

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.A.No.1440 of 2018 &
CMP.No.11494 of 2018

Uma

.. Petitioner/Appellant

Vs.

1. Narayanamurthy
2. P.V.Jagannathan
3. Harini
4. N.Jayanthi
5. Sekar Alagappan (died)
6. Ramakrishnan

(R5-Died Recorded and as per the memo dt.11.03.19 vide
court order dt.11.03.19 in CMA.1440/18.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43, Rule 1 read with Section 104 of CPC, challenging the decreetal and fair order passed in I.A.No.70 of 2018 in A.S.No.21 of 2018 dated 27.4.2018 passed by the Subordinate Judge Court, Poonamallee.

For Petitioner: Mr.T.T. Ravichandran
For R1 & R2 : Mr. M. Rajasekhar for R1

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the appellant challenging the decreetal and fair order passed in I.A.No.70 of 2018 in A.S.No.21 of 2018 dated 27.4.2018 passed by the Subordinate Judge Court, Poonamallee.

2. The appellant is the plaintiff before the Court. She filed a suit for permanent injunction in O.S.No.382 of 2011 restraining the respondents from interfering with the right of 20 feet common passage leading to the plaintiff suit schedule mentioned property except under due process of law and for a declaration that the B schedule property is a common passage.

3. The property originally stood as Plot No.10 and 11. Plot No.10 was purchased by one Kuruvilla and Plot No.11 was purchased by Raichal Eapen. The said Kuruvilla divided the property into plots and sold it. The appellant's property is plot No.2. Likewise, Raichal Eapen also divided the Plot No.11 and sold.

4. The access to plot No.10 is through Balvadi first street. The access to Plot No.11 is through Perumal Kovil Street. The 1st respondent 's property is Plot No.3A lying on the eastern side of the appellant's property. The access to the 1st respondent property is through a common passage from Perumal Kovil street. The appellant claims right of access through this common passage which is described as B schedule in the plaint. The trial Court, after considering all the materials placed before it and on the basis of Ex.B.30 sale deed executed in favour of K.T.Kuruvilla dated 1.9.1964 and the other sale deeds of the appellant's predecessors, had held that the appellant is not entitled to any relief, against which, the appellant preferred an appeal and filed a petition for interim injunction pending appeal. The injunction petition was dismissed, against which, the present appeal is filed.

5. Heard the submissions of both sides.

6. Perusal of records would reveal that Plot No.2 was originally purchased by one Sekar Alagappan. He in turn sold the same to one Hari Chandra Reddy by a registered sale Deed bearing Document No.599/2004 dated 4.2.2004. The said Harichandra Reddy sold the property to one P.L.Meenakshi by a registered sale deed bearing document No.630 of 2008 dated 24.3.2005. From the said P.L. Meenakshi, the appellant purchased the property by a registered sale deed bearing Document No.3964 of 2010. In the said sale deed, the eastern side boundary is shown as Plot No.3A and 20 feet wide common passage leading to Perumal Kovil Street, but the sale deed of the appellant's predecessor clearly show Plot No.3A as eastern boundary and the said appellant's property situate in Balvadi First Street. Therefore, it is very clear that the purchaser cannot have a better title than his vendor. In the instant case, the title deeds of the predecessors of the appellant shows plot No.3A as eastern boundary and there is no mention about the 20 feet common passage. Considering the same, the Lower Appellate Court declined to grant injunction restraining the respondents.

7. Normally in the cases of grant of discretionary relief, the appellate court does not interfere, unless it is patently illegal and arbitrary. In the present case, the Lower Appellate Court, after considering the facts and circumstances, had negatived the prayer.

8. The Honourable Supreme Court in its judgment made in C.A.No.5813 of 2009 (B.Muthukrishnan (Dead) by L.Rs. Vs. S.T.Reddiar Educational and Charitable Trust and others) reported in 2018 (4) SCC 298, was held as follows;

'4. It is not in dispute that the impugned orders are interim in nature having been passed in pending Regular First Appeal filed by the defendants (respondents herein) against the judgment and decree dated 11.03.2008 passed by the Trial Court in O.S.No.1 of 2003, which decreed the plaintiffs (appellants) suit. It is also not in dispute that the first appeal out of which these appeals arise in which the impugned orders were passed is still pending for its final disposal.

