



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.08.2018

Pronounced on : 23.08.2018

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CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

**C.R.P. (MD) .No.832 of 2016 &
CMP (MD) No.4212 of 2016**

and

**C.M.A. (MD) No.468 of 2016 &
CMP (MD) No.6089 of 2016**

C.R.P (MD) No.832 of 2016

Malayandi @ Ashok

.. Petitioner

-Vs-

- 1.T.Anaikutty @ Ravichandran
- 2.Babu @ Kattaiveeran
- 3.Ayee @ Rajeswari
- 4.Andammal @ Shanty
- 5.C.Seethai Ammal
- 6.R.Prabha
- 7.H.Prema
- 8.C.Pramila
- 9.C.Thavamani
- 10.Minor. Mani Raja
(Rep. through his mother 5th respondent)
- 11.K.Amutha
- 12.Minor. Yoga Thavam
(Rep. through his mother 11th respondent)
- 13.Minor. Thavamani Raja
(Rep. through his mother 11th respondent)
- 14.S.Amutha
- 15.Minor. Thava Tahmizh
(Rep. through his mother 14th respondent)
- 16.Minor. Tamizhmani
(Rep. through his mother 14th respondent)
- 17.Andammal
- 18.Booma
- 19.Chandra
- 20.Parameswari
- 21.Singa Manickam
- 22.Inba Valli
- 23.Kavitha
- 24.Regina
- 25.Vijayakumar



26.Ramamoorthy @ Kattappan
27.Ayyanan @ Sethu Raja
28.T.R.Varadharajan
29.K.Easter Raj Niketan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.798 of 2014 in O.S.No.24 of 2007 dated 21.04.2015 on the file of the V Additional District Judge, Madurai.

AND

CMA(MD)No.468 of 2016

1.S.Amutha
2.Thava Tamizh
3.Tamizh Mani

.. Appellants

-Vs-

1.T.Anaikutty @ Ravichandran
2.Babu @ Kattaiveeranan
3.Ayee @ Rajeswari
4.Andammal @ Shanti
5.C.Seethai Ammal
6.R.Prabha
7.H.Prema
8.C.Pramila
9.C.Thavamani
10.Minor. Mani Raja
11.K.Amutha
12.Minor. Yoga Thavam
13.Minor. Thavamani Raja
14.Malaiyandi @ Ashok
15.Andammal
16.Booma
17.Chandra
18.Parameswari
19.Singa Manickam
20.Inba Valli
21.Kavitha
22.Raghu
23.Vijayakumar
24.Ramamoorthy @ Kakkappan
25.Ayyanan @ Sethu Raja
26.T.R.Varadharajan
27.K.Easter Raj Niketan

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(4) of C.P.C., against the fair and decreetal Order passed by the Vth Additional District Court, Madurai in I.A.No.585 of 2015 in O.S.No.24 of 2007 dated 03.03.2016.



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For Petitioner

: Mr. Anand Chandrasekar
for Mr. K. K. Ramakrishnan
(for Petitioner in CRP.No.832/2016 &
for R14 in CMA.No.468/2016)

: Mr. V. Ramakrishnan
(for R1 in CRP.No.832/2016)

: Mr. D. Gandhi Raj
(for Appellants in CMA.No.468/2016)

: Mr. K. R. Laxman
(for R26 in CMA.No.468/2016)

: No Appearance (for R2 to R29 in
CRP.No.832 of 2016 and R1 to R13,
15 to 25, 27 in CMA.No.468/2016)

COMMON ORDER

Both the aforesaid Civil Miscellaneous Appeal and the Civil Revision Petition are arising out of two different Interlocutory Applications in an Original Suit in O.S.No.24 of 2007 on the file of the learned Vth Additional District Judge, Madurai.

2. As far as the CMA is concerned it is filed by the 10th to 12th defendants as against the order passed in I.A.No.585 of 2015 dated 03.03.2016. The said Interim Application was filed for the relief of temporary injunction as against the 14th respondent/13th defendant, however the said application was dismissed and against that the CMA is preferred. On the other hand the CRP is concerned, it is filed by the 13th defendant, as against the order passed in I.A.No.798 of 2014 dated 21.04.2015. The said Interim application was filed by the Plaintiffs to exonerate item numbers 12 and 15 of the suit 1st schedule/1st item among the suit properties. Since, the said application was allowed by the learned trial court, the 13th defendant has preferred the aforesaid Civil Revision Petition.

