



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Wednesday, the Twenty Eighth day of July Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE M.SUNDAR

CMP.No.25102 and 25105 of 2019

IN SA.No.1150 of 2019

J.VARADHAN

[PETITIONER IN BOTH THE PETITIONS]

Vs

1 J.GAJENDIRAN

[RESPONDENTS IN BOTH THE PETITIONS]

2 G.SELVARANI

3 G.UMAPATHI

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 order dated 25-03-2019 in A.S.No.4 of 2017 on the file of Sub Court, Arakkonam (in CMP.No.25102 of 2019) and;

(2) To grant an order of interim injunction restraining the respondents, not to put up any construction on the suit property in OS.No.200 of 2009 on the file of District Munsif Court, Sholinghur (in CMP.No.25105 of 2019) pending disposal of the above SA.No.1150 of 2019.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.P.KRISHNAN, Advocate for the petitioner in both the petitions and of MR.S.GANESH, Advocate for the Respondents in both the petitions, the court made the following order:-

Read this in conjunction with and in continuation of separate proceedings made in aforementioned main second appeal today, which reads as follows:

'Mr.P.Krishnan, learned counsel for sole appellant and Mr.S.Ganesh, learned counsel for three respondents are before this Virtual Court.



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2. Case file placed before this Court brings to light that captioned second appeal has been admitted by Hon'ble predecessor Judge on 26.11.2019. This Court is informed that records of the District Judiciary have since been received. This means that captioned second appeal is ripe for final disposal. However, both the aforesaid learned counsel on both sides request for an adjournment stating that they require some more time to prepare for advancing final hearing arguments/submissions in captioned second appeal. This request is acceded to.

List four weeks hence. List 25.08.2021.'

2. Captioned CMPs have been taken out by the lone appellant in the aforementioned main second appeal, for convenience 'C.M.P.No.25102 of 2018' shall be referred to as 'stay petition' and 'C.M.P.No.25105 of 2018' shall be referred to as 'injunction petition'.

3. A perusal of the case file placed before this Court reveals that in the injunction petition, an interim order has been granted by Hon'ble predecessor Judge at the time of admission of captioned main second appeal on 26.11.2019 and the same reads as follows:

'There will be an order of interim injunction as prayed for until further orders.'

2. Notice to the respondents returnable by 19.12.2019. Private notice is also permitted.'

4. This Court deems it appropriate to elaborate on the above. Suit was filed by the appellant before this second appeal Court with prayers for permanent injunction restraining the defendants from raising construction on the western side of plaintiff's wall of the suit property. After full contest, suit was decreed. The three defendants carried the matter in appeal by way of a regular first appeal under Section 96 of 'The Code of Civil Procedure, 1908' ('CPC' for the sake of brevity) vide A.S.No. 4 of 2017 on the file of 'Subordinate Judge's Court at Arakkonam' (hereinafter 'first Appellate Court' for the sake of brevity), first Appellate Court, after full contest, interfered with the trial Court's decree and allowed the appeal or in other words, the sequitur is, injunction decree granted by the trial Court stood set aside and the plaintiff stood non-suited. The non-suited plaintiff is now in appeal before this second appeal Court vide captioned second appeal.



5. Perusal of orders/proceedings made in the main second appeal today will reveal that main second appeal is ripe for final hearing. Therefore, it is only appropriate that the interim injunction already granted by Hon'ble predecessor Judge on 26.11.2019 in the injunction petition continues to operate till the disposal of the aforementioned main second appeal. If this happens, the stay petition becomes otiose.

6. Now that the interim injunction granted by Hon'ble predecessor Judge on 26.11.2019 will operate till the disposal of main second appeal, rights of the respondents in the main second appeal are preserved to move this Court if there is undue delay in disposal of the captioned main second appeal attributable to the appellant.

7. The following order is passed:

i) C.M.P.No.25102 of 2019 is disposed of as unnecessary and otiose;

and

ii) C.M.P.No.25105 of 2019 is closed holding that the interim injunction granted on 26.11.2019 will continue to operate till the disposal of captioned second appeal albeit preserving the rights of the appellant in the aforesaid manner.

There shall be no order as to costs.

-sd/-
28/07/2021
/ TRUE COPY /

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

TO

1 THE SUBORDINATE JUDGE,
ARAKKONAM



2 THE DISTRICT MUNSIF,
SHOLINGHUR

COPY TO

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THE SECTION OFFICER
V.R. SECTION,
HIGH COURT, MADRAS-600 104

CC TO MR.K.N.PANDIYAN, Advocate sr.no.4246/2021

Order

in
CMP.No.25102 and 25105 of 2019

IN SA.No.1150 of 2019

Date :28/07/2021

From 26.2.2001 the Registry is issuing certified
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PA (06/08/2021)