

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.03.2020

Pronounced on : 18.03.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

O.S.A.No.297 of 2019
and C.M.P.No.24611 of 2019

A.Michael ... Appellant / Petitioner
Vs.

1. Thenmozhi
2. J.Arul Basker
3. J.Rapeeta Earnest Mary
4. J.Stephen
5. A.Jesudass
6. A.Arokia Swamy
7. A.John
8. A.James
9. A.Pouline Mary
10. A.Augustine
11.J.Arokia Aruna ... Respondents / Respondents

Appeal filed under Order XXXVI Rule I of O.S.Rules r/w Clause 15 of the Letters Patent against the order of the learned Judge, dated 25.02.2019 made in A.No.4947 of 2018 in C.S.No.587 of 2016.

Prayer in Application No.4947 of 2018

To Permit the bank officials / surveyor of Catholic Syrian Bank Second Line beach branch to inspect and take measurements of the property No.4, 7th street, Gopalapuram, Chennai 600 001 in the presence of Police Officials and in the presence of an Advocate Commissioner.

Prayer in CS 587 of 2016.

(a) Praying for a preliminary decree of partition and separate possession of all plaint schedule properties allotting 1/8th share out of 1/4th share belonging to A.Lazar Mary in Schedule-A, 1/8th share belonging to A.Lazar Mary in Schedule-B 1/7th share belonging to A.Joseph in Schedule-C 1/10th share belonging to A.Joseph and 1/8th share out of 1/10th belonging to M.S.Arulanandam, A.Vedanayagam, A.Lazar Mary in Schedule-D

1/8th share belonging to M.S.Arulanandam in Schedule E. 1/8th share belonging to M.S.Arulanandam and A.Vendanayagam in Schedule F, 1/8th share out of 1/7th belonging to M.S.Arulanandam, A.Vedanayagam, A.Lazar Mary in Schedule G. Having full share on the property in Schedule H, 1/8th share belonging to Lazar Mary in Schedule I 1/8th share out of 1/6th share of A.Vedanayagam and Lazar Mary in Schedule J, 1/8th share belonging to M.S.Arulanandam and A.Vedanayagam is schedule-K, 1/8th share of A.Vedanayagam is Schedule L.

b. Directing the defendants to render true and correct account of the income from the said properties, collected by the defendant 1, 2, 5 to 7.

c. for costs of this suit and

d. For such further reliefs as this Honorable Court may deem fit in the circumstances of the case

For Appellant : Mr.K.P.Gopalakrishnan

For Respondents : Mr.P.Sidharthan for R1 to R4
Mr.R.Krishna Prasad
for M/s. Sarvabhauman Associates
for R5 and R9
Mr.Manoj Sreevelson
for R7, R8 and R10
R6 - Notice not ready, service
awaited.

J U D G M E N T

R.SURESH KUMAR, J

This Appeal has been directed against the fair and decretal order passed by the learned single Judge of this Court in the Original Side in A.No.4947 of 2018 in C.S.No.587 of 2016 by order, dated 25.02.2019.

2. The respondents 1 to 4 herein filed the suit C.S.No.587 of 2016 against the appellant who was the first defendant in the suit as well as respondents 5 to 11 who are the defendants 5 to 11 in the suit for partition of various properties which have been shown in the schedule of the plaint from Schedule A to Schedule L.

3. Among the said schedule of properties of the plaint, schedule H property is the subject matter herein, therefore for easy understanding, schedule H of the plaint is quoted hereunder :

"Schedule H

Property bearing land and building, New No.7, Old No.4, 7th Street, Gopalapuram, Chennai - 600 086, Survey No. 1245/2 & 1243/1, North-Part of R.S.No.1243/1, South by - R.S.No.1246/4, East by - R.S.No.1245/2, West by - Part of R.s.No.1243/1, More fully described in the document number 809/1991, 810/1991, 811/1991, Dated : 30/12/1991. Total value of this property is Rs.16 crores (Plaintiffs share is Rs.16 crores). The plaintiffs and the 8th defendant having full share on the property."

4. In respect of the schedule H property, the plaintiffs who are the respondents 1 to 4 herein asked for full share of the property by way of partition.

5. In this context, it is to be noted that, in the said suit, already the respondents 1 to 4 / plaintiffs sought for an interim injunction to restrain the defendants from encumbering with the suit schedule properties and such injunction was granted on 31.08.2016 which has been time and again extended.

6. While that being so, the present appellant who is the first defendant in the suit, filed the said Application in A.No.4947 of 2018 seeking with the prayer of permission to the appellant's Bank, namely Catholic Syrian Bank, II Line Beach Road, Chennai, to inspect the H-schedule property in the presence of police officials and in the presence of the Advocate Commissioner.

