



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CMA(MD)No.340 of 2019

Mahilabaranam

.. Appellant

Vs.

1.Uma

2.The Sub Registrar Joint-II,
Thoothukudi.

... Respondents

Civil Miscellaneous Appeal filed under Order 43 Rule 1 (r) CPC to set aside the fair and decreetal order dated 22.02.2019 in I.A.No.53 of 2018 in O.S.No.43 of 2018 passed by the II Additional District Judge, Tuticorin.

For Appellant : Mr.R.Vijayakumar

For R1 : Mr.M.Saravanakumar

JUDGMENT

The appellant herein had filed a suit in O.S.No.43 of 2018 on the file of II Additional District Judge, Thoothukudi for declaration declaring that the settlement deed dated 06.05.2013 executed by the defendants 1 to 3 in favour of the defendants 5 to 8 and registered as document No.1350/2013 in the office of the Sub Registrar, Tuticorin Joint - I, as null and void. In the said suit, the appellant/plaintiff has filed an application under Order 39 Rule 1 for interim injunction restraining the respondents/defendants from making any encumbrance over the suit property till the disposal of the suit. The trial Judge, after hearing the application in I.A.No.53 of 2018, has dismissed the petition. Challenging the said order passed by the trial Court, the plaintiff has filed the present Civil Miscellaneous Appeal before this Court.

2.The learned counsel appearing for the appellant/plaintiff would submit that he has filed the suit for declaration declaring the settlement deed dated 06.05.2013 registered as document No.1350/2013 is null and void and also for partition and separate possession. Till the disposal of the said suit, he sought for interim injunction. The learned trial judge dismissed the petition on the ground that no injunction can be granted against the co-owner and already partition has been effected and the petitioner therein



has not come before the Court with clean hands. It is erroneous to say that the appellant/plaintiff has sought for injunction restraining the co-owner from enjoying the property, but it is only restraining them from alienating or creating encumbrance over the scheduled mentioned property. Further the previous dismissal of Pauper Original Petition filed by the appellant/plaintiff is not relevant to the present case. Therefore, the order passed by the trial Court is liable to be set aside.

3.The learned counsel for the first respondent would submit that already a settlement deed has been executed and there is also a partition regarding the suit properties and the respective parties are enjoying the suit properties. Therefore, there is no property for effecting partition and the trial Court has rightly dismissed the petition and there is no need to interfere with the order of the trial Court.

4.Heard the learned counsel appearing on either side and perused the materials placed before the Court.

5.Admittedly the plaintiff has filed the suit for partition and also declaring the settlement deed dated 06.05.2013 executed by the defendants 1 to 3 in favour of the defendants 5 to 8 as null and void and the said suit is pending. During pendency of the suit, he has also sought for temporary injunction against the respondents from alienating the suit property. It is a settled proposition of law that no injunction can be granted against the co-owner. However, the injunction sought for in this petition is not to alienate the suit property during pendency of the suit. Since the appellant/plaintiff himself is challenging the settlement deed and also the cancellation of the unregistered partition deed, whether the settlement is genuine or null and void or the appellant/plaintiff is entitled for partition, will be decided only in the suit and not in the interlocutory application.

6.Now the core issue that has to be decided is during pendency of the suit, whether the defendants can be restrained by an order of interim injunction from alienating the property. In case, if the plaintiff is succeeded and the respondents had already alienated the property, then it will lead to multiplicity of proceedings. The trial Court has failed to consider the nature of the suit and the claim by the appellant/plaintiff. Since the appellant/plaintiff has got *prima facie* case, balance of convenience is in favour of the petitioner, in case the property is alienated during pendency of the suit, the appellant/plaintiff would be put to irreparable loss and if the plaintiff is succeeded in the suit, it will lead to multiplicity of proceedings, the order passed by the trial Court in I.A.No.53 of 2018 is set aside and the Civil Miscellaneous Appeal is allowed. Interim injunction is granted against the respondents herein during pendency of the suit in



encumbrance over the suit property till the disposal of the suit. No costs.

Sd/-

Assistant Registrar (P&A)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mj

To

1.The II Additional District Judge, Tuticorin.

2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.R.VIJAYAKUMAR, Advocate (SR-11194[F] dated 11/03/2020)

+1 CC to Mr.M.SARAVANAKUMAR, Advocate (SR-11008[F]dated 11/03/2020)

CMA(MD)No.340 of 2019
10.03.2020

VB(20.03.2020) 3P 6C