

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.(PD).Nos.4221 & 4222 of 2018 and
C.M.P.Nos.23179 & 23180 of 2018

1. Ramesh
2. Malarkodi
3. Rani
4. Malliga
5. Amutha
6. Arunadevi
7. Kanagamani

.. Petitioners in both CRP's

..Vs..

Dharmasamvardhini

.. Respondent in both CRP's

Prayer in CRP (PD) Nos.4221 of 2018 & 4222 of 2018: Civil Revision Case filed under Article 227 of Constitution of India, to set aside the docket orders dated 12.12.2018 passed in I.A.Nos. 659 & 658 of 2018 respectively in O.S.No.399 of 2018 on the file of the III Additional District Judge, Salem, filed under Order XXXIX Rules 1 & 2 and Section 151 of CPC.

For Petitioners : Mr.M.Premkumar
(in both C.R.P's)

For Respondent :Mr.S.R.Bharath Gowtham
(in both C.R.P's)

COMMON ORDER

These Civil Revision Petitions have been filed challenging the docket orders passed by the Court below on 12.12.2018 made in I.A.Nos. 659 & 658 of 2018 respectively in O.S.No.399 of 2018.

2. An interlocutory application in I.A.No.658 of 2018 in O.S.No.399 of 2018, was filed by the petitioners, before the III Additional District Judge, Salem, seeking interim injunction restraining the respondent and others from alienating or encumbering the petition mentioned property till the disposal of the suit.

3. An interlocutory application in I.A.No.659 of 2018 in O.S.No.399 of 2018, was filed by the petitioners, before the III Additional District Judge, Salem, seeking interim injunction against the respondent and others from putting up any construction in the petition mentioned property till the disposal of the suit.

4. The Court below vide order dated 12.12.2018 in both the applications,observed that '*Prima-facie* not made out in favour of the

petitioners'. Against the said orders, the petitioners are before this Court by way of these revisions.

5.The learned counsel for the petitioners submitted that the Court below has not granted any injunction when the matters were heard. When the matters were taken up for hearing for admission it was inclined to order notice in the I.As. Further, it was observed that interim injunction will be decided after the filing of the counter by the other side. When that being the case, the Court below ought not to have come to the conclusion that “*Prima-facie* not made out in favour of the petitioner”. Only after hearing both the parties, the Court can come to the conclusion about the failure of the petitioner/plaintiff to establish the case for granting injunction. In the present cases, without hearing both the parties, the court below has observed that “*Prima-facie* not made out in favour of the petitioner”, which is not proper. Therefore, he submitted that the docket order dated 12.12.2018 is liable to be set aside.

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6. The learned counsel for the respondents fairly submitted that since the matters are pending for more than two years, the court below may be directed to take up the applications and pass orders on merits and in accordance

with law, within a stipulated time.

7. Heard both sides. Perused the records.

8. Considering the facts and circumstances of the case and also considering the submissions made, this Court is of the view that the Court below, while issuing notice to the respondent ought not to have passed an order stating that '*Prima facie not made out in favour of the petitioner*' in both the applications, when they are not inclined to grant interim injunction, before hearing the respondent.

9. In view of the same, this Court is inclined to set aside the docket order in both the I.A.Nos. 658 and 659 of 2018 in O.S.No.399 of 2018 to the extent of the following line alone:

'Prima facie not made out in favour of the petitioner.'

10. Accordingly, the order dated 12.12.2018 made in I.A.Nos. 658 and 659 of 2018 are set aside to the extent indicated above and remanded back

to the court below for fresh consideration. The Court below is directed to consider and pass orders in the interlocutory applications, within a period of two months from the date of receipt of a copy of this order.

11. In the result, these Civil Revision Petitions are allowed with the aforesaid directions. Consequently, connected Miscellaneous Petitions are closed.

19.03.2021

arr/rst

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

To

The II Additional District Judge, Salem

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CRP.(PD)Nos.4221 & 4222 of 2018

KRISHNAN RAMASAMY,J.

arr/rst



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and
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