

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

O.S.A.No.73 of 2018
and C.M.P.No.4489 of 2018

L.K.Sridhar

.. Appellant

Vs

1.S.Ravichandran
2.Jayaprakash
3.Anuradha
4.Venkatesan
5.Manikandan
6.Srinivasan
7.Vijayalakshmi

.. Respondents

Prayer:- Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent to set aside the Judgement and Decree dated 23.01.2018 passed in O.A.No.680 of 2017 in C.S.No.657 of 2012.

Original Application praying that this Hon'ble Court be pleased to pass an order of ad-interim injunction restraining the 1st respondent/Plaintiff from in any manner interfering with the Applicants construction of compound wall in the suit schedule property .

C.S.No.657 of 2012:

The Suit in C.S.No.657 of 2012 is laid by the 1st respondent herein seeking declaration of title and recovery of possession of the suit property. while the 1st respondent would claim title to the property on the basis that it is the ancestral property of his family and there was a proceeding launched by under the Urban Land Tax Act by the Authorities and the same was decided in favour of the Plaintiff. He would also trace title to property under the sale deed dated 20.01.1930 and settlement deed date 26.03.1971.

For Petitioner : Mr.P.Subba Reddy
For RR1 & 2 : Mr.K.Venkateswaran
For RR3 to 6 : No appearance

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent this Original Side Appeal is taken up for final disposal.

2. The defendants 1 and 2/respondents 1 and 2 herein filed O.A.No.680 of 2017 in C.S.No.657 of 2012 against the 1st respondent/Plaintiff prayed for an order of ad-interim direction in any manner interfering with the construction of compound wall in the Suit Scheduled Property, vide impugned order dated 23.12.2018, the learned Judge has granted permission to the applicant/defendants 1 and 2 to construct joint compound wall on the Southern and Eastern side of the property and also made it clear that they cannot claim any right on the basis of the permission which has been granted and further observed that the compound wall should have a gate, the gate should be locked and the key shall be deposited in this Court and none of the parties shall have a excess to the property and challenging the legality of the same, the plaintiff /1st respondent has filed this appeal.

3. Mr.P.Subba Reddy, the learned counsel appearing for 1st respondent/plaintiff has invited the attention of this Court to the plaint averments and would submit that the title of the property has been traced, and his mother Mrs.K.Vimala Devi had settled the property in favour of the 1st respondent / Plaintiff by a Settlement Deed dated 25.02.2004, registered as Document No.765 of 2004 and he is in possession and enjoyment of the same and however, the respondents 1 and 2 by changing the patta and other revenue records, started claiming illegal ownership over the suit property and by way of abundant caution, the appellant / plaintiff apart from seeking a relief, he is the absolute owner of the property also prayed for delivery of possession and other consequential relief. The learned counsel appearing for the appellant would further submit that the learned Judge failed to take into consideration of the fact the ownership of the property in favour of the plaintiff and has come to erroneous conclusion as if the respondents 1 and 2/the defendants 1 & 2 are in possession and hence, prays for interference.

4. Per contra, the learned counsel appearing for respondents 1 and 2 / applicants/defendants 1 and 2 would submit that admittedly the prayer is also for recovery of possession and it is a vacant land and in order to protect possession from the encroachers / trespassers, the application has been taken out seeking permission to construct the compound wall and the learned Judge, taking note of the factual and other aspects, has accorded permission to put up a compound wall and also protected the interest of both the parties and hence, prays for dismissal of this appeal.

