



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.746 of 2018 and
C.M.P.(MD)No.8498 of 2018

Sivakirubakaran

... Appellant/Petitioner/Plaintiff

Vs.

1.Palaninathan

2.Sivakarunakaran

3.Sivagurugukan

... Respondents/Respondents/Defendants

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(U) of Civil Procedure Code, to set aside the fair and decreetal order dated 13.07.2017 passed in I.A.No.360 of 2017 in O.S.No.43 of 2017 on the file of the 6th Additional District Judge, Madurai.

For Appellant : Mr.G.Prabhu Rajadurai
For R2 : Mr.J.Barathan
For R3 : Mr.K.Muraleedharan

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the fair and decreetal order dated 13.07.2017 passed in I.A.No.360 of 2017 in O.S.No.43 of 2017 on the file of the 6th Additional District Judge, Madurai.

2.The appellant is the plaintiff in O.S.No.43 of 2017, seeking for partition, declaration and for injunction. Along with the suit, he has filed I.A.No.360 of 2017 for interim injunction, restraining the respondents from encroaching the suit property.

3.The respondents denied all the averments and contended that the appellant is not entitled for the relief sought for in the suit and application. The learned Judge, considering the averments in the counter affidavit, dismissed the application.

4.When the appeal is taken up for hearing, Mr.G.Prabhu Rajadurai, learned counsel appearing for the appellant raised various grounds in the appeal, challenging the order of the learned Judge. He contended that the learned Judge, while deciding the application, decided the suit itself on merits and prayed for setting aside the order of dismissal and prayed for injunction pending suit.

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5.The learned counsel appearing for the respondents 2 and 3



separately contended that the learned Judge has considered all the materials on record in proper perspective and dismissed the application, by giving cogent and valid reason. They are prayed for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the second and third respondents and perused the materials on record.

7. From the materials on record, it is seen that the learned Judge has observed that the relief of partition itself has to be decided and held that the appellant has not made out any *prima facie* case for injunction pending the suit and balance of convenience is not in his favour. In addition to that the learned Judge has held that any encumbrance or alienation made by the respondents pending the suit will hit by principles of *lis pendens*.

8. Considering the impugned order in entirety, I hold that there is no illegality or infirmity in the order passed by the learned Judge.

9. Considering the contention of the learned counsel appearing for the appellant that the learned Judge has decided the suit itself on merits, the learned Judge is directed to dispose of the suit on merits as expeditiously as possible without being influenced by the order passed in I.A.No.360 of 2017 and by this judgment of this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The VI Additional District Judge, Madurai.
2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- + 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 90375
- + 1 CC TO Mr.K.MURALEEDHARAN, ADVOCATE IN SR No. 90759
- + 1 CC TO Mr.T.R.JEYAPALAM, ADVOCATE IN SR No. 90382

MYR

TE/PM/SAR-3 : 20/11/2018 : 2P/7C

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