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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI
C.M.A.(MD) No. 841 of 2018 and
CMP(MD).No.9333 of 2018

1.L.Anbu Selvam

2.L.A.Ananthi

... Appellants/Respondents/Defendants
Vs.

S. Vijaya

.. Respondent/Petitioner/Plaintiff

Prayer: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(r) of Civil Procedure Code to set aside the order dated 11.12.2017 made in I.A.No.276 / 2017 in O.S.No.54 of 2017 on the file of the learned V Additional District Judge, Madurai.

For Appellant : Mr.R. Arjunrajan

For Caveator : Mr.G. Prabhu Rajadurai

J U D G M E N T

This Civil Miscellaneous Appeal is filed to set aside the order dated 11.12.2017 made in I.A.No.276 / 2017 in O.S.No.54 of 2017, on the file of the learned V Additional District Judge, Madurai.

2. The appellants are defendants in O.S.No.54 of 2017, on the file of the learned V Additional District Judge, Madurai. The respondent filed the said suit for recovery of Rs.10,00,000/- and for permanent injunction.

3. The respondent has filed caveat. By the consent of both sides, this Civil Miscellaneous Appeal is taken up for final hearing at the stage of admission itself.

3. According to the respondent / plaintiff, the appellants / defendants originally borrowed a sum of Rs.3,00,000/- agreeing to repay the same together with interest at 18% on the security of suit property. They executed a Registered mortgage deed on 20.09.2012. Subsequently, the appellants borrowed a sum of Rs.7,00,000/- and created usufructuary mortgage and the first appellant executed a registered mortgage deed on 22.03.2014. The second appellant signed the same as witness. The appellants handed over the possession of the suit properties to the respondent. The respondent is in possession and enjoyment of the suit property by cultivating the same. At the time of harvesting on 06.10.2018, the appellants and their henchman trespassed into the suit properties and threatened the workers and assaulted them and also damaged crops in the suit properties. The respondent lodged a complaint with the concerned police against the first appellant and others on



07.10.2018. On these averments, the respondent sought for interim injunction. The appellants filed O.S.No.121 of 2016, on the file of the learned District Munsif, Usilampatti, by making false allegation against the respondent and filed Crl.O.P. before this Court and the said Crl.O.P was dismissed. On these averments the respondent sought for interim injunction, pending suit, by filing I.A.No.276 of 2017.

4. The appellants in the counter affidavit denied and contended that the appellants are in possession of suit properties. The respondent is claiming possession based on the fabricated documents. Before the learned Judge, both the respondent and appellants filed documents

5. The learned Judge considering the averments in the affidavit and counter affidavit and documents filed by the parties held that the respondent has made out a prima facie case and balance of convenience is in favour of the respondent granted interim injunction.

6. Against that, the appellants have come out with the present appeal.

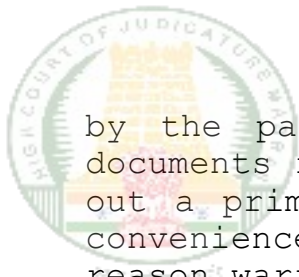
7. I have heard the learned counsel appearing on either side and perused the materials available on record.

8. The contention of the learned counsel appearing for the appellants is that the appellants are in possession of the suit property and respondent is interfering with their possession. The learned Judge did not properly consider the documents marked as Exs.R1 and R2 and rejected the documents filed by the appellants and granted interim injunction to the respondent. The Documents produced by the respondent are fabricated ones.

9. Per contra, learned counsel appearing for the respondent / caveator has contended that the respondent has produced registered deeds and documents to show the possession of suit property and is cultivating and the documents filed by the appellants do not relate to the suit properties. The respondent has also made out a prima facie case and balance of convenience is in his favour and prayed for dismissal of this appeal.

10. I have heard the learned counsel appearing on either side and peruse the materials available on record.

11. The contention of learned counsel appearing for the appellants is contrary to the documents filed by the respondent. The respondent has filed Registered mortgage deeds and revenue records. The appellants also filed Adangal and the learned Judge has held that they do not relate to the suit properties. The question whether the documents produced by the respondent are fabricated one or documents filed by the appellants relate to suit properties could be decided only by appreciating the evidence let in



by the parties during trial. The learned Judge based on the documents filed by the respondent held that the respondent has made out a prima facie case for injunction pending suit and balance of convenience is in favour of the respondent and hence, there is no reason warranting interference by this Court.

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12. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-III)

To

The V Additional District Judge, Madurai.

+1cc to Mr.G.PRABHU RAJADURAI, Advocate, SR.No.89672

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