



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.1016 of 2018

and

C.M.P(MD)No.10614 of 2018

Harilakshmi @ Uma

... Petitioner/Petitioner/Appellant

vs.

1.K.R.Krishnasamy
2.K.K.Jaganlal
3.P.Suresh Kumar
4.D.Sathish
5.B.Karthiga Devi
6.D.Pushpavalli
7.A.Vijayalakshmi
8.B.Kannan
9.V.Parthiban

... Respondents/Respondents/
Respondents

Prayer: The appeal filed under Order 43 Rule 1 of Civil Procedure Code, to set aside the Fair and decretal order, dated 12.09.2018 passed in I.A.No.18 of 2016 in O.S.No.9 of 2016, on the file of the I Additional District Judge, Madurai and allow the present Civil Miscellaneous Appeal.

For Appellant

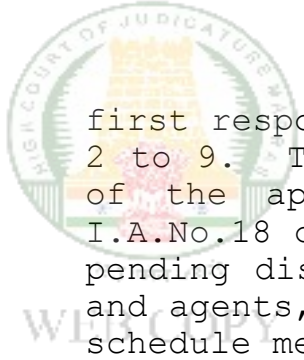
: Mr.R.Subramanian

JUDGMENT

The present appeal is filed to set aside the order, dated 12.09.2018 made in I.A.No.18 of 2016 in O.S.No.9 of 2016, passed by the learned I Additional District Judge, Madurai.

2.I have heard the learned counsel appearing for the appellant and perused the materials available on record.

3.The appellant, who is the plaintiff, filed a suit in O.S.No.9 of 2016 for partition and separate possession. The respondents are the defendants 1 to 9. According to the appellant, all the suit properties in question were acquired by her grand-father Jagannatha Iyer and after his death, her father K.J.Ramamoorthy inherited the same. Her father died on 20.09.2013 in an accident. The first respondent is her brother. When the appellant demanded partition of the properties, he gave evasive reply. The appellant applied for Encumbrance Certificate for properties and came to know that the



first respondent has alienated certain properties to the respondents 2 to 9. The first respondent has taken steps to deprive the share of the appellant. In view of the same, the appellant filed I.A.No.18 of 2016 for Ad-Interim Injunction and Temporary Injunction pending disposal of the suit restraining the respondents, their men and agents, assigns from in any manner alienating or encumbering the schedule mentioned properties till the disposal of the suit.

4.The respondents filed separate counter affidavits. The first respondent in the counter affidavit has contended that even during the life time of his grand-father, two partitions were effected in the year 1957 and 1958 and by two Wills executed by his grand-father and father respectively, the first respondent has become absolute owner of the suit properties and further contended that the appellant has no right and title over the suit properties.

5.The learned I Additional District Judge, Madurai, after considering the averments in affidavit and counter affidavits and documents filed by the respondents, held that both the appellant and the first respondent have made out a prima facie case, but balance of convenience and irreparable loss is in favour of the first respondent and dismissed the application. The learned Trial Judge also held that any alienation pending suit, will be hit by principles of lis pendens and documents produced by the first respondent have to be proved during trial. In the appeal, the learned counsel for the appellant contended that if there is any alienation pending suit, it will lead to multiplicity of proceedings. The learned Trial Judge having held that the appellant has made out a prima facie case, ought to have granted interim injunction.

6.Considering the entire materials on record, the contentions of the learned counsel for the appellant, are without merits. The learned Trial Judge after considering the documents filed by the first respondent held that the first respondent has not only made out a prima facie case, but balance of convenience is in favour of the first respondent. At the same time, the learned Trial Judge has taken note of the fact that the alienation by the first respondent to respondents 2 to 9 were prior to institution of suit and if there is any alienation subsequent to the suit, it will hit by principles of lis pendens. There is no error in the reasoning of the learned Trial Judge warranting interference by this Court. The learned Trial Judge has held that the first respondent has to prove the documents relied on by him during trial. From the order of the learned Trial Judge, it is seen that the suit is ripe for trial.

7.For the reasons stated above, the Civil Miscellaneous Appeal is dismissed as devoid of merits. The learned I Additional District Judge, Madurai, is directed to dispose the suit on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this judgment, without being influenced by any of the observations made in the order dated 12.09.2018, in I.A.No.18



of 2016 and this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

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/True Copy/

Sub Assistant Registrar(CS-II)

To
The I Additional District Judge,
Madurai.

+1cc to Mr.R.Subramanian, Advocate Sr.No.92800

AM

KM/SKN/SAR2/04.01.2019/3P/3C

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