

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Fifth day of March Two Thousand Nineteen

PRESENT

THE HON`BLE MR.JUSTICE M.M.SUNDRESH

and

THE HON`BLE MR.JUSTICE C.SARAVANAN

CMP No.19754 of 2018

and CMP No.4300 of 2019

in AS No.701 of 2018

1 V.F.SRIDHARAN [1 & 2 PETITIONERS IN CMP.19754/2018
& 1 & 2 RESPONDENTS IN CMP.4300/2019]
2 S.VIJAYANAND

Vs

1 SATHIAVANI [1ST RESPONDENT IN CMP.19754/2018
& PETITIONER IN CMP.4300/2019]

KRISHNARADJOU ALIAS KICHENASSAMY
GRAMANY (DIED)

2 GOVINDAMMALLE ALIAS SUSILA [2 TO 7 RESPONDENTS IN CMP.19754/18
& 3 TO 8 RESPONDENTS IN CMP.4300/2019]

3 KAVITHA

4 THE UNION OF INDIA
REP. BY CHIEF SECRETARY.
GOVERNMENT OF PUDUCHERRY,
CHIEF SECRETARIAT, GOUBERT AVENUE,
(BEACH ROAD,) PUDUCHERRY -1

5 THE EXCISE DEPARTMENT
GOVT.OF PUDUCHERRY
CHIEF SECRETARIAT
GOUBERT AVENUE, (BEACH ROAD)
PUDUCHERRY -1

6 THE REGISTRAR OF FIRMS AND
COMPANIES,,
THE STATUTORY AUTHORITY UNDER THE
INDIAN PARTNERSHIP ACT AND INDIAN
COMPANIES ACT, 3RD CROSS, ILANGO NAGAR, PUDUCHERRY -11.

7 S.SIVARJA MURUGA

Petitions praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased

(1) to suspend the decree dated 28.08.2018 passed in O.S.No.2007, on the file of the Principal District Judge at Puducherry, in so far it related to clauses (ii) to (iv) of the same are concerned, (in CMP.19754/2018) and

(2) To pass an order vacating the interim order of suspension passed in CMP No.19754 of 2018 in A.S.No.701 of 2018 dated 20.11.2018 (in CMP.4300/2019) respectively pending AS No.701 of 2018.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of MR.S.SUBBIA SENIOR COUNSEL for M/S.ELIZABETH RAVI, Advocate for the petitioners 1 & 2 in CMP.19754/2018 and for the respondents 1 & 2 in CMP.4300/2019 and of M/S.R.NATARAJAN Advocate for the 1st respondent in CMP.19754/2018 and for the petitioner in CMP.4300/2019 and of MR.S.RAJENDRA KUMAR Advocate for the 2nd respondent in CMP.19754/18 and for the 3rd respondent in CMP.4300/2019 and of M/S.N.MALA ADDL.GOV'T.PLEADER for the respondents 4 to 6 in CMP.19754/18 and for the respondents 5 to 7 in CMP.4300/2019 the court made the following order:-

(Order of the Court was made by M.M.SUNDRESH, J.)

This appeal is directed against the order of the Trial Judge, who, while dismissing the suit filed for partition and separate possession, cancelled the licence granted in favour of the first appellant/4th defendant inter alia holding that the licence having been obtained pending suit is vitiated by fraud. At the time of entertaining this appeal, interim stay was granted in C.M.P.No.19754 of 2018. Seeking to vacate the same, C.M.P.No.4300 of 2019 has been filed by the petitioner/plaintiff who also incidentally filed another appeal in A.S.No.884 of 2018.

2.Learned senior counsel appearing for the petitioner in C.M.P.No.19754 of 2018 would submit that without a prayer seeking to suspend the licence, the Trial Judge passed the order. The suit filed for partition has also been dismissed. The petitioner has been running the shop for quite some time. Therefore, the interim order granted will have to be made absolute.

3.Learned counsel appearing for the petitioner in C.M.P.No.4300 of 2018 submits that it is a case of benami set up by the petitioner in C.M.P.No.19754 of 2018. Finding on fact given by the trial Court would show that licence has been obtained by

playing fraud. Therefore, Receiver will have to be appointed while vacating the order of interim stay granted.

4.The issue sought to be raised will have to be decided only in the appeal. As of now, the suit for partition is dismissed. Prima facie, it appears that the trial Court has granted the relief, which has not been sought for. Further, at least for a decade, the petitioner in C.M.P.No.19754 of 2018 has been running the business. The licence has already been transferred in his name. Therefore, we are of the view that the status quo as on today will have to be maintained insofar as running of shop is concerned. However, the petitioner in C.M.P.No.19754 of 2018 will have to give account periodically, during first week of every month for the running of the shop. It is made clear that the aforesaid arrangement would be subject to the result of the appeal. Accordingly, C.M.P.No.19754 of 2018 stands disposed of. Consequently, C.M.P.No.4300 of 2019 stands closed.

5.Considering the issue involved, the appeal is directed to be posted for final hearing on 10.06.2019. Registry is directed to make the papers ready.

-sd/-

05/03/2019

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT JUDGE
PUDUCHERRY.

C.C. to ELIZABETH RAVI Advocate on payment of necessary charges

सत्यमेव जयते

Order

in

CMP.19754/2018

and CMP.4300/2019

in

AS.701/2018

Date :05/03/2019

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VS 28.11.2018

VS 15.03.2019

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