3. Since, the petitioner in C.R.P. and 14th respondent/13th defendant is the contesting party, the matters are taken up for final hearing on consent though some of the parties concerned are yet to be served notice. Moreover, as the C.R.P. and C.M.A. are filed against the fair and decreetal orders passed in two interim applications but in one suit both the C.R.P. and C.M.A. are clubbed together and thereby the following common order is passed:

"The original suit in O.S.No.24/2007 has been filed by the plaintiffs for the relief of partition. Pending original suit an application in I.A.No.798/2014 was filed by the plaintiffs U/s. 151 of CPC to exonerate item Nos.12 and 15



of the 1st schedule/1st item among the suit properties. The averments found in the affidavit filed along with the petition would show that the said properties have been included in the suit schedule due to inadvertency. As the petitioners/plaintiffs have not made any claim for partition in respect of the said properties keeping the same in the suit schedule would serve no purpose. So, it is the prayer of the petitioners that those properties are to be exonerated from the suit schedule in the interest of justice.

(2) However, it was contended by the 13th Defendant/14th Respondent that those properties were the subject matter of the suit in O.S.No.804/2000 on the file of Learned IIIrd Additional Subordinate Judge, Madurai for framing a scheme but the said suit filed by the 1st plaintiff herein was dismissed and against the dismissal, an Appeal Suit in A.S.No.199/2000 was filed but the appeal suit was also dismissed. Against the dismissal of the appeal suit, a second appeal in S.A.No.1840/2003 was filed and the same is pending. The further contention of the 14th Respondent/13th Defendant before the learned Trial court was that the Petitioners/Plaintiffs have filed such interim applications to exonerate some properties, attempted to change the character of the properties which are the subject matter of the aforesaid second appeal in S.A.No.1840/2003. So, the said application ought not to have been allowed. However, the learned Trial Court without appreciated the totality of the case, wrongly allowed said application. As the said order is untenable the same is to be set-aside by this court.

4.The learned counsel for the appellants in the Civil Miscellaneous Appeal would submit that the appellants herein filed the aforesaid interim application in I.A.No.585 of 2015 for the relief as against the 13th defendant, who is the 14th respondent herein, in order to restrain him from in any way in alienating or from encumbering the suit properties in any manner till the disposal of the suit. It is seen from the records that the plaint is consisted of 15 Schedules and several items immovable properties. The apprehension of the Petitioners/Appellants before the Learned Trial court was that since the 14th Respondent/13th Defendant alienating some properties which are the subject matter of the original suit, the petitioners were constrained to file the said application but without proper appreciation the said application was simply dismissed by the order dated 03.03.2016 "since the suit was ripped for trail the said application was dismissed". The reason adduced in the order of dismissal is totally unsustainable as it is a cryptic and non speaking order, so he prays this court to allow the Civil Miscellaneous Appeal.



5. On the other hand the learned counsel for the 14th Respondent/13th Defendant would contend that the allegations leveled in the affidavit filed along with the interim application against which the instant Miscellaneous appeal is preferred are baseless at the same time the order passed by the learned trial court is not erroneous in any manner and the same shall not be subjected for the interference of this Court, hence he prays for the dismissal of the Miscellaneous appeal.

6. I heard Mr. Anand Chandrasekar for Mr. K.K. Ramakrishnan, learned counsel for the Petitioner in CRP.No.832 of 2016 and 14th respondent in CMA.No.468 of 2016, Mr. V. Ramakrishnan, learned counsel for the 1st respondent in CRP.No.832 of 2016, Mr. D. Gandhi Raj, learned counsel for the Appellants in CMA.No.468 of 2016 and Mr. K.R. Laxman, learned counsel for the 26th respondent in CMA.No.468 of 2016 and the materials available on record are perused. No representation on behalf of the respondents 2 to 9 in CRP.No.832 of 2016 and respondents 1 to 13, 15 to 25, 27 in CMA.No.468 of 2016.