7. The said application filed by the appellant / first defendant, having been heard was dismissed by the learned Judge, through the impugned order. Felt aggrieved by the same, the present intra-court appeal has been filed.

8. We have heard Mr.K.P.Gopalakrishnan, learned counsel appearing for the appellant, Mr.P.Sidharthan, learned counsel appearing for respondents 1 to 4, Mr.R.Krishna Prasad, learned counsel appearing for respondents 5 and 9 and Mr.Manoj Sreevelson, learned counsel appearing for respondents 7, 8 and 10.

9. The learned counsel appearing for the appellant would submit that, H-schedule property of the plaint belongs to the appellant, where the plaintiffs / respondents did not have any

right to claim share, therefore ultimately the suit for partition would be dismissed in respect of H schedule property. He would further submit that, the said property, i.e., H-schedule property has already been mortgaged to the Bank in the year 2009 itself, against which loan was availed by the appellant and periodically the mortgage by way of deposit of title deeds had been extended as per the bank norms.

10. While that being so, now the bank, by letter, dated 11.10.2018 has sought for getting permission for the bank officials to inspect the property for survey and for preparation of the report, so that, the mortgage already made in respect of the suit H-schedule property would further be extended or regularised, otherwise, the appellant would not be entitled for any reduction of rate of interest or waiver charges.

11. The learned counsel for the appellant would further submit that, only in furtherance of the said letter issued by the bank, the appellant filed the said application seeking such permission from the Court for inspection and survey of the property by the bank officials which was, according to the learned counsel, was erroneously rejected by the learned Judge, therefore it has to be interfered with.

12. Per contra, Mr.P.Sidharthan, learned counsel appearing for respondents 1 to 4 / plaintiffs would submit that, the property in question, i.e., H-schedule property of the plaintiff is not the property of the appellant and that is the reason why in the partition suit, in so far as the H-schedule property is concerned, full property has been sought for, i.e., full share of the property of schedule-H and that is the reason why, in respect of creating any third party right or encumbrance on these properties, including the H-schedule property by the appellant as well as the other defendants in the suit, the plaintiffs had already sought for an injunction restraining the defendants from encumbering the suit schedule properties and that was granted on 31.08.2016 and the same has been periodically extended.

13. The learned counsel would further submit that, however during the currency of the order of injunction, the appellant along with his sons, created the mortgage further of the H-schedule property on 03.08.2017 for a sum of Rs.40 lakhs and also there has already been a subsisting mortgage in respect of the very same property for a sum of Rs.40 lakhs as on 03.12.2010.

14. Therefore the action on the part of the appellant in further mortgaging or encumbering the suit-H schedule property was in utter violation of the prohibitory order of injunction granted by the Court, therefore appropriate contempt proceedings have to be initiated against the appellant.

15. Be that as it may, the learned counsel for the respondents / plaintiffs would further submit that, in respect of the H-schedule property, the plaintiff, especially the second plaintiff is in possession, as he is residing with his family in that property, therefore in order to disturb such possession, the present attempt has been made by the appellant, that is the reason why the present application has been filed in the name of survey of the property by bank officials. The intention of the appellant is explicitly known, as the appellant in the application sought for such permission of survey of the property by the bank officials in the presence of police force as well as the Advocate-Commissioner. Such an attempt made by the appellant seeking permission of this Court with police and Advocate-Commissioner to disturb the possession by way of residence of the plaintiffs, especially the second plaintiff, is nothing but an ill design of the appellant and therefore the learned Judge, having considered all these aspects, especially in the context of the attitude of the appellant who violated the prohibitory order of injunction granted by this Court, by extending the mortgage or creating the mortgage further in respect of H-schedule property, has rightly rejected his plea to give such permission for survey of the property by bank officials, therefore the impugned order is justifiable and sustainable, hence, it does not warrant any interference from this Court.

16. We have considered the said rival submissions made by the learned counsel appearing for both sides and have given our anxious consideration on the materials supplied before this Court on record for perusal.

17. It is an admitted case that, the property in question, i.e., H-schedule property of the plaint in C.S.No.587 of 2016 is one of the property on which, partition has been sought for by the plaintiffs. In fact full share has been sought for by the plaintiffs in respect of the said property. It is also a fact that, Court had granted injunction prohibiting the defendants from alienating or encumbering the properties including H-schedule property, by order, dated 31.08.2016. The said order of injunction seems to have been subsequently extended from time to time and there is no much dispute that, the said order of injunction is continuing. While that being so, on 31.08.2017, the appellant / defendant has created an encumbrance by way of deposit of title deeds. On reading of the memorandum of deposit of title deeds, dated 31.08.2017, we come to know that, the deposit of title deeds had been made on 25.11.2009, 03.12.2010 and on 03.06.2017 with the Bank. This has been shown as the security with an intend to secure due repayment to the bank of

all monies, that are due or shall from time to time in future or any time be due from the mortgagee in respect of these credit facilities.

