



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Sixth day of June Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice K.RAVICHANDRABAABU
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

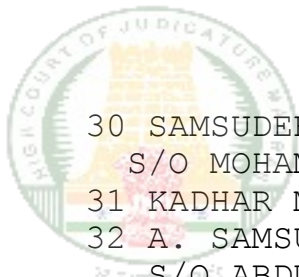
CMP(MD) No.4085 of 2018
IN
AS(MD) No.91 of 2017

1 ABDULLA
2 NOORJAHAN

... PETITIONERS / APPELLANTS

Vs

1 PATHUMUTHU JOHARA
2 SEENI MATHAR
3 SEENI PITCHAI
4 M. MAJAHAR BEGAM
5 M. THOULATH BEEBI
6 R.SYED RAVIYATH
7 S. SHAHIRA BANU
8 M. ANISH FATHIMA
9 SREENIVASAN
10 AYYAVU AMBALAM
11 MURUGAN
S/O MUTHAIAH CHETTIAR
12 BHADHUR RAJA
13 SEKAR
14 PARTHIBAN
15 SAHUL HAMEED
16 RAGHUNATHAN
17 RAJKUMAR
18 PONNUSAMY
19 CHELLAMMAL
20 RAVIATH BEEVI
21 PONNUTHAI
22 MATHINA
23 IBRAHIM BATHU
24 MOHAMED ALI JINNAH
25 MURUGAN
S/O VELLAI AMBALAM
26 H.SAITHOON BEEVI
27 NOORJAHAN
28 E. MEGARAJ
29 N.S. SAIPUDEEN @ ATHAVU



30 SAMSUDEEN
S/O MOHAMMED ANIFA

31 KADHAR MYDEEN

32 A. SAMSUDHEEN

S/O ABDULLAH

33 ZAHEER HUSSAIN

34 MUMTAJ

35 MARIAM BEEVI

36 MINOR RAMZAN

S/O SYED

37 MINOR MAMSAL

S/O.SYED

... RESPONDENTS / RESPONDENTS

MINOR RESPONDENTS 36 & 37 ARE
REPRESENTED THROUGH THEIR COURT
GUARDIAN ADVOCATE Tr.SENTHIL

(RESPONDENTS 9 TO 37 ARE GIVEN UP
IN CMP ALONE. HENCE NO NOTICE IS
NECESSARY TO THEM)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant an order of injunction restraining the Respondents 1 to 8 from alienating the suit properties which are subject matter in AS (MD) No.91 of 2017 more fully described in the schedule to the petition and thus ender justice.

PRAYER IN AS (MD) No.91 of 2017:-

to set aside the judgment and Decree dated 05.12.2016 made in O.S.No.202/2004 on the file of the Learned VI Additional District Court, Madurai and allow the First Appeal and thus render justice.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.M.V.VENKATASESHAN, Advocate for the petitioners and of Mr.S.A.AJMAL KHAN , Advocate for Caveator on behalf of the Respondents R1 to R8, Mr.A.SENTHILKUMAR, Advocate for R17, R18, the court made the following order:-

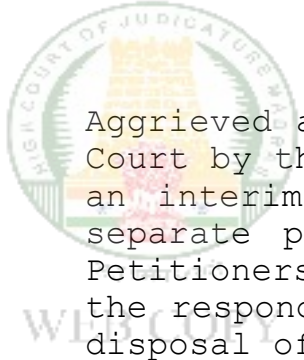
(Order of the Court was made by **K.RAVICHANDRABAABU, J**)

This application is filed seeking an order of injunction restraining the respondents 1 to 8 from alienating the suit properties, which are the subject-matter properties in the First Appeal.

2.The Petitioners are the appellants. They are the defendants 2 and 3 before the Trial Court in a suit for partition filed by the respondents 1 to 8 herein. The other respondents are the other defendants in the said suit.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The Trial Court granted a Preliminary Decree for partition.



Aggrieved against the same, the present appeal is filed before this Court by the Petitioners/appellants. This Court has already granted an interim order of stay of passing of Final Decree alone, in a separate petition. Now the present application is filed by the Petitioners/appellants seeking for temporary injunction restraining the respondents 1 to 8 from alienating the suit properties, pending disposal of the appeal. Their apprehension is that the respondents 1 to 8 are making all attempts to alienate the suit properties in favour of third parties in order to create third party interest and to defeat the interest of the Petitioners/appellants, in the event of their success in the appeal.

4.A counter affidavit is filed by the respondents 1 to 8 disputing the claim made by the Petitioners/appellants. It is their contention that the Petitioners/appellants are not having any right over the subject-matter properties and therefore, they cannot prevent these respondents from alienating the suit properties, since already they succeeded before the Trial Court.

5.Heard both sides.

6.The present appeal arises against the judgement and decree passed in a suit for partition. Admittedly, this Court has stayed the passing of Final Decree by the Trial Court. Needless to say that the First Appeal being the continuation of the Original Suit, all the facts and circumstances including the pleadings and evidence let in by the parties have to be gone into and a decision has to be taken only at the time of final hearing the First Appeal. In the mean time, if the respondents 1 to 8 attempt to alienate the suit properties as contented by the Petitioners/appellants, certainly it would cause great prejudice to the interest of the appellants, apart from the fact that a third party interest would be created, which, this Court considered as an unwarranted attempt on the part of the respondents 1 to 8, at this stage. At the same time, by allowing this application, it cannot be construed as if this Court has accepted the case of the Petitioners/appellants, since all the contentions raised by both the parties would have to be considered and decided in only the main appeal. Thus, in the interest of both parties, this Court is of the view that the respondents 1 to 8 have to be prevented from alienating the suit properties, pending disposal of the present appeal.

7.Accordingly, this application is allowed. Post the main appeal for final disposal after completion of pleadings set and documents set, in the third week of September 2018

sd/-

06/06/2018

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TO

THE VI ADDITIONAL DISTRICT JUDGE,
MADURAI

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+2. C.C. to M/S.M.V.VENKATASESHAN Advocate SR.No.9669

vsn

JAM/11/06/2018/ PN /RNB/ 4p-4c

ORDER

IN

CMP (MD) No.4085 of 2018

IN

AS (MD) No.91 of 2017

Date :06/06/2018