



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2018

CORAM

WEB COPY

THE HON'BLE **MS.JUSTICE V.M.VELUMANI****CMA(MD) No.815 of 2018**
and C.M.P. (MD) No.9132 of 2018M.Ramalingam .. Appellant/2nd Respondent/
2nd Defendant**-Vs-**

1.Kittathal
2.Rathinam .. Respondents 1 & 2/Petitioners 1 &2
Plaintiffs 1 &2
3.M.Vijayalakshmi ..3rd Respondent/1st Respondent
/1st Defendant
4.Nallammal (died)

(Memo filed on 7.9.2018 to record as R4 died, R5 and R6, who are already on record are recorded as the lrs of R4 as per order dated 7.9.2018 in M.P.(MD)No.1 of 2012 in C.M.A.(MD) SRNO.26669 of 2012)

5.K.Saraswathi (Died)

6.K.Balusamy .. Respondents 4 to 6/Respondents 3 to 5/
Defendants 3 to 5

7.Sudharani

8.Minor.Anutheerthi

9.Minor.Avanthiga ...Respondents 7 to 9/Lrs of deceased R5

(RR7 to 9 are brought on record as LR's of the deceased 5th respondent, vide court order dated 24.11.2017 made in M.P.(MD Nos.1 to 3/15)

PRAYER: Civil Miscellaneous Appeal - filed under Order 43 Rule 1 (r) of the Code of Civil Procedure against the judgment and decree in I.A.No.76 of 2011 in O.S.No.19 of 2011 dated 20.01.2012 on the file of the District Court, Karur.

For Appellant : Mr.K.Govindarajan
<https://hcservices.ecourts.gov.in/hcservices/> For R1 & R2 : Mr.V.Balaji
(In SR Stage)

**J U D G M E N T**

The appellant is the second defendant in O.S.No.19 of 2011 on the file of the District Court, Karur. The respondents 1 and 2 filed the suit for partition. The first respondent is the mother of the appellant and the respondents 2 and 3. According to the respondents 1 and 2, the suit 'A' schedule property was allotted to one Muthusamy, who is husband of the first respondent and father of the appellant, the respondents 2 and 3. He purchased 'B' schedule property along with his brother's son Ramasamy and another brother Krishnasamy. 'C' schedule property is in joint possession of parties. Based on these averments, the respondents 1 and 2 filed the suit for partition. Along with the suit, the respondents 1 and 2 filed I.A.No.76 of 2011 for interim injunction restraining the appellant and the third respondent from alienating or otherwise encumbering the shares of the respondents 1 and 2 and not to alter the physical features of the shares of the respondents 1 and 2. The appellant opposed the said application on the ground that he has acquired the title to the suit property by adverse possession and his father by a Will dated 14.12.1989 bequeathed the suit properties while he was in sound and disposing state of mind. The respondents 3 to 5 filed counter and stated that they have no objection for partition in 'B' schedule property except first item of 'B' schedule property.

2. The learned Judge, considering the averments in the affidavit and counter affidavits, granted injunction by order dated 20.01.2012 pending the suit on the ground that no partition was effected and the appellant has to prove the Will.

3. Against the said order, the second defendant has come out with the present appeal.

4. The learned counsel appearing for the appellant contended that the respondents 1 and 2 has not pleaded any *prima facie* case or balance of convenience in their favour and sought for injunction only in respect of their share. But the learned Judge has granted injunction in respect of entire property.

5. The learned counsel appearing for the respondents 1 and 2 contended that the suit is for partition. The trial already commenced and contention of the appellant that he became absolute owner by way of adverse possession and by the Will executed by their father can be decided only after completion of trial based on the evidence let in by the parties. Considering these facts, the learned Judge granted interim injunction. The appellant has come out with the present appeal after 6 years and prayed for dismissal of the appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

6. Heard the learned counsel for the appellant and the respondents 1 and 2 and perused the materials available on record.



7. The suit is for partition. The respondents 1 and 2 claimed share in the suit properties. The same is resisted by the appellant and other defendants. The respondents 1 and 2 have stated that the appellant and the third respondent are trying to alienate and encumber the suit property. The appellant has not stated that he is not alienating or encumbering the suit property. The injunction granted by the learned Judge is dated 20.01.2012 and the appeal is coming for admission after 6 years. The trial has commenced.

8. In view of the above reasons, this Civil Miscellaneous Appeal is dismissed. The suit is of the year 2011. The trial Judge is directed to dispose of the suit as expeditiously as possible. No costs. Consequently, connected C.M.P.(MD) No.9132 of 2018 is also dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS-III)

To

The District Judge,
Karur.

+1cc to Mr.V.Balaji, Advocate, Sr.No.89657.

+1cc to Mr.V.Govindarajan, Advocate, Sr.No.89949.

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and C.M.P. (MD) No.9132 of 2018
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