

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.01.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1785 of 2020
and
C.M.P.No.13141 of 2020

1.Shanthi
2.Elangovan
3.Arunkumar
4.Jayapratha

...Appellants

Vs.

1.Shantha
2.Nirmala
3.Prakash
4.Anandan
5.Shanmugam

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 of C.P.C., against the Fair and Decretal order dated 21.08.2020 passed by the Additional District Court, Tiruvannamalai in I.A.No.102 of 2020 in O.S.No.92 of 2018.

For Appellants : Mr.N.C.Ashok Kumar
For Respondents : Mr.L.Damodaran
[For R4]

J U D G M E N T

The Fair and Decretal order dated 21.08.2020 passed in I.A.No.102 of 2020 in O.S.No.92 of 2018 is sought to be set aside in the present Civil Miscellaneous Appeal.

2. The appellants are the plaintiffs, who instituted a Suit for Partition against the respondents. The learned counsel appearing on behalf of the appellants strenuously contended that the respondents are considerably developing the property during the pendency of the suit for Partition and in the event of allowing such development, it will create many other issues other than the issues raised in the Civil Suit. The learned counsel for the appellants is of an opinion that by putting up some constructions or developing a disputed property, the respondents may claim equity or compensation from the appellants/plaintiffs at the time of trial or passing a judgment by the trial Court. Thus, an order of interim injunction is just and essential.

3. The learned counsel appearing on behalf of the 4th respondent objected the said contentions by stating that the appellants have no semblance of right in respect of the property in question. The suit for Partition itself is not maintainable, in view of the fact that the appellants have not established any right over the suit property. Thus, the Trial Court has considered all the grounds raised and rejected the Interlocutory Application, seeking an order of interim injunction, there is no further grounds to interfere with the order passed by the trial Court and accordingly, the miscellaneous appeal is liable to be dismissed.

4. This Court is of the considered opinion that a balanced and pragmatic approach is required for the purpose of granting an interim relief in a suit. The Courts are to be cautious, while granting such an interim relief, in view of the fact that the same should not cause any prejudice to either of the parties. The principles for grant of interim relief though settled, the discretion to be exercised by the Courts are also to be weighed with reference to the facts and circumstances of each case. Therefore, uniformity need not be followed in the matter of grant of interim relief. However, the facts and circumstances of each case is to be considered with reference to the established principles.

5. As far as the case on hand is concerned, the suit is instituted by the appellants for Partition. The appellants claim right over the property in question. The 4th respondent denies the same. The contention of the appellants is that the 4th respondent is developing the property.

6. This Court is of the considered opinion that the suit is pending for the past about two and half (2 ½) years without any interim order. Therefore, it is not preferable to grant any interim order at this length of time. However, the interest of the appellants is also to be protected. Taking note of these circumstances, the respondent, if at all develops the property, he will be doing at his risk and he cannot claim any equity or compensation against the appellants/plaintiffs at the time of disposal of the suit or at any point of time. Therefore, the respondent is bound to take note of all these facts and the developments if at all made is at the risk of the 4th respondent and with these observations, the trial Court has to dispose of the suit as expeditiously as possible. The reasons stated for rejection of Interlocutory Application is certainly candid and convincing and this Court has not inclined to interfere with the findings made by the trial Court, while rejecting the Interlocutory Applications.

7. This being the factum, the trial Court is directed to dispose of the suit as expeditiously as possible and

preferably within a period of six months from the date of receipt of the copy of this judgment. The parties to the suit are directed to co-operate for the early disposal of the suit and they are bound to avoid unnecessary adjournments. The Trial Court in the event of granting adjournment shall record the reasons and mechanical adjournments are certainly not warranted.

8. Accordingly, the Civil Miscellaneous Appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge,
Additional District Court,
Tiruvannamalai.

Copy to: The Section Officer,
V.R. Section,
High Court,
Madras.

+1cc to Mr.C.Jagadish, Advocate, S.R.No.82.

+1cc to Mr.L.Dhamodharan, Advocate, S.R.No.329.

C.M.A.No.1785 of 2020

SSV(CO)
CSR 12.03.2021

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