18. Therefore it has become obvious that, despite the order granted by this Court, prohibiting the appellant / defendant from encumbering the property, the appellant / defendant seems to have continuously violating the Court order by encumbering the property by way of mortgage through deposit of title deeds on 31.08.2017.

19. It seems that, the appellant, unmindful of the Court order knowing well that, the H-schedule property is part and parcel of the plaint for partition, where order of injunction has been granted not to encumber the property, has, in violation of such orders, continued to go on for onslaught of making the encumbrance one after another and the present attempt, by making this application seeking permission for the Bank officials to survey the property, can very well be construed as a yet another violation, for which the appellant / defendant wants the vouch of this Court, which has been rightly rejected by the learned Judge through the impugned order.

20. After having gone through the facts of the case and the relevant documents filed before us for perusal, we are of the firm view that, the appellant is not at all entitled for the relief sought for in the said application, as such permission would amount to extending the premium for the appellant for the continuous wrong doing on his part, especially in the context of currency of the prohibitory order, which is nothing but a willful disobedience or violative of the orders of this Court. Therefore we find no error in the order of the learned Judge, which is impugned herein, in rejecting the plea of the appellant, therefore the said order does not warrant any interference.

21. In the result, this Appeal deserves to be dismissed and we do so accordingly. However there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

tsvn

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The Sub assistant Registrar(OS)
High Court, Chennai-104.

+1 cc to M/s.Sarva Bhavuman Associates ,Advocate Sr.No. 24246

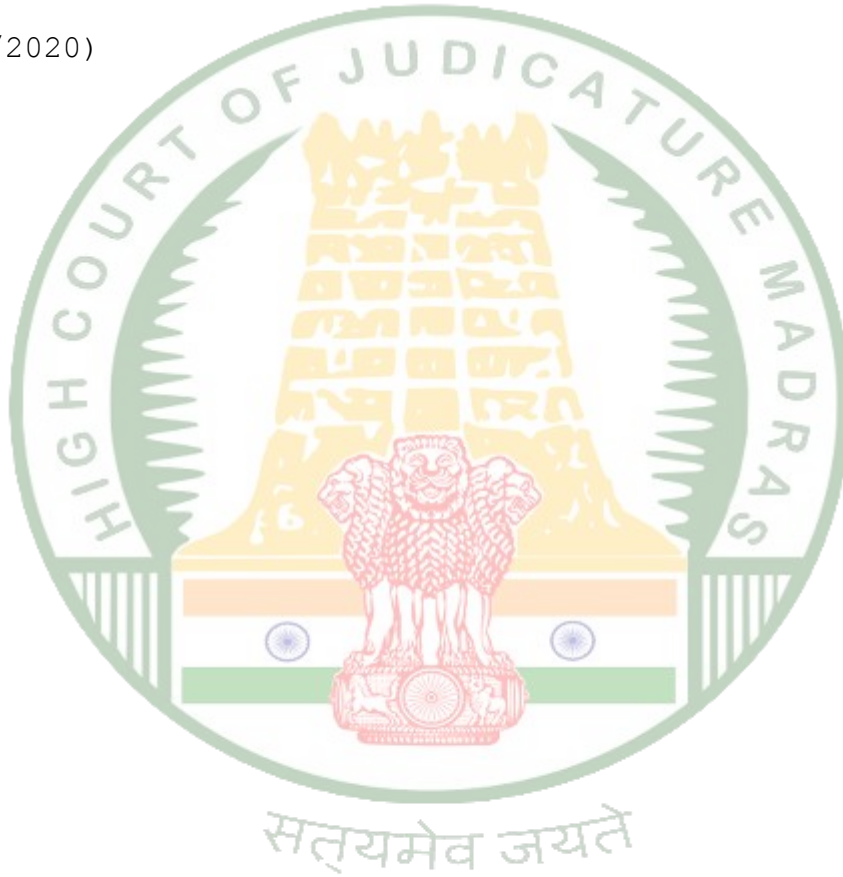
+1 cc to M/s.K.P.Gopalakrishnan, Advocate Sr.No. 23926

+1 cc to M/s.P.Sidharthan, Sr.No. 23923

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RGN(CO)

RMP(04/09/2020)



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