

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Monday, the Twenty Sixth day of April Two Thousand Twenty One

PRESENT

THE HON`BLE MR JUSTICE M. SUNDAR

CMP No.7723 of 2021
IN SA.NO.409 OF 2021

V. JEEVANANDHAM [PETITIONER]

Vs

1 C. THANGARAJ [RESPONDENTS]

2 K.G. RADHAKRISHNAN

3 SMT. PREMALEELA

4 ARUCHAMY

5 R.RAMARAJ

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of the Decree and Judgement dated 24/11/2016 made in OS No. 531/2007 on the file of the Honble III Additional Subordinate Judge, Coimbatore which was confirmed by Decree and Judgement dated 16/12/2020 made in AS No. 26/2017 on the file of the Honble III Additional District Judge, Coimbatore, (IN CMP.NO.7723 OF 2021) pending disposal of the SA.NO.409 OF 2021.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of B.R.SANKARA LINGAM, Advocate for the petitioner the court made the following order:-

Read this in conjunction with and in continuation of separate proceedings made in captioned Second Appeals, which reads as follows:

'One V.Jeevananadham is the lone appellant in both the captioned second appeals. Mr.B.R.Sankara Lingam, learned counsel on record for lone appellant in both captioned second appeals is before this Virtual Court.

2. S.A.No.408 of 2021 (senior second appeal) arises out of a suit in O.S.No.133 of 2009 on the file of 'III Additional Subordinate Judge's Court, Coimbatore' ('Trial Court' for convenience) filed by the appellant with prayers inter alia for declaration that cancellation of Power/Mortgage are invalid. This is via A.S.No.68 of 2017 on the file of 'III Additional District Judge's Court, Coimbatore' ('First Appellate Court' for convenience).

3. S.A.No.409 of 2021 (junior second appeal) arises out of a suit against the appellant (fourth defendant) being O.S.No.531 of 2007 on the file of Trial Court wherein there were inter alia prayers for cancellation of sale deed and mandatory injunction. This is via A.S.No.26 of 2017 on the file of the first Appellate Court.

4. Learned counsel submits that the pivotal issue in both the captioned second appeals centers around Ex.B3 which is styled “வர்த்தமான ஒப்பந்தமும் இரஃதும்” dated 02.03.2005. The neat question that arises in captioned second appeals, according to learned counsel for appellant is, '**whether Ex.B3 is compulsorily registrable or is optional vide Section 18(b) of the Registration Act, 1908?**' In the light of the trajectory the matter has taken, prima facie case made out.

5. To be noted, the above is the lone question that is projected at this admission stage notwithstanding very many grounds and very many questions proposed in the memorandum of grounds of appeal. Furthermore, above is a prima facie view i.e., view that it is a substantial question of law arising in the cases on hand subject to the rights of the respondents under sub-section (5) of Section 100 CPC.

6. **Admit.** Issue notice returnable by 21.06.2021. Private notice permitted. Private notice through all available electronic modes of communications also permitted. Private notice should set out with clarity the substantial question of law on which captioned second appeal has been admitted by this Court.

List on 21.06.2021.'

2. Learned counsel for petitioner/appellant adverting to the affidavit filed in support of captioned CMP, more particularly, paragraph 10 thereof submits that pursuant to the decree of the trial Court, the original deed has to be handed over to the third respondent and that apart, the sale deed executed in favour of the

petitioner/appellant has been declared as null and void. In these circumstances, if judgment and decree in O.S.No.531 of 2007 as confirmed in A.S.No.26 of 2017 is not stayed, an irreversible situation can occur is learned counsel's say.

3. In the light of proceedings in main second appeal, *prima facie* case has been made out and balance of convenience is in favour of grant of stay as if matters are precipitated pursuant to the decrees of the Courts below when this Court is in seizin of the second appeal, it can lead to an irreversible situation.

4. There shall be an order of interim stay as prayed for till next listing i.e., till 21.06.2021.

Notice to respondents returnable by 21.06.2021.

-sd/-

26/04/2021

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE IIIRD ADDITIONAL DISTRICT
JUDGE COIMBATORE.

2 THE IIIRD ADDITIONAL
SUBORDINATE JUDGE COIMBATORE.

C.C. to MR.B.R.SANKARA LINGAM Advocate SR.NO.2778/2021

Order

in

CMP No.7723 of 2021

IN SA.NO.409 OF 2021

Date :26/04/2021

From 26.2.2001 the Registry is issuing certified
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VC (02/06/2021)