

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1129 of 2017

and C.M.P.No.5623 of 2017

Tmt.Sasikumari .. Appellant/Plaintiff

Vs.

1.C.Chandrasekara Gupta

2.C.Srinivasan alias Suresh .. Respondents/Defendants

PRAYER : Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(r) CPC, 1908, against the order and decretal order dated 09.03.2017 made in I.A.No.685 of 2016 in O.S.No.28 of 2015, on the file of the Second Additional District Judge, Puducherry.

For Appellant : M/s.R.Thiagarajan
M/s.Vasudha Thiagarajan

For Respondents : M/s.B.Balavijayan for R1
No Appearance for R2

J U D G M E N T

The appellant herein is the plaintiff in the suit in O.S.No.28 of 2015 filed by her for the relief of permanent injunction and other consequential reliefs. She also filed I.A.No.119 of 2015 for the relief of temporary injunction. During the pendency of the proceedings, the first respondent filed I.A.No.685 of 2016, under Order 39 Rule 1 and 2 of CPC, seeking an ex-parte ad-interim injunction restraining the plaintiff and her men and agents or any one claiming through her either in the capacity of the plaintiff or in the capacity or party receiver from in any manner giving possession of any portion/floor of the suit property to any 3rd party stranger in any manner whatsoever. In order to avoid multiplicity of proceedings, the trial Court allowed the application. Aggrieved by that, the plaintiff preferred this appeal.

2. Point for consideration:

(i) Whether the trial Court has erred in allowing the I.A.No.119 of 2015 by granting the temporary injunction against this appellant restraining her not to induct any third party stranger in any portion of the suit property.

3. The learned counsel for the appellant/plaintiff submits in a suit filed by her, the respondent/first defendant has no right to file an application and as such, the interim injunction obtained is not maintainable in law and she prays to set aside the order passed by the trial Judge.

4. The learned counsel for the respondent submits that suppressing the real facts, the plaintiff approached the Court with false allegation against the respondents. In fact, she has not enjoyed the suit property and she filed the suit for claiming 1/3rd share in the suit property. But, she attempted to induct the third party stranger. So that only they have filed an interim application before the trial Court and considering all the circumstances and facts, the trial Court rightly granted interim order in favour of the defendant. So he prayed to dismiss the Civil Miscellaneous Appeal as no merits.

5. The defendant contested the suit denying the plaintiff claims over the suit property by filing the written statement. During the pendency of the suit, the defendant approached the trial Court contending that the plaintiff attempted to give possession of the first floor to some stranger, if she succeeds it would lead multiplicity of proceedings. At the same time, they also denied that the plaintiff is enjoyment of suit property after the death of her husband.

6. Considering the facts, as well as the objection raised by the defendants involved in the suit, with regard to the plaintiff right over the suit property would be decided based upon the oral and documentary evidence adduced on the side of the both parties. Now, the trial also begun and posted for PW.1 cross examination and due to the interim order granted in the above I.A.No.119 of 2015, the possession of the property is safeguarded. As rightly pointed out by the trial Court, in order to avoid multiplicity of proceedings, the order passed by the trial Court is confirmed till the disposal of the suit. The trial Judge is directed to decide the suit in O.S.No.28 of 2015, on merits within three months from this judgment by hearing both sides, without giving unnecessary adjournments.

7. Accordingly, this Civil Miscellaneous Appeal is

ordered. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VII)

/TRUE COPY/

Sub-Assistant Registrar

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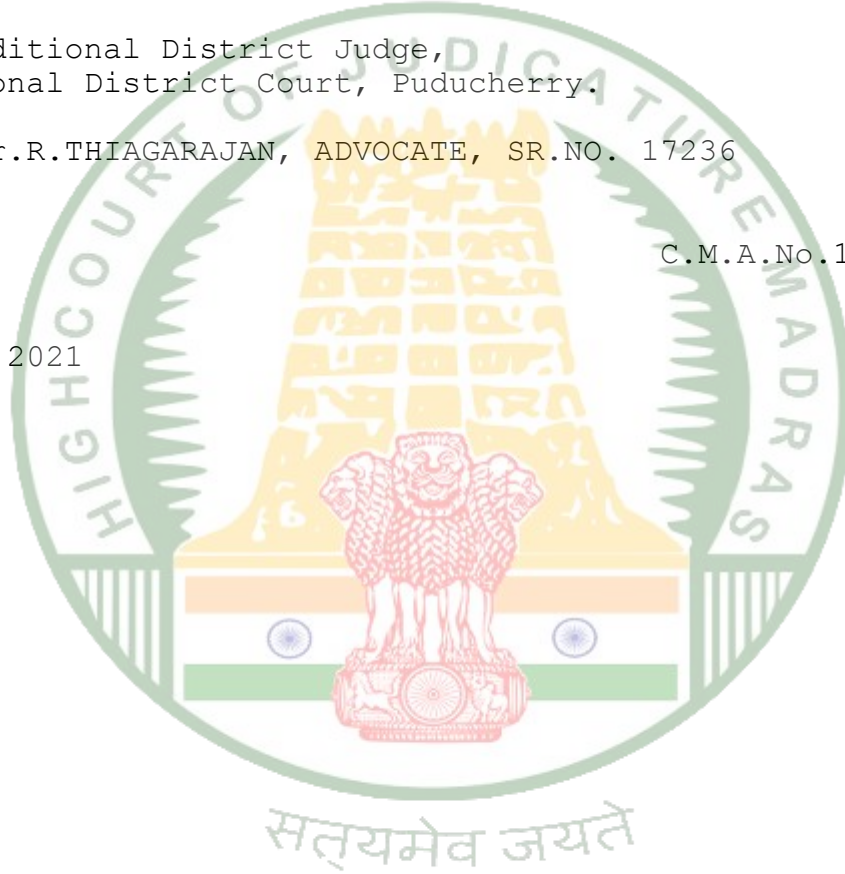
To

The II Additional District Judge,
II Additional District Court, Puducherry.

+1cc to Mr.R.THAGARAJAN, ADVOCATE, SR.NO. 17236

C.M.A.No.1129 of 2017

CP (CO)
KKN 26.04.2021



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