5. This Court has carefully considered the rival submission and also perused the materials placed before it.

6. A perusal of the plaint would reveal that the appellant / plaintiff claiming title and right over the suit property by virtue of registered Settlement Deed dated 25.02.2004 registered as document No.765 of 2004 and also averred that the respondent 1 and 2 and defendants had created records started claiming illegal ownership over the suit property and that they did not have any right, title or interest over the suit property. However, it is to be noted at this juncture that the appellant / plaintiff apart from seeking a prayer for declaration, also prays for recovery of possession of the Suit Schedule Property and thereby implying that the respondents 1 and 2 / defendants are in possession of the property and however, whether the possession of the respondent 1 and 2 / defendants 1 and 2 are rival or not cannot be adjudicated in this appeal, as it is a trivial issue. The learned judge has taken into consideration of the fact that the suit property is a vacant land and after taking note of the apprehension expressed by the respondents 1 and 2 that he is likely to be encroached or dispossessed and in order to protect the right by permitting the respondents 1 and 2 to put up a compound wall and also made it clear that in the para 6 of the impugned order that the respondents 1 and 2 cannot claim any right on the basis of the permission which has been granted and further observed that the compound wall to be constructed shall have a gate, the gate shall be locked and the key shall be deposited in this Court and further made it clear that none of the parties shall have a access to the property.

7. In the considered opinion of this Court, the impugned order passed by the learned Judge has taken care of the interest of both the parties. It is to be noted at this juncture that it is only a prima facie opinion expressed by the learned Judge for granting interim orders and it is a settled position of law that the findings recorded prima facie, shall not have any bearing on the merits of the Suit, which shall be decided based on the rival contentions put forth by the parties and by letting in evidence.

8. In the result, the Original Side Appeal is dismissed, confirming the order passed by the learned Judge in O.A.No.680 of 2017 in C.S.No.657 of 2012 dated 23.01.2018. No Costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

rka/sk

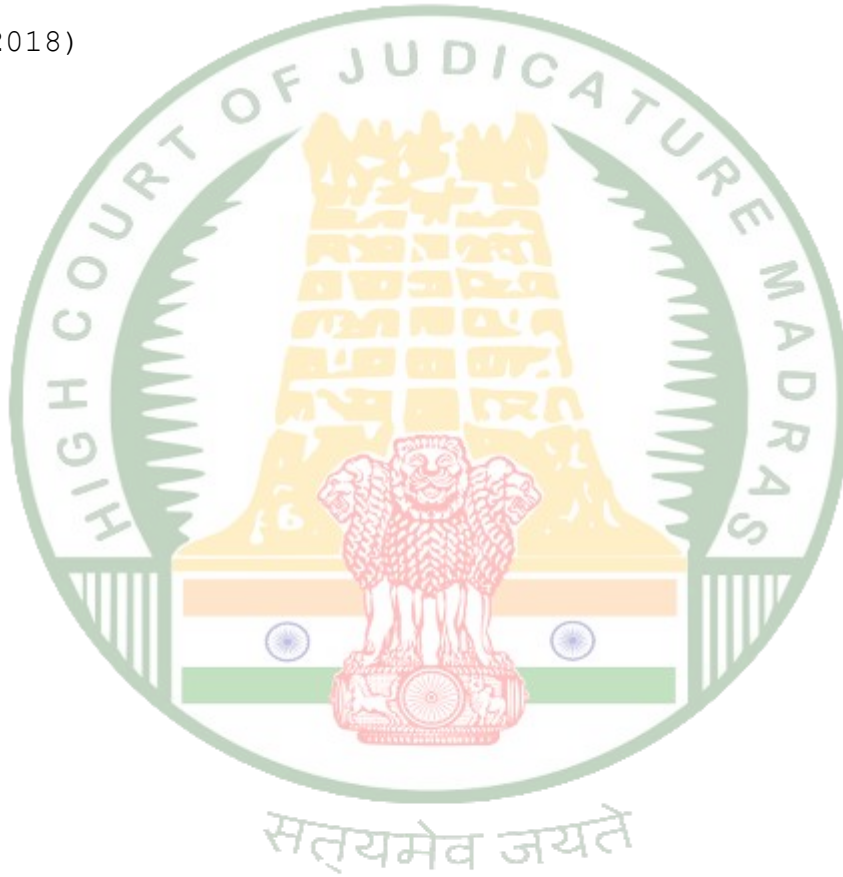
To

1. The Sub Assistant Registrar
High Court, Madras 104.

+1 CC to Mr.C. Venkatesan, Advocate sr 24679.

O.S.A.No.73 of 2018

SP(17/04/2018)



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