Judge considered these rival contentions and the fact that after filing of the suit, the first appellant settled the property on 23.11.2007 in favour of the second appellant and both of them have entered into joint venture agreement with the builders on 24.11.2007.

11. In view of the above facts, the learned Judge held that the rival claim can be decided only after conclusion of trial and granted interim injunction in both the applications for a limited period of six months from 16.02.2018. At that time, it has also been taken into consideration that the appellants have entered into joint venture agreement with the builder and have received Rs.25,00,000/- and are receiving Rs.10,000/- as monthly rent from the builders. There is no illegality or irregularity warranting interference by this Court with the orders of the learned Judge dated 16.02.2018 made in I.A.Nos.15899 and 15900 of 2017 in O.S.No.6002 of 2017. The appellants have entered into joint venture with a builder and they have received Rs.25,00,000/- and possession is with builder. In view of the same, the learned Judge is directed to dispose of the suit on merits and in accordance with law, as expeditiously as possible, in any event not later than 16.07.2018.

12. With the above direction, both the Civil Miscellaneous Appeals are disposed of. Consequently, connected Civil Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To
The XVI Additional City Civil Judge,
Chennai.

+2cc to Mr.M.Murugan, Advocate sr.no.25058
+2cc to Mr.Senthil Kumar, Advocate sr.no.25036

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