

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMA NO.2711 OF 2018
AND CMP NOS.20501 AND 20503 OF 2018

C.Dhakshinamurthy ... Appellant

VS.

1.Ramanathan
2.P.Loganathan
3.Deivanai Ashok
4.K.Chandran

5.M/s.Tamil Nadu Mercantile Bank
Gobichettipalayam Branch
Represented by its Manager
Gobichettipalayam,
Erode District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (r) of Civil Procedure Code against the petition order dated 19.09.2018 made in I.A.No.1094 of 2018 in O.S.No.25 of 2018 on the file of the III Additional District and Sessions Judge, Gobichettipalayam, Erode District.

For Appellant : Mr.A.E.Ravichandran

For Respondents 1 to 4 : Mr.I.C.Vasudevan

J U D G M E N T

The appellant / plaintiff filed a suit for partition and declaration to declare the registered partition taken place between the parties as null and void. Pending suit, he filed an interlocutory application for injunction restraining the respondent from in any way encumbering or alienating the property. The Trial Court after considering the arguments of all the parties, rejected the prayer of the appellant / plaintiff. Aggrieved over the same, the appellant is before this Court.

2. A perusal of the plaint by itself proved that the appellant / plaintiff himself as a signatory to the registered partition deed between the parties. He would allege that the signature was obtained by fraud by using sweet coated words and therefore, it is not binding on him.

3. Be that as it may, as per the registered partition deed between the parties, the appellant's sister and father have given up the right in favour of their mother's brother. Having signed the partition deed, the appellant / plaintiff now cannot plead ignorance of law or of fact. It is pertinent to note that pursuant to the registered partition suit, the defendants 1 and 2 have already mortgaged the property to the fifth respondent / Bank and the appellant is very much aware of it. Therefore, till the rights of the share of the appellant is decided by the Court, the appellant cannot seek for a blanket injunction restraining the respondents from alienating the property. In any case, Section 53 of the Transfer of Property Act, 1882, will come into play. Any sale made by the other party will not bind the share of the appellant/plaintiff and it would be subject to lis pendens. Therefore, the order dated 19.09.2018 passed in I.A.No.1094 of 2018 in O.S.No.25 of 2018 refusing to grant interim injunction, needs no interference.

4. It is submitted by the learned counsel for the respondent that the suit is at the trial stage. In that event, there will be a direction to the Trial Court to complete the trial within a period of six months from the date of receipt of a copy of this order.

5. With the above observation and direction, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

TK

To

1. The III Additional District and Sessions Court
Gobichettipalayam,
Erode District.

2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.A.E.Ravichandran, Advocate SR.No.31576

+1cc to Mr.I.C.Vasudevan, Advocate SR.No.32176

CMA NO.2711 OF 2018

NRJK (CO)
GMY (28/06/2019)



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