

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twenty Second day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CMA(MD) No.546 of 2019

AND

CMP(MD) No.6445 of 2019

1 S.VEERAMMAL
2 S.ESAKKIPANDI
3 S.VEERAMANIKANDAN ... APPELLANTS/PETITIONERS/PLAINTIFFS

Vs

1 V.ARUMUGATHAMMAL
2 V.SUBRAMANIYAN
3 N.EASWARI
4 M.NAINAR ... RESPONDENTS/RESPONDENTS/DEFENDANTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to set aside the order of passed in IA No.1/2019 in OS No.15 of 2019 dated 23.04.2019 on the file of IV Additional District Court, Tirunelveli by allowing this appeal.

Prayer in CMP(MD). 6445/ 2019 :

To pass an order of interim injunction restraining the 2nd respondent from making and proceeding with the construction in the petition mentioned property, which is the subject matter of the suit in OS No.15 of 2019, on the file of the IV Additional District Court, Tirunelveli pending disposal of the Civil Miscellaneous Appeal.

ORDER :This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.H.ARUMUGAM, Advocate for the petitioner, the court made the following order:-

Heard.

2. In earlier, the appellants in this Civil Miscellaneous Appeal filed a suit in O.S.No.15 of 2019, on the file of the IV-Additional District Court, Tirunelveli, and seeking the relief of partition. It is an admitted fact that the first appellant is the mother of the second and third appellants. The second respondent is the younger brother and the third respondent is the younger sister of the first appellant. The first respondent is the mother of the

first appellant, second respondent and third respondent. The fourth respondent is the husband of the third respondent.

3. The allegation levelled by the appellants in the suit is that, eventhough the suit is filed for the relief of partition, the second respondent has started to construct the house in the suit property, but, in the impugned order, dated 23.04.2019, passed in I.A.No.1 of 2019 in O.S.No.15 of 2019, the learned IV-Additional District Judge, Tirunelveli, refused to grant injunction, on the other hand, he held that, if the plaintiffs are succeeded in the suit, the first plaintiff is not liable to pay the compensation for the house constructed by the second respondent. Hence, ultimately, the Court below permitted to construct the house by the second defendant.

4. Now, on considering the facts and circumstances, I am of the considered opinion that if the second respondent is permitted to make further construction, it will create some other litigation among the plaintiffs and the defendants. So, there shall be an order of interim injunction restraining the second respondent to construct further more.

5. Notice to the respondents returnable by 14.08.2019. Private notice is also permitted.

sd/-
22/07/2019

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE IV ADDITIONAL DISTRICT JUDGE,
TIRUNELVELI.

+1. C.C. to M/S.H.ARUMUGAM Advocate SR.No.12093

ORDER
IN
CMA(MD) No.546 of 2019 AND
CMP(MD) No.6445 of 2019
Date :22/07/2019

pjl

PK/JC/SAR-4/26.07.2019 : 2P/3C