

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND

THE HONOURABLE MR. JUSTICE C.SARAVANAN

O.S.A. No. 400 of 2018

1.N. Usha
2.M.Sai Srinivasan
3.M.Ragul
4.M.Rohit

...Appellants/Respondents/Defendants

Vs.

S.Ganesan

...Respondent/Petitioner/Plaintiff

Prayer: Appeal under Order 36 Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the fair and decretal order dated 20.06.2018 passed in O.A. No. 1289 of 2017 in C.S. No. 989 of 2017.

Original Application filed praying that this Hon'ble Court be pleased to grant ad-interim injunction restraining the respondents/defendants their men, agents, servants or anyone authorised through them from alienating, encumbering or dealing with the property being Flat in the second and ground floor in Door No.16/14, 5th Main Road, Nandanam Extension, Chennai 600 035 with UDS of 1278 sq.ft more fully described in the schedule hereunder pending disposal of the suit.

Civil Suit filed under order IV Rule 1 of OS Rules Read with order VII Rule 1 of CPC praying this court for a judgment and decree against the defendants jointly and severally directing them.

i.to pay a sum of Rs.80,44,000/- together with interest thereon at 24% per annum of Rs.49,10,000/- from the date of plaint till the date of actual realisation;

ii. to pay costs suit.

For Appellants : Mr.K.M.Subrahmaniam

For Respondent : Mr.K.J.Parthasarathy

JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

This appeal is preferred by the appellants, being the defendants in the suit, challenging the order of the learned Single Judge by which the appellants were directed not to alienate or encumber the property pending disposal of the suit.

2. Learned counsel appearing for the appellants submitted that the order passed would amount to attachment before decree. The respondent/plaintiff is a money lender. Due to harassment caused by the respondent/plaintiff, the first appellant's husband (father of appellants 2 to 4) committed suicide.

3. Learned counsel appearing for the respondent/plaintiff submitted that the learned Single Judge merely protected the interest of the respondent by holding that the appellants shall not alienate or encumber the schedule mentioned property. The suit is also at the advanced stage of letting in evidence. Therefore, the order of the learned Single Judge would require no interference.

4. Admittedly, the suit is at the stage of letting in evidence. It is not a case of exercising of power under Order 38 Rule 5 of the Code of Civil Procedure. Considering the materials available on record, the learned Single Judge merely ordered that the appellants shall not alienate or encumber the suit property. Therefore, the contention of the learned counsel appearing for the appellants that it is an order passed by the learned Single Judge under Order 38 Rule 5 of C.P.C cannot be accepted.

5. Thus, we do not find any attachment involved in this case. Moreover, the case is also at the advanced stage as indicated above. Thus, we do not find any fault with the order passed by the learned Single Judge warranting interference. However, we make it clear that the observation made by the learned Single Judge will have no bearing while deciding the main suit.

In view of the above, the appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

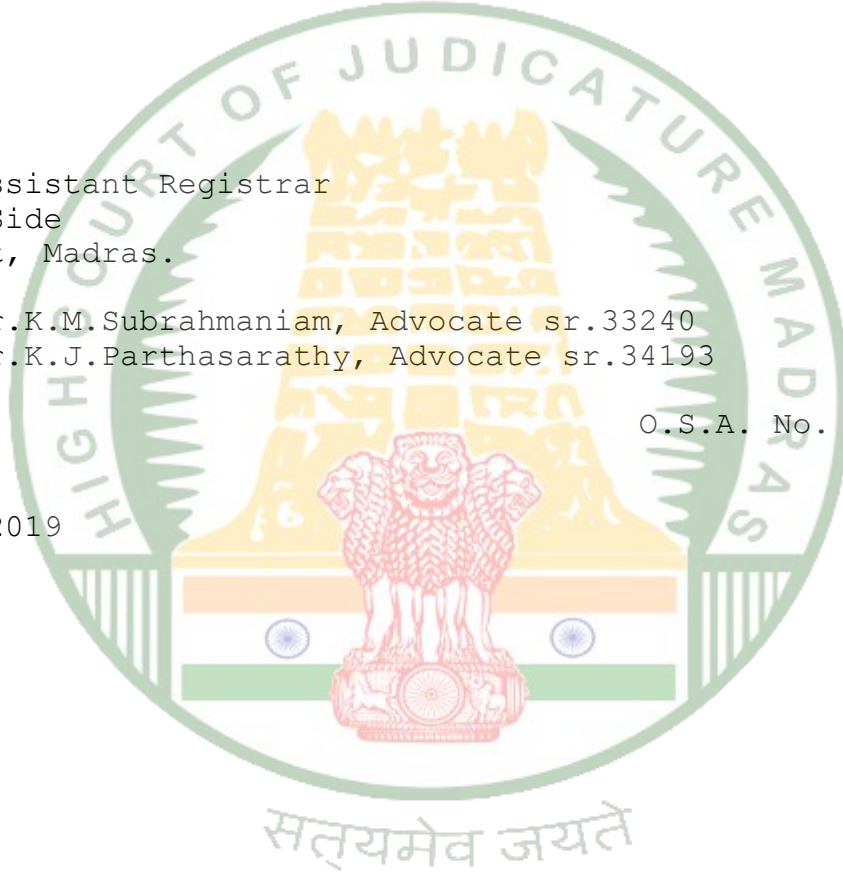
To

The Sub Assistant Registrar
Original Side
High Court, Madras.

+1cc to Mr.K.M.Subrahmaniam, Advocate sr.33240
+2cc to Mr.K.J.Parthasarathy, Advocate sr.34193

O.S.A. No. 400 of 2018

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