



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.M.A(MD) No.536 of 2018

and

C.M.P(MD)No.6304 of 2018

1.Karthikeyan
2.Janagarajan
3.Palani Kumar

... Appellants/Petitioners/Plaintiffs

vs.

1.Paathala Rubi
2.Ramalakshmi

... Respondents/Respondents/Defendants

Prayer: The appeal filed under Order 43 Rule 1(r) of Civil Procedure Code, to call for the records in the fair and decreetal dated 26.10.2017 passed in I.A.No.204 of 2017 in O.S.No.1 of 2017 by the learned I Additional District Judge, Madurai and to set aside the same in the nature and circumstances of the case.

For Appellant : Mr.R.Rajamohan

JUDGMENT

The appellants, who are the plaintiffs, filed a suit in O.S.No.1 of 2017 against the respondents/defendants before the I Additional District Court, Madurai for partition, declaration to declare the judgment and decree, dated 10.02.2015 made in O.S.No.420 of 2010 on the file of the Additional Sub Court, Dindigul as null and void and for permanent injunction restraining the respondents/defendants from any way encumber the suit properties regarding the share of the appellants. Along with suit, the appellants filed I.A.No.204 of 2017 under Order 39 Rules 1 & 2 CPC for temporary injunction restraining the respondents from in any way alienating or encumbering the suit property pending suit.

2.According to the appellants, they have 3/15th share in item Nos. 1 to 9 of the properties and 1/5th share in item Nos.10 & 11 of the properties. The respondents on 05.07.2016 came along with their henchmen and cut of the trees in the suit properties and threatened the second appellant. The respondents are trying to dispose the properties in a hurried manner to create a third party right to curtail the rights of the appellants.



3.The respondents filed counter affidavit and contended that no incident occurred on 05.07.2016 as alleged by the appellants. The said allegation is made only for the purpose of showing cause of action and prayed for dismissal of the application.

4.The learned Judge considering the affidavit and counter affidavit and materials on record and arguments of the learned counsel for the appellants and respondents dismissed the application holding that the appellants have not placed any materials to show that the respondents are trying to alienate the properties.

5.Aggrieved against the said order of the dismissal, the appellants have come out with the present appeal.

6.From the materials on record it is seen that both the appellants and the respondents have made averments on merits on their claim in the suit and in the I.A.No.204 of 2017. From the impugned order it is seen that the suit is ripe for trial even on 26.10.2017. In view of the same, without deciding the issue on merits, it is suffice to direct the learned I Additional District Judge, Madurai to dispose of the suit in O.S.No.1 of 2017 on merits and in accordance with law, as expeditiously as possible, in any event, not later than 31st December 2018. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The I Additional District Judge,
Madurai.

+1CC to Mr.R.Rajamohan, Advocate, SR.No.79766

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