

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1666 of 2020

N.S.Srinikumar

..Appellant/Petitioner/
Plaintiff

Versus

1.N.Balasubramanian
2.Napa Sricharana
3.N.Srihari

..Respondents/Respondents
Defendants 1 to 3

Prayer: Civil Miscellaneous Appeal has been filed under Order XLIII Rule 1 of the Civil Procedure Code praying to set aside the order dated 20.02.2020 passed in I.A.No.234 of 2018 in O.S.No.298 of 2018 by the learned I Additional District Judge, Tiruvallur.

For Petitioner : Mr.P.L.Narayanan

For Respondents : Mr.J.R.K.Bhavanantham

JUDGMENT

Heard Mr.P.L.Narayanan, learned counsel for the appellant, and Mr.J.R.K.Bhavanantham, learned counsel for the respondents, through Video Conferencing, due to COVID-19 pandemic.

2. This Civil Miscellaneous Appeal is directed against the impugned order dated 20.02.2020 passed in I.A.No.234 of 2018 in O.S.No.298 of 2018 by the learned I Additional District Judge, Tiruvallur, declining to grant ad-interim injunction.

3. The appellant herein is the plaintiff and the respondents herein are the defendants 1 to 3 in the suit.

4. The plaintiff/appellant herein has filed a suit seeking for declaration to declare the sale deed dated 10.07.1962 bearing Document No.1229/1962 registered on the file of Sub-Registrar Office, Arani, executed in favour of defendants' father N.Ramarathinam is null and void; and for a permanent injunction restraining the defendants 1 to 3, their men, agent and servants from in any manner interfering in the plaintiff's peaceful possession and enjoyment of the plaint schedule property.

5. Pending suit, the plaintiff/appellant herein has filed I.A.No.234 of 2018 seeking to grant ad-interim injunction restraining the defendants 1 to 3/respondents herein, their men and agent from in any manner interfering with their peaceful possession and enjoyment of the suit property.

6. Learned trial Court, in the impugned order, held that since the subject land itself is a vacant land, the possession would follow title and that when the title itself is in dispute, the same has to be decided only on the strength of the evidence to be adduced by both parties through oral and documentary. By observing so, learned trial Court declined to grant interim injunction. Aggrieved by the same, the plaintiff/appellant herein has filed the present appeal.

7. Mr.P.L.Narayanan, learned counsel for plaintiff/appellant submitted that the patta issued by the revenue authorities stands in name of his father. Besides, Electricity consumption (Ex.P2), kist receipt(Ex.P3) and house tax receipts commencing from 1991 till 2003 also stand in the name of Sachidanandam, father of the appellant herein. Therefore, if the interim injunction is granted to maintain the status-quo on both parties, no prejudice would be caused to anyone.

8. On the other hand, Mr.J.R.K.Bhavanantham, learned counsel for the respondent submitted that initially there was a partition among Srinivasalu, grandfather of the respondents herein, Vasudevaiah, grandfather of the appellant herein and one Chandraiah Chetty as per the registered partition deed dated 17.01.1955 bearing Document No.26 of 1955 on the file of Sub-Registrar Office, Arani. Thereafter, the plaintiff's grandfather N.Vasudevaiah, by virtue of a registered sale deed dated 10.07.1962 bearing Document No.1229 of 1962 on the file of Sub-Registrar Office, Arani, sold the same to one N.Ramarathinam, father of defendants/respondents herein, for a valuable consideration. Therefore, merely on the strength of the patta issued by the Revne Authorities in favour of the appellant, the Court cannot come to the conclusion that there is a prima facie case in favour of the appellant, because, the very issuance of a patta itself has been put to challenge before the Revenue Divisional Officer and the same is also pending. Secondly, unless and until the sale deed dated 10.07.1962 executed by the grandfather of the plaintiff/appellant herein in favour of N.Ramarathinam, father of defendants/respondents herein is declared as null and void by the competent Civil Court, neither the status-quo nor the interim injunction as rightly refused by the learned trial Court can be reconsidered by this Court.

9. As rightly observed by the learned trial Court, in a suit for declaration of title, before passing any interim order, all the documents adduced by both parties have to be gone into and therefore, since both parties are residing outside the suit property, this Court, without going into the merits of the matter, directs the learned trial Court to take up the main suit itself and dispose of the same on merits within a period of one year from the date of receipt of a copy of this order. Needless to state that learned trial Court shall take a decision uninfluenced by any of the observation made by this Court.

10. In fine, the Civil Miscellaneous Appeal stands disposed of. No Costs. C.M.P.No.12270 of 2020 is closed.

Sd/-

Assistant Registrar

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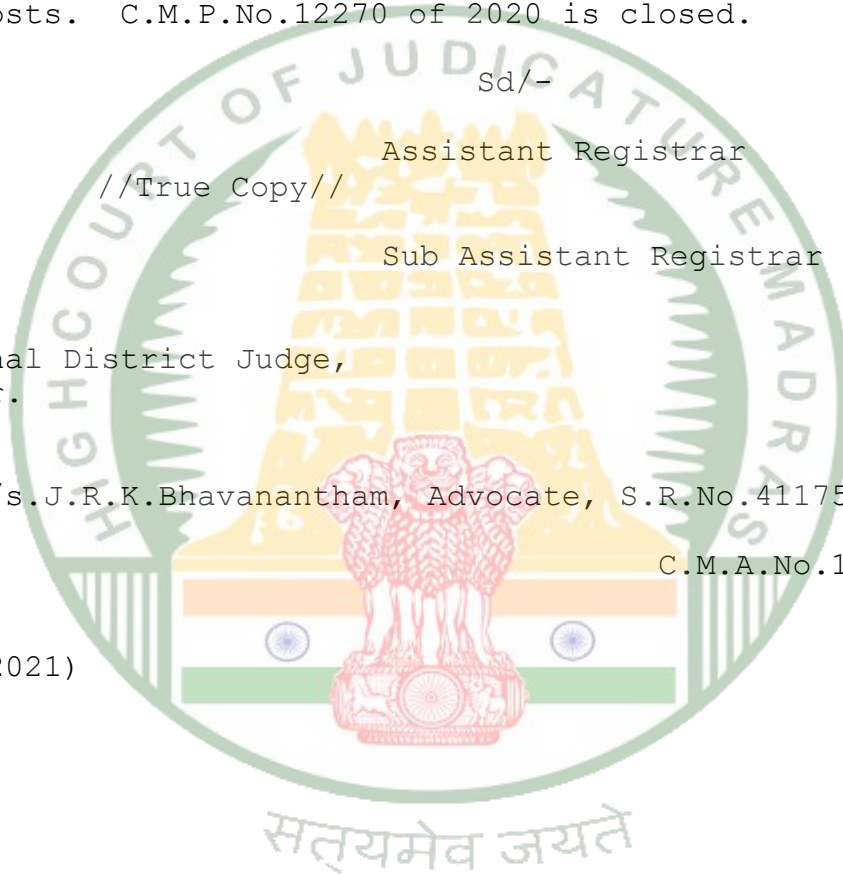
Sub Assistant Registrar

To
I Additional District Judge,
Tiruvallur.

+1cc to M/s.J.R.K.Bhavanantham, Advocate, S.R.No.41175

C.M.A.No.1666 of 2020

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