

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2621 of 2018
and
C.M.P.No.19779 of 2018

Mohana Balusamy .. Appellant/Respondent/Defendant

Vs.

M.Kandahmani .. Respondent/Petitioner/Plaintiff

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 rule 1(r) of Civil Procedure Code, against the fair and decreetal order dated 17.09.2018 made in I.A.No.1827 of 2018 in O.S.No.23 of 2018 on the file of the learned Fourth Additional District Court, Erode District at Bhavani.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.K.S.JeyaGaneshan

J U D G M E N T

The appellant herein is the defendant in O.S.No.23 of 2018 filed by the respondent herein, for the relief of permanent injunction and other consequential reliefs, in which he filed I.A.No.1827 of 2018 on the file of the Fourth Additional District Court, Erode District at Bhavani, for the relief of temporary injunction.

2. Both the appellant and the respondent have contested the suit as well as the Interlocutory applications.

3. On 17.09.2018, the trial Court allowed the Interlocutory application in favour of the respondent/petitioner granting the relief of temporary injunction restraining the respondent/defendant from interfering with the petitioner's peaceful possession and enjoyment of the suit property till the disposal of the suit. Aggrieved by the said order, the defendant has preferred the present appeal before this Court.

4. The question of Law that arises for consideration is as to "whether the trial Court has erred in granting temporary injunction infavour of the plaintiff without considering the sale deeds with regard to the suit property stands in the name of the defendant."

5. The fact reveals that the appellant and the respondent are sisters. The appellant was a retired headmistress and the respondent is a Doctor. The suit property originally belongs to the respondent/plaintiff. According to the respondent, the sale deed was executed in favour of the appellant on 25.11.2015, for valid consideration and the possession also given to the appellant.

6. But the case of the respondent/petitioner is that the alleged sale deed was obtained forcibly keeping her with intoxication mood, so she denied the execution of sale deed infavour of the appellant. Besides she also submits that she is in possession and enjoyment of the suit property till filing of the suit and she has not received any alleged sale consideration as stated by the appellant/respondent. Since the appellant caused interference in her enjoyment, thereby, she approached Court for relief of permanent injunction. She also filed a temporary injunction to safeguard her enjoyment but the respondent also admitted that due to close relationship, she permitted to reside in their house.

7. While considering that the trial Court granted the temporary injunction from any way evicting the respondent/petitioner except due process of law. Aggrieved by the order, the appellant/respondent approached this Court.

8. But on considering the entire facts the appellant counsel submits that sale deed was executed in favour of the appellant voluntarily by the respondent and she also received valid consideration at the instigation of her close relatives now the respondent denied the execution of sale deed. But admittedly the respondent is residing in the suit property. About the genuineness of the sale deed the manner of the execution of the sale deed, passing of the consideration are to be decided with the help of both oral and documentary evidence during the trial. At this stage, this Court would not give any finding with regard to those facts which are all subject matter of the issue involved in the original suit.

9. Further more, as far as the submission of both the counsels, the suit is still pending. Admittedly, both the plaintiff and defendant are sisters and who are aged about more than 60 years. Before the trial Court, the appellant also admitted that the respondent was permitted to reside in the house (suit property).

10. As discussed above, since the suit is ripe for trial, the temporary injunction given by the trial Court is made absolute till the dismissal of suit, and the Trial Court is directed to dispose of the suit in O.S.No.23 of 2018 within a period of three months from the date of receipt of copy of the judgment.

11. Accordingly, this Civil Miscellaneous Appeal is ordered. Consequently connected Civil Miscellaneous petition is closed. No Costs.

rri

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

TO

1.The IV Additional District Judge,
Erode District of Bhavani.

Copy to: The Section Officer,
VR Section, High Court Madras.

- 1 cc to Mr. K.S. Jeyaganeshan, Advocate SR.17494
- 1 cc to Mr. N. Manokaran, Advocate SR.17365

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