



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1338 of 2011

1. P.M.Maruthai Chettiar
2. G.Jeevarathnam
3. M.Sundaram
4. S.Rajalakshmi .. Appellants

-vs-

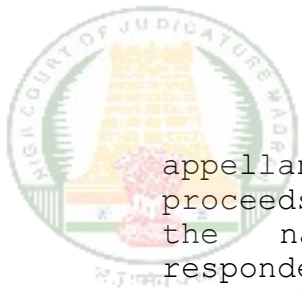
1. M.Balasubramanian
2. M.Muthuselvam .. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Order XLIII, Rule 1 of the Civil Procedure Code, against the order dated 22.12.2010 made in I.A.No.673 of 2010 in O.S.No.274 of 2010 on the file of the First Additional District Judge, Coimbatore.

For Appellants :: Ms.Vasudha Thiagarajan
For Respondents :: Mr.K.Seetharam

JUDGMENT

Learned counsel for the appellants/plaintiffs, assailing the impugned decretal order passed in I.A.No.673 of 2010 in O.S.No.274 of 2010 by the learned First Additional District Judge, Coimbatore, heavily contended that from the year 1974, the appellants/plaintiffs are doing the business and only from the proceeds of the business, they purchased the suit property in the name of Mrs.Kaliammal, the first appellant's wife and in the name of M.Balasubramanian, the first respondent. From the date of purchase, it is claimed that the appellants/plaintiffs are enjoying the property by doing business in the suit property. Therefore, during the pendency of the suit, they have moved I.A.No.673 of 2010 for an order of interim injunction restraining the respondents/defendants, their men, agents, servants, hirelings etc., from in any way alienating or encumbering the suit property. For the reasons best known, the trial Court, taking note of the stand taken by the first respondent/first defendant in the counter statement, has wrongly held that it is not correct to say that in 1974, the first



appellant/first plaintiff was doing business and from the proceeds of the business, he had purchased the suit property in the name of his wife Mrs.Kaliammal and the first respondent/first defendant. Again carried away by the mere averment made by the first respondent/first defendant that the suit property was purchased by Mrs.Kaliammal, the wife of the first appellant and the mother of the other appellants and the respondents, out of her own funds in her name and in the name of the first respondent, the trial Court has wrongly refused the grant of interim injunction. In any event, O.P.No.906 of 2013 has been filed by the second respondent/second defendant-M.Muthuselvam before this Court and to try the O.P.No.906 of 2013 along with the pending suit in O.S.No.274 of 2010 on the file of the First Additional District Judge, Coimbatore, a transfer civil miscellaneous petition has also been filed in the year 2016 and the same is also pending. Therefore, the reasonable prayer sought for by the appellants/plaintiffs to restrain the respondents/defendants from alienating or encumbering the suit property can be granted, till the disposal of the pending Original Petition and also the testamentary suit.

2. This Court is unable to accept the submissions made by the learned counsel for the appellants. It is not in dispute that after going through the pleadings in the I.A.No.673 of 2010 filed by the appellants/plaintiffs and the counter statement filed by the first respondent/first defendant in June, 2010 opposing the prayer that the appellants/plaintiffs are not in physical possession and enjoyment of the suit property, the trial Court has held that the appellants/plaintiffs have not even produced any iota of evidence to show that they are in physical possession and enjoyment of the suit property. When there is no documentary evidence to show that the appellants are in physical possession, it also goes further to say that making a prayer that the suit property shall not be alienated or encumbered itself also clearly shows that it is not in the physical possession of the appellants/plaintiffs. Hence, in my considered view, rightly the trial Court has refused the prayer. This Court, agreeing with the said findings, is inclined to dismiss the civil miscellaneous appeal, as it is bereft of any merit. Accordingly, the civil miscellaneous appeal stands dismissed. Consequently, M.P.No.1 of 2011 is also dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional District Judge
Coimbatore.

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+1cc to Mr.K.Seetharam, Advocate, S.R.No. 48902

C.M.A.No.1338 of 2011

VSN II (CO)
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