5. In a situation where the impugned orders are interim in nature and when the first appeal in which such impugned orders were passed is still pending for its final disposal in the High Court, it would be in the interest of all the parties to the appeal that the appeal itself be disposed of finally on merits.

6. So far as the legality of the impugned orders is concerned, suffice it to say, it being interim in nature, we do not consider it proper to interfere in such orders.'

9. I also consider that the Lower Appellate Court had rightly exercised its discretion and it does not warrant any interference. In view of the judgment of the Honourable Supreme Court and considering the facts and circumstances of the case, this Court is of the considered opinion that disposal of the appeal will give quietus to this issue.

10. It is submitted by both the parties that interim applications are pending in the appeal. A direction is also given to the Lower Appellate Court to dispose of the interim application as well as the appeal on merits within a period of four months from the date of receipt of a copy of this order.

11. The Civil Miscellaneous Appeal is disposed of with the above direction. No costs. Consequently, the connected C.M.P.No.11494 of 2018 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

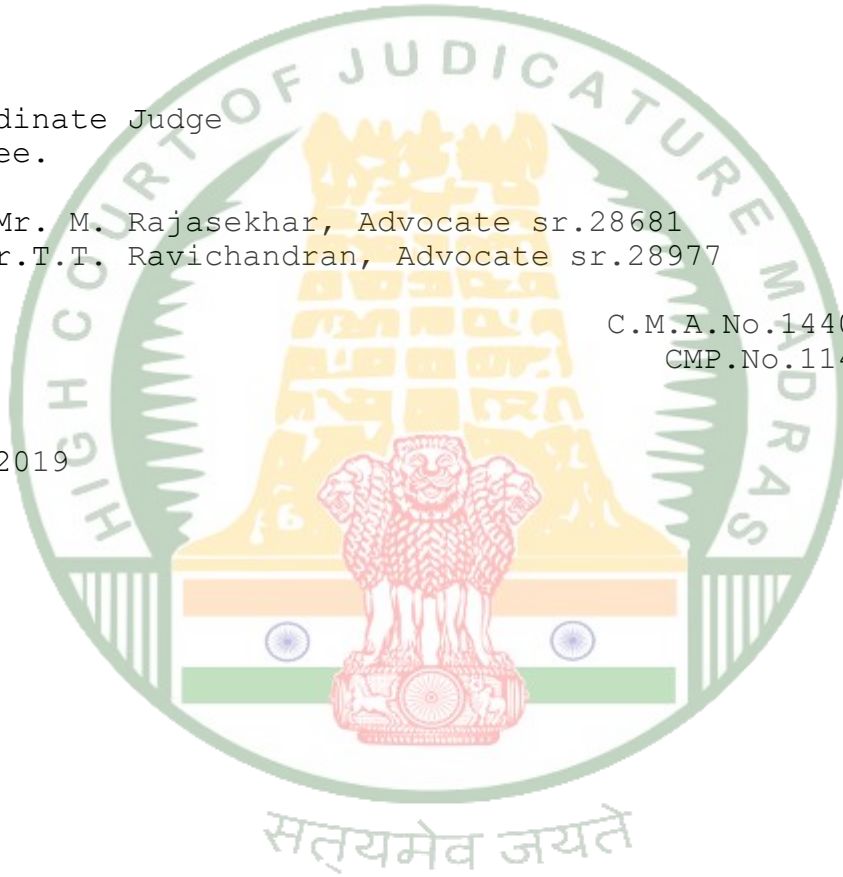
The Subordinate Judge
Poonamallee.

+1cc to Mr. M. Rajasekhar, Advocate sr.28681

+1cc to Mr.T.T. Ravichandran, Advocate sr.28977

C.M.A.No.1440 of 2018 &
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