



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .Nos.907 of 2012 (PD)

and

M.P. (MD) .No.2 of 2012

WEB COPY

M/s.Essar Constructions (India) Limited,
No.11, Kesorao Kathe Mark,
Mahalakshmi, Mumbai Corporation,
Mumbai-34.

.. Petitioner/Respondent/
Defendant

Vs.

Paramasivan

.. Respondent/Petitioner/Plaintiff

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 01.03.2012 passed in I.A.No.173 of 2012 in O.S.No.34 of 2012, on the file of the Principal District Munsif Court, Sankarankovil by allowing this Civil Revision Petition.

For Petitioner : Mr.D.Nallathambi

For Respondent : No Appearance

O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below allowing the Interim Injunction Petition filed by the respondent pending disposal of the suit.

2.The petitioner is the defendant in the suit. The respondent filed a suit before the Court below seeking for the relief of partition and separate possession of 3/8th share in the property and for consequential injunction. In the said suit, the respondent filed I.A.No.173 of 2012, seeking for interim injunction not to interfere with his possession and enjoyment of the property,

3.The Court below has allowed the petition by an order dated 01.03.2012, only on the ground that the petitioner was not present and he was called absent and was set *exparte*.

4.The learned counsel appearing for the petitioner submitted that even if the petitioner is set *exparte*, the Court below ought to have considered the averments made in the affidavit and concluded itself that there was a *prima facie* case, the



balance of convenience is in favour of the plaintiff and irreparable loss and hardship will be caused, if the order of interim injunction is not granted in favour of the plaintiff. The learned counsel further submitted that these are minimum requirements that need to be satisfied by the Court below before granting an order of interim injunction. Since these minimum requirements have not been satisfied, the *exparte* order allowing the petition, is illegal and the same requires interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

5.The respondent has been served with the notice and his name has also been printed in the cause list and there is no representation on behalf of the respondent.

6.This Court is in complete agreement with the submissions made by the learned counsel appearing for the petitioner. The Court below while passing an order of interim injunction must satisfy itself that a *prima facie* case has been made out by the plaintiff and that the balance of convenience is in his favour and by not granting the order of interim injunction, it will cause irreparable loss and hardship. Even this minimum requirement is not satisfied by the impugned order and the order reflects complete non application of mind. Therefore, the order passed by the Court below requires interference of this Court. It is also seen that this Court had already suspended the order of interim injunction granted by the Court below, even at the time of admission in the year 2012.

7.In the result, the order passed by the Court below in I.A.No.173 of 2012, dated 01.03.2012, is hereby set aside and this Civil Revision Petition is accordingly allowed. The Court below is directed to complete the proceedings in O.S.No.34 of 2012, within a period of three months from the date of receipt of a copy of this order, if it has not been already disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

tsg

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To

1.The Principal District Munsif,
Sankarankovil.

2.The Record Keeper, VR Section -2copies
Madurai Bench of Madras High Court,
Madurai.

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KM/ (17.10.2019) 3P 4C