

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.NOS.2052 AND 2053 OF 2013

Saraswathi

.. Appellant in both appeals/
1st Respondent/Defendant No.1

Versus

1.Smt.J.Latha

2.R.J.Subhahini

.. Respondents 1 & 2/Petitioners/
Plaintiffs

3.A.Mahalingam

4.M.Radhamani

5.M/s.Siva Bharathi Tex,
Rep. By its Partner Eswaramurthy,
14/10, Vellankurichi Road,
Kalapatti Mill, Coimbatore - 641 048.

6.Varadarajan

7.Vellingiri

8.Santhakumar

9.Hemaphil Society,
Coimbatore Chapter,
JPR Complex, Chitra Road,
HDFC Bank (Opp),
Kalappatti, Coimbatore- 641 048.

... Respondents in both appeals

(No Relief was souht against the Respondents 3 to 9
are not necessary parties for the present)

Prayer: Civil Miscellaneous Appeal has been filed under Order 43 Rule 1(r) of Civil Procedure Code praying to set aside the fair and decreetal order of the learned IV Additional District Judge (formerly Fast Track Court No.II) Coimbatore, dated 27.08.2012 in I.A.No.425 of 2012 in O.S.No.410 of 2012 and I.A.No.645 of 2012 in O.S.No.410 of 2012 respectively.

For Appellant	: Mr.Karthikeyan for M/s.V.Nicholas
For R1&R2	: A.E.Ravichandran
For R3 to R9	: Given up (both CMAs)

COMMON ORDER

Heard Mr.Karthikeyan, learned counsel for the appellant, and Mr.A.E.Ravichandran, learned counsel for the respondents 1 and 2, through Video Conferencing due to COVID-19 pandemic.

2. In the suit, appellant herein is the first defendant and respondents 1 and 2 herein are the plaintiffs. The plaintiffs/respondents 1 and 2 herein filed a suit in O.S.No.410 of 2012 on the file of learned IV Additional District Court, Coimbatore, praying;

(a) to direct the first defendant to pay a sum of Rs.25,000/- as monthly maintenance to the plaintiffs;

(b) to create a charge over the plaint schedule properties for the due payment of maintenance to the plaintiffs;

(c) to direct division of suit property into two equal shares and allot one such share to the plaintiffs;

(d) permanent injunction restraining the first defendant from alienating or encumbering the plaintiff's $\frac{1}{2}$ shares of the suit properties;

(e) to declare the sale deed dated 14.03.2012 in document No.1774 of 212 registered before Gandhipuram Sub-Registrar's office in favour of 2nd defendant as null and void;

(f) to declare the sale deed dated 14.03.2012 in document No.1775 of 2012 registered before Gandhipuram Sub-Registrar's office in favour of 2nd defendant as null and void;

(g) to direct the first defendant to render accounts for the rents received from tenants;

(h) to direct the defendant to pay the costs of the suit.

3. Pending suit, the plaintiffs/respondents 1 and 2 herein have filed following six Interlocutory Applications;

(i) I.A.No.424 of 2012 seeking an order of Appointment of Receiver under Order 40 Rule 1 r/w 151 CPC.

(ii) I.A.No.425 of 2012 seeking an order of temporary injunction restraining the first respondent/first defendant from alienating or encumbering $\frac{1}{2}$ share of petition mentioned properties till the disposal of the suit under Order 39 CPC.

(iii) I.A.No.426 of 2012 seeking an order of Interim maintenance of Rs.15,000/- per month from the first respondent out of the income and proceeds from the petition mentioned property.

(iv) I.A.No.645 of 2012 seeking an order of temporary injunction restraining the respondents 1 to 3 from demolishing or altering the physical features of the petition mentioned properties till the disposal of the suit.

(v) I.A.No.651 of 2012 seeking an order of appointment of Commissioner to inspect the suit properties for the purpose of noting out the physical features.

4. After hearing the parties, the Court below dismissed some of the I.As. and granted the relief as sought for in I.A.Nos.425 and 645 of 2012. Aggrieved by the same, first defendant/appellant herein has filed these appeals.

5. Learned counsel appearing for the first defendant/appellant herein submitted that the plaintiffs/respondents 1 and 2 herein have filed five I.As. and out of which, two I.As. were dismissed, however, two I.As., namely, I.A.Nos.425 and 645 of 2012, were allowed, and I.A.No.651 of 2012 was partly allowed. When the first defendant/appellant herein has given an undertaking that she would not demolish, alter and reconstruct Item Nos.5 and 12 of suit schedule property, there is no need for granting interim injunction in I.A.No.645 of 2012 and similarly, when the plaintiffs/respondents 1 and 2 have not adduced any evidence to show that the first defendant/appellant herein is trying to alienate or encumber $\frac{1}{2}$ share of petition mentioned properties, learned Court below ought not to have allowed this prayer in I.A.No.425 of 2012.

6. Learned counsel appearing for the plaintiffs/respondents 1 and 2 herein submitted that learned Court below, after dismissing some of I.As., granted the relief sought for in I.A.Nos.425 and 645 of 2012, namely, temporary injunction restraining the first defendant from alienating or encumbering $\frac{1}{2}$ share of petition mentioned properties, and interim injunction from demolishing or altering the physical features of Item Nos.5 and 12 suit schedule properties. When there was an apprehension made out before the learned Court below that the first defendant is trying to demolish and alter the physical features of the petition mentioned properties, learned Court below has rightly

granted the temporary injunction on the ground that if the demolition takes place, then the purpose of suit will fail, and on the other hand, if the prayer is allowed, no prejudice would be caused to any one. He further submitted that now the matter is ready for trial and therefore, fair and decreetal order passed by the learned Court below does not call for interference.

7. I fully agree with the aforesaid submissions, for the reason that the learned Court below has granted only temporary injunction in respect of demolition, alteration and reconstruction of Schedule Nos.5 and 12 of plaint mentioned properties, and further granted temporary injunction from encumbering or alienating the suit properties against the first defendant/appellant herein. If the subject properties are sold during the pendency of suit, then this would lead into multiplicity of proceedings. Secondly, as rightly observed by the learned Court below, if the demolition of properties in respect of Item Nos.5 and 12 of plaint mentioned property takes place, then the purpose of the suit will fail. Therefore, I do not find any error or illegality in the fair and decreetal order passed by the learned Court below restraining the first defendant/appellant herein from alienating or encumbering the suit property and granting of interim injunction against demolition, alteration and reconstruction in respect of Item Nos.5 and 12 of plaint mentioned properties.

Thus, for the reasons stated above, Civil Miscellaneous Appeals are dismissed. No Costs. It is stated that now suit is at the trial stage and therefore, the parties are directed to cooperate for the disposal of the main suit itself.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

To

The IV Additional District Judge,
Fast Track Court No.II, Coimbatore.

+lcc to M/s.V.Nicholas, Advocate, S.R.No.29139

C.M.A.Nos.2052 and 2053 of 2013

PVS (CO)
CS/10/11/2020