

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4426 of 2019

1.Anil Ann Kuruvilla
2.Asha Susan Mathew
3.Anju S.Mathew

..Appellants

Vs.

1.Menakabai S.Nikam
2.Shakuntala S.Nikam
3.Supriya S.Nikam
4.Meena S.Nikam
5.Anand S.Nikam
6.N.Arunachalam
7.M.Damodharan
8.P.Devi

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (r) of CPC, to set aside the order and decreetal order 16.08.2019 made in I.A.No.12072 of 2018 in O.S.No.5059 of 2018 on the file of the II Additional Judge, City Civil Court, Chennai by allowing this Civil Miscellaneous Appeal with costs throughout.

For Appellant : Mr.T.Dhanasekaran

For Respondents : Mr.R.Nirmala Devi for R6
RR1 to 5 and 7 & 8-Ex-parte.

J U D G M E N T

The Judgment and Decree dated 16.08.2019 passed in I.A.No.12072 of 2018 in O.S.No.5059 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 declaration of title and permanent injunction. Along with the suit, the appellants filed an interlocutory application for interim injunction.

3. The learned counsel for the appellants made a submission that the interim injunction was initially granted by the trial Court and after filing a counter by the defendants, the interim injunction granted was vacated by the trial Court. Thus, the present appeal is filed against the said order.

4. The learned counsel for the appellants is of the opinion that the respondent has no right whatsoever in respect of the suit property and a prima facie case was established by the appellants at the time of institution of the suit and the trial Court has rightly granted the interim injunction. Thus, the dismissal of the interlocutory application after some time is an error apparent and accordingly the appeal is liable to be allowed.

5. The learned counsel for the respondent sterroneously opposed the contention of the appellant by stating that the appellants had suppressed certain materials and facts before the trial Court and obtained an order of interim injunction. Therefore, the trial Court rightly vacated the interim injunction and rejected the interlocutory application filed by the appellants along with the suit and there is no reason whatsoever to interfere with the order passed by the trial Court at this juncture and the appeal is to be dismissed.

6. This Court is of the considered opinion that the interim orders are to be granted by the Courts by adopting a balancing approach and a pragmatic view is to be taken, without causing prejudice to the rights of the parties. Interim order granted by the Courts should not cause any infringement by either of the parties, during the pendency of the litigation. Thus, the Courts are expected to be cautious while granting interim orders in a civil suit. Undoubtedly, the rights of the parties are to be established through the documents and evidence by conducting a full-fledged trial. However, grant of interim order, if just and necessary, then alone, the Courts can grant interim orders and not otherwise.

7. The principles for grant of interim order, though enumerated by the Courts on various circumstances, ultimately, grant or not grant is vested with the discretion of the Courts concerned which is to be exercised based on the facts and circumstances of the case. Therefore, declining an order of interim injunction or granting an order of interim injunction must be based on the facts and circumstances by adopting a pragmatic approach.

8. Though an interim injunction was granted in the present case on hand, it was vacated at the instance of the respondent by the trial Court. On perusal of the records, it reveals that the trial Court vacated the interim orders based on certain vital facts furnished and therefore, to decide the issues, the full-fledged trial is to be conducted.

9. It is made clear that the observations or findings in the order now under challenge shall not influence the trial Court, while considering the issues at the time of deciding the suit finally. In other words, the suit is to be decided uninfluenced by any findings arrived in the interlocutory application order passed by the trial Court.

10. As far as the grant of interim injunction is concerned, this Court is of the opinion that the matter is pending for about 1 ½ years, thus, granting of interim order at this length of time is not preferable. The parties are at liberty to adjudicate the same by filing documents and evidence before the trial Court. The trial Court is directed to proceed with the trial and dispose the suit as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

11. With these observations, the Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Asst. Registrar

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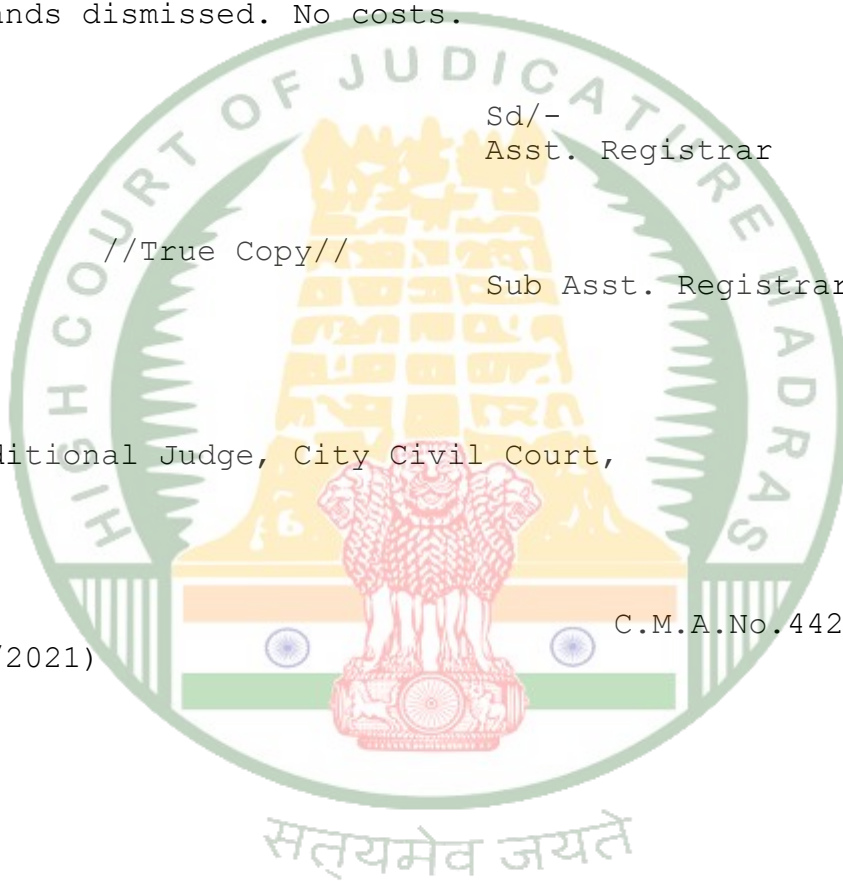
Sub Asst. Registrar

ssb

To
The II Additional Judge, City Civil Court,
Chennai.

VC (22/01/2021)

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