



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CMA(MD) .No.664 of 2021

and

CMP(MD)No.6282 of 2021

WEB COPY

1.P.Johnson

2.P.G.Chandrasekar

3.A.Selvam Dhanaraj

(Represented through her Power of attorney

the 2nd petitioner P.G.Chandrasekar)

4.P.G.Arulraj

: Petitioners/Petitioners/Appellants

Vs.

J.Pathmavathi

: Respondent/Respondent/1st defendant

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code, against the fair and decreetal order dated 08.01.2021 passed in I.A.No.82 of 2018 in O.S.No.47 of 2017, on the file of the Ist Additional District Judge, Thoothukudi.

For Appellants : M/s.F.X.Eugene

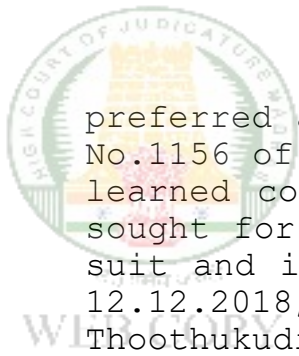
JUDGMENT

The Civil Miscellaneous Appeal is directed against the order dated 08.01.2021 passed in I.A.No.82 of 2018 in O.S.No.47 of 2017 on the file of the Ist Additional District Judge, Thoothukudi, dismissing the petition filed under Order 39 Rule 1 CPC.

2.The appellants are the plaintiffs and they have filed the above suit for partition. It is further evident that the plaintiffs have filed an application in I.A.No.83 of 2017 claiming temporary injunction under Order 39 Rule 1 CPC and the learned trial Judge has passed an order directing the parties to maintain *status quo* and subsequently, the injunction petition was ordered to be dismissed on 14.08.2018. Thereafter, the plaintiffs have filed another application in I.A.No.82 of 2018, claiming temporary injunction under Order 39 Rule 1 CPC restraining the defendants from alienating or encumbering the petition mentioned property. The learned Additional District Judge, after enquiry, has passed the impugned order on 08.01.2021, dismissing the said petition. Aggrieved by the said order of dismissal, the plaintiffs have come forward with the present appeal.

3.It is not in dispute that the plaintiffs, challenging the dismissal of petition in I.A.No.83 of 2017, dated 14.08.2018, have

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preferred a Civil Miscellaneous Appeal before this Court in CMA(MD) No.1156 of 2018. When the matter was taken up for hearing, since the learned counsel for the appellants confined their prayers and only sought for a direction to the trial Court for early disposal of the suit and in view of the same, this Court has passed an order dated 12.12.2018, directing the learned Additional District Judge, Thoothukudi to dispose of the suit in O.S.No.47 of 2017 within a period of six months from the date of receipt of copy of that order.

4.The learned counsel for the appellants would submit that after dismissal of the earlier injunction petition, the respondent had disposed of the properties except the present petition mentioned property and that therefore, the plaintiffs were constrained to file the present injunction application restraining the respondents from alienating the said property. The learned counsel for the appellant would further submit that it would suffice, if a direction is given to the trial Court for early disposal of the suit proceedings.

5.Considering the facts and circumstances of the case and taking note of the submissions made by the learned counsel for the appellants and also the limited prayer now sought for by the appellants, without expressing any opinion with regard to the merits of the case, this Court directs the learned Ist Additional District Judge, Thoothukudi to dispose of the suit in O.S.No.47 of 2017 on merits and in accordance with law within a period of four months from the date of receipt of copy of this order.

6.With the above direction, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

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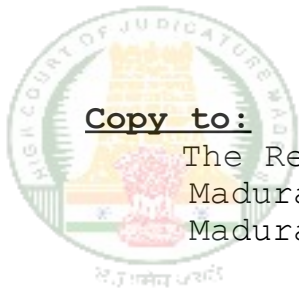
Sub Assistant Registrar(CS)

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.Ist Additional District Judge,
Thoothukudi.

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Copy to:

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

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RS (09.09.2021) 3P 3C