

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1696 OF 2019
and
C.M.P.NO.5232 OF 2019

G.Rajagopal

... Appellant

Vs.

1.Kulandaivelu
2.Ramamurthy

.... Respondents

PRAYER: Civil Miscellaneous Appeal under Order 43 Rule A1(r) of C.P.C. praying to set aside the fair order dated 12.09.2018 in I.A.No.16 of 2018 in A.S.No.10 of 2018 on the file of Sub Court, Mannargudi.

For appellant : Mr.M.V.Venkateshan

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the interim order granted in an Appeal Suit.

2.The defendant is the appellant herein. Respondents herein filed a suit for declaration of title and permanent injunction.

3.The Trial Court granted an order of interim injunction pending suit. The appellant herein challenged the grant of interim order in C.M.A.No.17 of 2011 and the same was dismissed. Thus during the pendency of the suit, the respondents / plaintiffs had the benefit of interim order.

4.On 24.05.2017, the suit was dismissed and the respondents preferred an appeal against the decree and judgment of the Trial Court. Pending appeal interim protection has been granted in favour of the respondent / plaintiff in I.A.No.10 of 2018 in A.S. No.10 of 2018. Challenging the same, the present appeal has been preferred.

5.Heard the appellant.

6.It is an admitted fact that the respondent / plaintiff

had the benefit of interim order during the pendency of suit. The lower appellate Court finding prima facie case has granted the discretionary relief pending appeal also. This Court cannot interfere with the discretion exercised by the Courts below, unless the order is patently illegal or perverse/ The present case is not the one falling under such exception warranting such interference. I do not find any merit in the appeal and dismiss the same.

7.However the learned counsel for appellant would pray for an early disposal of the appeal.

8.In the result this Civil Miscellaneous Appeal is dismissed with a direction to the lower Appellate Court to dispose of the appeal within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Civil Miscellaneous Appeal is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordiante Judge, Mannarkudi.

KAN(CO)
CSL/27.06.2019

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