7. It is seen from the records that the Original suit was filed by 4 plaintiffs who are the Respondent Numbers 1 to 4 in the instant C.R.P. (MD) No.832 of 2016 as well as in the Civil Miscellaneous Appeal also. The CRP is preferred by the petitioner who is the 13th defendant in the original suit and the CMA is preferred by the 10th to 12th Defendants in the original suit. The relief sought for in the original suit was partition of 4/14th share in the suit property and also the relief of not to alienate the suit property till the disposal of the original suit. The other prayers were for the protection of the joint possession and enjoyment and also for mense profits. It is the contention of the learned counsel for the petitioner in the Civil Revision Petition that the properties found in the suit schedule were owned by one late. M.R. Malaiyandi Ambalam who is the great grandfather of the Plaintiffs. He had three wives and the plaintiffs and the defendant numbers 1 to 12 are the legal heirs of the said M.R. Malaiyandi Ambalam through his 1st wife namely Aandammal. Through his second wife, namely Puliyammal the said Malaiyandi ambalam had a son namely Pichai. However, the said Pichai was died in the year 1942 without got married and the said Puliyammal was also died in the year 1965. At the same time, through his 3rd wife namely Aandichi ammal the said Malaiyandi ambalam had a daughter namely Mahamaaye. However, in the written statement filed by the 13th defendant/14th respondent, who is the revision petitioner herein, the averments of the plaint are denied in all extent.

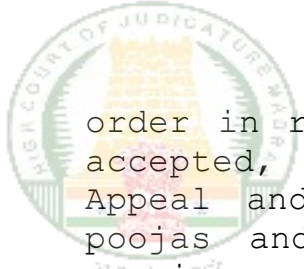
8. At the same time, the contention of the learned Counsel for the appellants is that once the properties brought to the judicial proceedings for adjudication, the alienation of the properties of the plaint shall not be permissible to subject them any kind of encumbrances including sale. This would not only to

avoid multiplicity of the proceedings but the same would squarely cover under the Lis-Pendants. So, in no manner any of the parties of the original suit are entitled to subject the title of the suit properties to encumber in any manner.

9.The learned counsel for the Appellants in the Civil Miscellaneous Appeal brought to the notice of this court about the order passed in the application in I.A.No.585 of 2015. The perusal of the same would disclose that the reason adduced therein was that since "the suit was ripped for trail the petition was dismissed". Time and again the Hon'ble Supreme court as well as this court had repeatedly held that while passing an order in the interim application, the concerned presiding officers are to apply their mind into the legal position as well the facts and circumstances of the case. It is unfortunate to record here that the order passed in the I.A.No.585 of 2015 cannot be appreciated in any manner but to set-aside the same for the simple reason that it is a cryptic order.

10.At the same time though it is the contention of the learned counsel for the 14th Respondent/13th Defendant that since he was the title holder of the properties without any doubt, the act of his alienation shall not be questioned by the petitioners in any manner. On the other hand, it is contended by the counsel for the appellants that several items of the suit properties have been sold by the 14th Respondent/13th Defendant in a hurried manner. Unless he is curtailed by the order of this Court, otherwise he would totally swindle the suit properties. He also brought to the notice of this court into the encumbrance certificate filed along with the typed set of papers which would prove that the 13th Defendant has invariably sold several items of the suit properties. When the properties of the plaint and their title are pending adjudication, it is totally impermissible inadvisable to transfer the title of those properties in any manner. Such transfers though in the eyes of law are invalid; the same cannot be appreciated in any manner but can be defined as an act of disregard to the judicial proceedings.

