



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2183 of 2021 &
CMP.No.12104 of 2021

1.Dhanalakshmi
2.Jeevitha ... Appellants

Vs

Rajagopal ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 104 of CPC read with Order XLIII Rule I(r) of CPC against the fair and final order passed in IA.No.78 of 2020 in O.S.No.32 of 2020 on the file of the Principal District Court, Tiruvarur dated 26.02.2021.

For Appellant : Mr.S.Sounthar

For Respondent : Mr.B.Jawahar

JUDGMENT

This appeal has been filed challenging the judgment and decree dated 26.02.2021 passed by the learned Principal District Judge, Thiruvarur in I.A.No. 78 of 2020 in O.S.No.32 of 2020 under which the application filed by the Appellants/plaintiffs seeking for injunction against the respondent was dismissed.

2. The suit O.S.No.32 of 2020 was filed by the Appellants/plaintiffs seeking for partition against the defendants and the respondent is the first defendant. The first Appellant/first plaintiff is the wife of late Elango and the second Appellant/second plaintiff is his daughter. Late Elango is the brother of the respondent.

3. It is the case of the Appellants that no share has



been allotted to the Appellants by the respondent in the properties belonging to the joint family. In such circumstances, the suit was filed by the Appellants seeking for partition on their 1/4th share. Pending the suit, I.A.No.78 of 2020 was filed by the Appellants/plaintiffs seeking for injunction restraining the respondent from making any encumbrance in the suit properties till the disposal of the original suit.

4. Under the impugned order dated 26.02.2021, the learned Principal District Judge, Thiruvarur dismissed I.A.No.78 of 2020 on the ground that no injunction can be granted against a co-owner. Aggrieved by the same, this appeal has been filed.

5. Learned counsel for the Appellants would submit that the Appellants are willing to cooperate for the early disposal of the suit O.S.No.32 of 2021 and till such time, this Court may grant an order of injunction as prayed for in CMP.No.12104 of 2021.

6. Admittedly, the first Appellant's husband Elango is the brother of the respondent, as seen from the written statement filed by the respondent before the trial court. However, it is the contention of the respondent that by virtue of a will, they are entitled for the entire share in the properties and the Appellants/plaintiffs are not entitled for any share.

7. Whether the will is a genuine document or not has to be determined by the trial court. Since the Appellants/plaintiffs have undertaken to cooperate with the trial on day to day basis, this court is of the considered view that injunction can be granted in favour of the Appellants insofar as the remaining unsold properties for a limited period or till the disposal of the suit. This Court is of the considered view that since the pleadings are completed, the trial court can frame the issues and after completion of trial, can dispose of the suit within a time frame to be fixed by this Court. This court is of the considered view that the suit can be disposed of within a period of four months from the date of receipt of a copy of this judgment.

8. In view of the above, this court directs the trial court namely the Principal District Judge, Thiruvarur, to dispose of the suit O.S.No.32 of 2020 within a period of four months from the date of receipt of a copy of this Judgment.



9. There shall be an order of interim injunction in favour of the Appellants in respect of properties in suit A Schedule item-III and suit B schedule item V (1) & (2) for a limited period of four months from the date of receipt of a copy of this Judgment or till the disposal of the suit O.S.No.32 of 2020 whichever is earlier.

10. In the aforesaid terms, this appeal is disposed of. No costs. In case the suit is not disposed of due to the non-cooperation of the Appellants/plaintiffs within four months from the date of receipt of a copy of this Judgment, the interim injunction granted by this court shall stand automatically vacated.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Tiruvarur

2.The Section Officer,
V.R.Section, High Court of Madras.

+1cc to M/s.B.Jawahar, Advocate, S.R.No.55494

+1cc to M/s.S.Sounthar, Advocate, S.R.No.54826

C.M.A.No.2183 of 2021

GP(CO)
SB(10/11/2021)