



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CMA(MD)No.966 of 2021 &

CMP(MD)No.9172 of 2021

WEB COPY

G.Nagamoni

... Appellant/Petitioner/
Plaintiff

vs.

Gomathiyammal

... Respondent/Respondent/
Defendant

PRAYER : Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) and Section 151 of CPC to call for the records and set aside the fair and decreetal order in IA.No.1 of 2020 in OS.No.88 of 2020 dated 03.06.2021 on the file of the learned Principal District Judge, Kanyakumari District, Nagercoil and allow the said IA.No.1 of 2020 in OS.No.88 of 2020.

For Appellant : Mr.S.Abul Kalaam Azad

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/plaintiff to set aside the order in IA.No.1 of 2020 in OS.No.88 of 2020 on the file of the Principal District Judge, Kanyakumari District, Nagercoil.

2. Heard the learned counsel appearing for the appellant.

3. The appellant filed IA.No.1 of 2020 under Order 39 Rule I & II and Section 151 of CPC, restraining the respondent/defendant from alienating or encumbering the suit property to third parties. The suit in OS.No.88 of 2020 was filed for specific performance on the basis of unregistered sale agreement. Unregistered sale agreement can be considered for a collateral purpose. Whether Ex.P1, unregistered sale agreement can be considered, can be decided only after full trial in suit. It is well settled that any encumbrance to the pending suit, is hit by lis pendens. In view of the above, the appellant/plaintiff is directed to conduct the suit itself.

4. The learned Principal District Judge, Kanyakumari District, Nagercoil is directed to dispose the suit in OS.No.88 of 2020



within a period of six months from the date of receipt of a copy of this Order. With the above direction, this Civil Miscellaneous Appeal is dismissed in the admission stage itself. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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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

The Principal District Judge,
Kanyakumari District, Nagercoil.

CMA (MD) No. 966 of 2021
11.11.2021

RK/PM(24/11/2021) 2P 2C