

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.11.2018
Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.2689 of 2018
and
C.M.P.No.20291 of 2018

Arulmigu Parthasarathi Temple
Represented by its Executive Officer,
Triplicane, Chennai - 600 005..... Appellant/ Respondent
verses
S.K.Arumugam ...Respondent/ Petitioner

Prayer : Civil Miscellaneous Appeal is filed under Order 43 Rule 1 r/w Section 104 of Code of Civil Procedure, praying to set aside the order and decree made in C.M.P.No.1076 of 2016 in C.M.P.No.1442 of 2012 in A.S.No.465 of 2012 dated 20.09.2018 on the file of the First Additional City Civil Judge, Chennai.

For Appellant : Mr.S.Senthil Nathan

JUDGMENT

The decree holder in E.P.No.3110 of 2008 and the respondent in CMP.No.1076 of 2016 in A.S.No.465 of 2012 pending on the file of the learned First Additional City Civil Judge, Chennai, is the appellant before this Court.

2.It is the case of the appellant is that originally the appellant/temple has filed a civil suit in A.S.No.465 of 2012 against this respondent for eviction of vacant land and the same was delivered by decreeing the suit.

3.Pursuant to the above decree passed in O.S.No.6122 of 1997, this appellant/temple has filed E.P.No.3110 of 2008 before the Executing Court, viz., X Assistant Judge, City Civil Court, Chennai, pending E.P., the decree holder namely, appellant herein filed petition in E.A.No.2974 of 2010 under Order XXI Rule 97 of C.P.C. to remove the obstruction caused by the respondent S.K.Arumugam or any other person. Considering the temple case, on 11.10.2012, the learned X Assistant Judge, City Civil Court, Chennai is set to allow the E.A.No.2974 of 2010 by directing to remove the Obstrucuter from the suit property and to delivery the same to the Decree Holder in the terms of the decree.

4.Challenging the said order in E.A.No.2974 of 2010 in E.P.No.3110 of 2008, the respondent/obstructor has filed an appeal in A.S.No.465 of 2012 before the learned First Additional Judge, City Civil Court, Chennai against the appellant/temple and the same is pending.

5.While pendency of the said appeal, the respondent/obstructor has filed an application in C.M.P.No.1076 of 2016 and CMP.No.1077 of 2016 in A.S.No.465 of 2012 under Order 39 Rule 1 and 2 and Section 151 of C.P.C. praying for interim injunction restraining the respondent temple from making any alteration to the suit shop premises till the disposal of the appeal in A.S.No.465 of 2012.

6.The respondent also states that in his petition that at the time of filing the appeal in A.S.No.465 of 2012, the learned First Additional Judge, City Civil Court, Chennai has granted an interim order passed in E.A.No.2974 of 2010 dated 11.10.2012 and the same is pending. Therefore, he sought for the interim injunction restraining this appellant temple from making any alteration to the suit shop premises till the disposal of the appeal.

7.Considering the respondent's case, the learned First Additional Judge, City Civil Court, Chennai, by an order dated 20.09.2018 in CMP.No.1076 of 2016 granting an order of interim injunction restraining this appellant/temple from making any alteration till the disposal of the appeal.

8.Challenging the said order in CMP.No.1076 of 2016, the appellant has filed this appeal before this Court.

9.I heard Mr.S.Senthil Nathan, learned counsel appearing on behalf of the appellant and perused the materials available on record.

10.Admittedly, the appeal in A.S.No.465 of 2012 is pending before the learned First Additional Judge, City Civil Court, Chennai along with interim stay by granting stay of the order in E.A.No.2974 of 2010 in E.P.No.3110 of 2008 dated 11.10.2012 and the said stay is still pending without any further progress.

11.It is admitted fact that the appellant is attempting to alter the petition mentioned property. Though the respondent was already dispossessed the suit property while pendency of the interim stay was in force. Therefore, the appellate court viz., the First Additional Judge, City Civil Court, Chennai considering the respondent's case and granted interim injunction in favour of the respondent on

20.09.2018.

