



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1710 of 2020 and C.M.P. No.12590 of 2020

K.B.Venkatesan

... Appellant

-vs-

1.P.N.Balaji

2.P.N.Raghavendiran

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) of the Code of Civil Procedure against the fair and decretal order in I.A. No.1 of 2019 in O.S. No.286 of 2018 dated 17.12.2019 on the file of the I Additional District Court, Tiruvallur.

For Appellant : Ms.Sandiya

For Respondents : No appearance

JUDGMENT

This appeal has been filed by the appellant against the order dated 17.12.2019 passed by the I Additional District Court, Tiruvallur in I.A. No.1 of 2019 in O.S.No.286 of 2018.

2.Ms.Sandiya, learned counsel appearing for the appellant submitted that respondents, who are the plaintiffs have filed an Original suit in O.S. No.286 of 2018 for declaration of right and title over the suit schedule property before the Trial Court and they have also filed an Application in I.A. No.1 of 2019 under Order 39 Rule 1 and 2 of C.P.C. for ad-interim injunction restraining the appellant/first defendant from interfering with the peaceful possession and enjoyment over the suit schedule properties till the disposal of the suit and the appellant is the first defendant in the above suit. The Trial Court, in its order dated 17.12.2019, wrongly considering the fact that the plaintiffs/respondents have shown prima facie case, balance of convenience and irreparable loss, allowed the said I.A. No.1 of 2019 granting temporary injunction until disposal of the suit on the premise that the plaintiffs/respondents have filed Ex.A1 to A20 to prove their prima facie case and that the second



respondent has filed Ex.R1 to R14 to support his case in as much as it is the settled position of law that possession follows title and that the plaintiffs/respondents have filed the kist receipt and 'A' register showing the possession over the suit property. Learned counsel for the appellant further submitted that when the appellant has right over the property by virtue of the Partition Deed dated 10.04.1969, the order granting an interim injunction is against the settled principle stating that an injunction cannot be granted as against a Co-owner.

3.As admittedly the possession of the suit property belonged to the respondents, the contention raised by the learned counsel appearing for the appellant that the plaintiffs have received money from the said Suyamprakash and a sale deed has been uploaded for execution of Rs.3,00,000/- on 28.06.2018 cannot be accepted. The reason being that in any event the execution of the sale deed has not been completed. Secondly, the physical possession of the property has not been handed over by the respondents. Therefore, the learned Trial Court has rightly granted interim injunction during the pendency of the suit, otherwise the possession would be disturbed by any third party. Hence, the order of interim injunction cannot be found fault with. The Trial Court is directed to dispose of the matter expeditiously. With the above direction, the appeal stands dismissed. Consequently, C.M.P. No.12590 of 2020 stands closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vga

To

1. The I Additional District Court,
Tiruvallur.

Copy To
The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.Sarvabhuman Associates, S.R.No.37295

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BP(CO)
CS/02/02/2021