

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2019

CORAM :

THE HON'BLE Ms. JUSTICE P.T.ASHA

C.R.P. (PD) No.282 of 2016

1.M.Kalaiselvi
2.M.Vijayakumar
3.M.Srinivasan
4.M.Venugopal
5.R.Muthalu

... Revision Petitioners

Vs.

1.D.Shanthi
2.D.Rajesh

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 19.11.2015 passed in C.M.A.No.6 of 2013 on the file of the Subordinate Judge, Kanchipuram, confirming the judgment and decretal order in I.A.No.1915 of 2012 in O.S.No.374 of 2012 on the file of the District Munsif-cum-Judicial Magistrate at Sriperumbudur.

For Petitioners : Mr.V.Lakshminarayanan

For Respondents : No appearance

ORDER

The above Civil Revision Petition has been filed, challenging the concurrent orders of the Courts below in granting the order of injunction

restraining the petitioners from interfering with the respondents' peaceful possession and enjoyment of the suit property and from disturbing the construction work being put by them.

2.The brief facts which are necessary to dispose of the Civil Revision Petition are as follows :

3.It is seen that the revision petitioners herein had filed a partition suit in O.S.No.408 of 2008 against the respondents herein and a preliminary decree had been passed on 21.09.2011 and they had filed a final decree application for partition. After the passing of the preliminary decree, the respondents herein have come forward with the suit in O.S.No.374 of 2012 on the file of the District Munsif-cum-Judicial Magistrate Court, Sriperumbudur, with a prayer for injunction, restraining the petitioners herein, their men, agents, servants, friends, relatives and all other persons acting on behalf of the petitioners, from interfering with the peaceful possession and enjoyment of the suit schedule property. In the plaint, the respondents would submit that the 1st respondent had become the owner of the suit schedule property, measuring an extent of 3660 sq.ft., comprised in Grama Natham Old Survey No.19/1, New Survey No.19/16 of Neelamangalam Village, within the specified boundaries and that she has been exclusively in possession and enjoyment of the same and that she had commenced the construction in the

said property and the revision petitioners had attempted to interfere with this activity of her.

4.In the main suit, the relief claimed was one for injunction from interfering with the possession and enjoyment of the suit schedule property. Pending the suit, the respondents had filed an Interlocutory Application in I.A.No.1915 of 2012 for an ad-interim injunction, restraining the revision petitioners, from not only interfering with her possession and enjoyment, but also from disturbing the construction being put up by the 1st respondent in the suit schedule property. The basis on which this relief was sought for was that, she had received the necessary approval for putting up construction and the construction materials and other materials are to be stored and that the revision petitioners do not have any right, title or interest over the suit schedule property.

5.The revision petitioners herein had filed a detailed counter, wherein, they have stated that, preliminary decree for partition had already been passed and when the final decree proceedings are pending, the co-owner cannot be permitted to bring out any change in the character of the property, which is one of the properties in the partition suit.

6.Be that as it may, the learned District Munsif-cum-Judicial Magistrate, by his order dated 30.04.2013, had proceeded to allow the said injunction petition on the ground that the revision petitioners have not raised any protest, when the construction activities had commenced and also the preliminary decree, being an exparte decree, will not preclude the respondents from putting up the construction and ultimately, in the final decree, equities shall be worked out, having regard to the constructions put up by the 1st respondent in the suit property.

7.Challenging the said order, the revision petitioners had filed C.M.A.No.6 of 2013 on the file of the Subordinate Court, Kanchipuram. The learned Subordinate Judge also confirmed the order passed by the learned District Munsif-cum-Judicial Magistrate.

8.Challenging the said order, the revision petitioners are before this Court.

9.Heard Mr.V.Lakshminarayanan, learned counsel appearing for the revision petitioners. He would contend that the preliminary decree in the suit in O.S.No.408 of 2008 had been passed and it is only thereafter, the suit in O.S.No.374 of 2012 has come to be filed. He would further contend that, no co-owner can change the character of the suit property and in respect of the

said submission, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass** reported in **(2004) 8 SCC 488** and the relevant paragraph is extracted hereunder :

"10. Be that as it may, Mr. Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The

said orders are set aside and the order of the trial court is restored."

10. Heard the learned counsel and perused the materials on record.

11. It is rather surprising that, despite the Courts below who were put on notice about the preliminary decree having been passed in favour of the revision petitioners, would grant an order of injunction, permitting the respondents to put up construction. The Courts below have failed to take note of the fact that the prayer in the interim application exceeds the prayer sought for in the main suit. The judgment relied upon by the learned counsel for the revision petitioners applies on all fours to the facts of this case.

12. In the result, this Civil Revision Petition is allowed and the order of the learned Subordinate Judge, Kanchipuram, in C.M.A.No.6 of 2013 is set aside and the interim order of injunction granted by the Court below is suspended. No costs.

WEB COPY

01.03.2019

mkn

Index : Yes / No

Internet : Yes / No

Speaking order / Nonspeaking order

To

- 1.The Subordinate Judge,
Kanchipuram.
- 2.The District Munsif-cum-Judicial Magistrate,
Sriperumbudur.



WEB COPY

P.T.ASHA, J.

mkn



C.R.P. (PD) No.282 of 2016

WEB COPY

01.03.2019