12.Now, when the matter has been taken up, both the learned counsels appearing for the appellant and the respondent were argued their case before this Court, but this Court do not want to go into the merits of the case in this appeal. But, admittedly, there was an interim order in force in E.A.No.2974 of 2010 and the appeal which was challenged the order of removal of the obstracter viz., the respondent from the suit property and the same to be delivered to the decree holder viz., the appellant/temple and the stay order in E.A.No.2974 of 2010 dated 11.10.2012 has to be decided on merits till the disposal of the said appeal in A.S.No.465 of 2012, the alteration of the suit property should not be permitted.

13.On the other hand, this appellant was also states that likewise the respondent also should not make any alteration in the property, since the property was lawful land before 5 years and the same is continue till date.

14.In the said circumstances, this Court feels that by disposing this appeal in the interest of justice, it is just and necessary to both the parties to maintain the status quo as on date, further direction to the appellate Court to dispose the appeal within the stipulated period which will ends of justice.

15.In the result:

- (a) this civil miscellaneous appeal is disposed of;
- (b) both the parties are directed to maintain status-quo till the disposal of the appeal in A.S.No.465 of 2012 as on date;
- (c) since the appeal is of the year 2012, which is pending for more than six years, the learned Additional City Civil Judge, Chennai is directed to dispose of the appeal, within a period of four weeks from the date of receipt of a copy of this order on day to day basis without giving any adjournments to either of the parties. After passing the judgment in A.S.No.465 of 2012, the learned first Additional City Civil Judge, Chennai is directed to report before this Court within 10 days thereafter. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs

To

1.The First Additional City Civil Judge, Chennai.

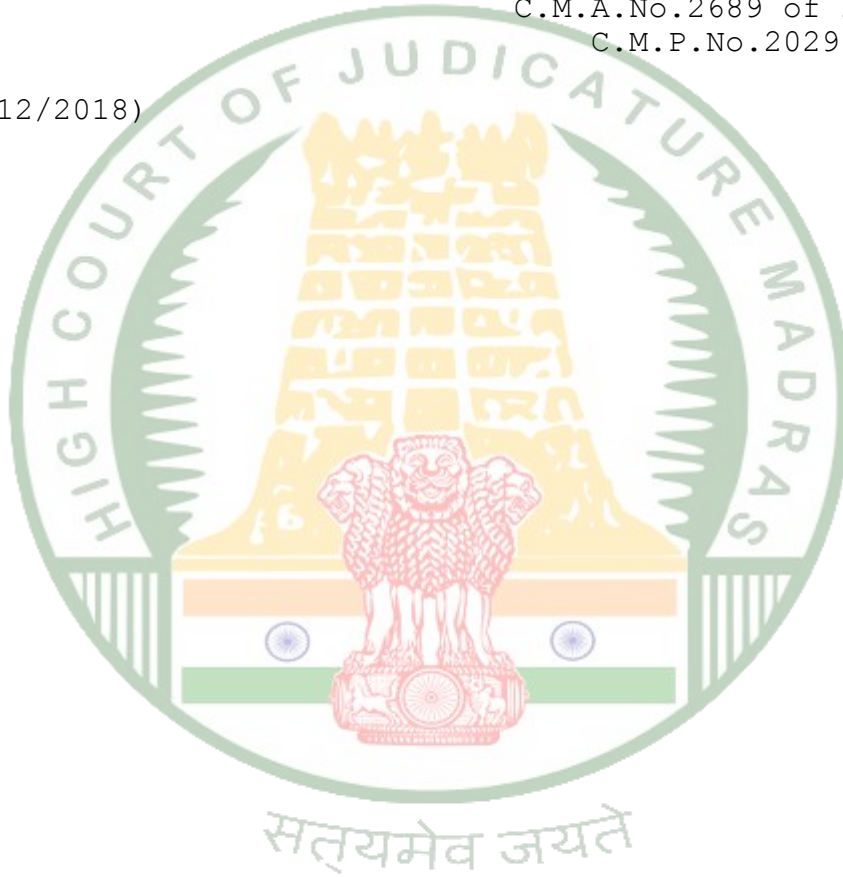
2.the X Assistant Judge, City Civil Judge, Chennai.

3.the Additional Judge,City Civil Judge, Chennai.

+1cc to Mr.S.Senthil Nathan , Advocate SR.No. 78609

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ASK(17/12/2018)



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