11.At the same time it is also brought to the notice of this court to the averments of the affidavit filed in I.A.No.585 of 2015 that the aforesaid M.R.Malaiyandi Ambalam created in his life time two trust as named in the affidavit. The trust was conducted by the founder and also Poojas were performed periodically and after the demise of the founder of the trust, Poojas were performed by the legal heirs of the Malaiyandi Ambalam. So, the appellants herein are also having the right to perform poojas as they are the descendants of the said Malaiyandi Ambalam. However, this contention is stoutly denied by the counsel for the 13th Defendant/14th Respondent submitting that the said subject matter of the original suit and the same cannot be adjudicated in the instant Civil Miscellaneous Appeal. In the considered opinion of this court once the genealogical



order in respect of the estate of the said Malaiyandi Ambalam is accepted, to the extent of Appellants in the Civil Miscellaneous Appeal and the respondent numbers 1 to 23, then performing of poojas and who is having the right to perform poojas do not acquire much significance, but to perform poojas there cannot be any impediments either legally or factually. However, no one can acquire or ascertain his or her title over any property simply by performing poojas to the idols in the suit property. So, in this regard the parties need not dispute or prevent with each other for the performing of poojas on either side.

12. Now the order passed by the learned trial judge in respect of the prayers sought for in the interim application is to be testified as already discussed that it is a cryptic order. At this juncture it is to be adjudicated here that as to whether the learned trial judge is entitled to pass such an order that the interim application was dismissed as the suit is ripped for trial. As far as the interim applications are concerned it can be filed for several reasons in pending original suits. Once an application is filed, it can be disposed of by the Learned Judge concerned by way of a speaking order. At the same time if the counter part of the interim application has recorded no objection then it may be allowed by way of a cryptic order. Even at that time also the court has the bounden duty to ascertain that parties are not colluded with each other in getting orders by filing any interim application. Here the counter affidavit filed in I.A.No.585 of 2015 by the 14th Respondent/13th Defendant would show that the averments of the affidavit filed in I.A.No.585 of 2015 are generally denied but it is admitted that the other Defendants have claiming their exclusive rights in respect of some items of the suit properties. If such a stand is taken by the 13th Defendant/14th Respondent then he is not entitled to make any kind of encumbrance including sale in respect of the suit properties.

13. In the light of the above discussion this court is having no hesitation to set-aside the fair and decreetal order passed in I.A.No.585 of 2015 dated 03.03.2016.

14. Now coming to the contents of the affidavit filed along with the I.A.No.798 of 2014, against the order passed therein, the CRP is filed. It is averred in the affidavit that as the item nos.12 and 15 of the 1st schedule/1st item of the suit properties they have been included in suit schedule by inadvertence. It is also made it clear that the petitioners will not make any claim for partition in those properties. Contending that the petitioner in the Civil Revision Petition that the said application is devoid of merits and it is nothing but an attempt of changing the character of those properties. The perusal of the affidavit filed by the 1st Respondent herein does not show anything about touching the character or origin of those properties. So, the apprehension of the revision petitioner is meaningless and unsustainable the



exclusion of any properties already found in the suit schedule would never get decided in respect of the title of the particular property. At the same time even in the affidavit filed for the exoneration of those properties, neither the character nor the origin of the particular property is dealt with. So, those properties are not only exonerated but they have been exonerated and excluded from deciding the title of those properties. In such circumstances the revision petitioner shall not have any apprehension simply for the reason that the mere exoneration will not change the character of those properties. For the above discussion, the grounds raised in the Civil Revision Petition are failed.

15. Therefore, for the foregoing discussions, the Civil Miscellaneous Appeal succeeds and the same is to be allowed, accordingly allowed. On the other hand the Civil Revision Petition is failed and same is to be dismissed, accordingly dismissed. However, as the original suit is of the year 2007, in the interest of justice the learned trial court is directed to dispose of original suit as per law as early as possible but not exceeding 31.12.2018 and the parties are directed to extend their fullest cooperation to get the lis adjudicated at the earliest. With the above observation, the order is passed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The V Additional District Judge,
Madurai.

+1cc to Mr.D.Gandhi Raj, Advocate Sr.No.80165

+1cc to Mr.V.Ramakrishnan, Advocate Sr.No.79787

VSV

VB/SKN/SAR4/05.10.2018/8P/4C

order made in

C.R.P. (MD) .No.832 of 2016 &

CMP (MD) No.4212 of 2016

and

C.M.A. (MD) No.468 of 2016 &

CMP (MD) No.6089 of 2016

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