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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2022

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THE HONOURABLE Ms.JUSTICE P.T. ASHA

C.M.A.No.575 of 2022

&

C.M.P.No.4200 of 2022

H.B.Hussain Baig

... Appellant/
Respondent/5th Defendant

Vs

1.Jabeena

2.Shabeena

3.Irshad Khan

... Respondents/
Petitioners/ Plaintiffs

Prayer: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (T) of the Code of Civil Procedure against the order dated 20.12.2021 made in I.A.No.4 of 2021 in O.S.No.234 of 2021 on the file of the Additional District Judge, Hosur.

For Appellant : Mr.R.Balaguru Swamy

For Respondents : Mr.V.Sundar Raman
For Mr.G.Vijayakumar
Caveator Counsel

JUDGEMENT

Challenging the order of injunction granted in I.A.No.4 of 2021 in O.S.No.234 of 2021 by the learned Additional District Judge, Hosur the 5th defendant is before this Court. The facts in brief culminating in the filing of this appeal are as follows. The parties are referred to in the same array as in the suit.

2. The respondents herein as plaintiffs had filed a suit in O.S.No.234 of 2021 for partition and separate possession of the suit property in their 4/8th share, to declare the sale deed dated 15.06.2021 executed by the defendants 1 to 3 in favour of the 5th defendant as null and void, permanent injunction restraining the defendants 1 to 3 and 5 from creating any further encumbrance in respect of the suit property and for an



injunction restraining the 5th defendant, his men, agents from interfering with the peaceful possession and enjoyment of the house in the suit property by the plaintiffs.

3. It is the case of the plaintiffs that the property comprised in S.No.1347/1, Denkanikotta Grama Natham was being enjoyed by the plaintiff's father Shoukath @ Shoukathullakhan and his brother Inayathullakhan. The two brothers were sons of one Peer Khan. Patta was also issued in the joint name of Shoukath @ Shoukathullakhan and Inayathullakhan. Thereafter, the brothers had orally partitioned the property belonging to them under the oral partition. The northern portion of the property was allotted to Inayathullakhan and the southern portion measuring 3000 Sq.ft. was allotted to the share of Shoukath @ Shoukathullakhan. Each of them were allotted properties within specified boundaries and they have been exclusive possession and enjoyment of their respective shares from then.

4. After the oral partition, the said Shoukath @ Shoukathullakhan had constructed four shops in the ground floor and house in the first floor leaving 1250 sq.ft as vacant space out of the total extent of 3000 Sq.ft. The shops were let on rent and the Plaintiffs were residing in the house along with the parents till the life time of their parents. After the death of their parents and marriage of Plaintiffs 1 & 2, the 3rd Plaintiff, 4th Defendant and their deceased brother Noushadkhan were residing in the 1st floor house in the suit property

5. The 1st defendant is the wife of Noushadkhan and defendants 2 and 3 are the children of Noushadkhan. After the death of Noushadkhan, defendants 1 to 3 had gone away to the 1st defendant's parent's house and it is only the 3rd plaintiff and the 4th defendant who were residing in the house.

6. The plaintiffs would submit under a gift deed dated 02.11.2010 Shoukath @ Shoukathullakhan gifted 962.5 Sq.ft. in favour of the 3rd plaintiff who is the 2nd son of Shoukath @ Shoukathullakhan. Possession was also handed over to him. Thereafter, the 3rd plaintiff had executed a gift deed in respect of the same extent of 962.5 Sq.ft in favour of his brother Noushadkhan under a gift deed dated dated 09.05.2013 and delivered possession to him. After the execution of the gift deed Shoukath @ Shoukathullakhan was left with 2037.5 Sq.ft out of the total extent of 3000 Sq.ft. The said Shoukath @ Shoukathullakhan died intestate on 20.08.2015. Therefore, the plaintiffs 1 to 3 and 4 the defendant became entitled to the property.



7. After Noushadkhan's death on 05.03.2017, the defendants 1 to 3 have entered into a sale by creating an illegal and forged sale deed in favour of the 5th defendant. This has forced the plaintiffs to file the present suit. Along with the suit the plaintiffs / respondents 1 to 3 herein had filed I.A.No.4 of 2021 for an injunction restraining the 5th defendant / appellant herein from disturbing the peaceful possession and enjoyment of the house in the suit property.

8. The 5th defendant contested the application and he would submit that he is in possession and enjoyment of the suit schedule property. He would in his counter stated that on 15.12.2021, the plaintiffs have wrongfully entered into house premises, assaulted his family members and a complaint has been lodged with the Denkanikottai Police Station.

9. The learned Additional District Judge, Hosur by order dated 20.12.2021 was pleased to allow the application and grant an interim injunction till the disposal of the suit. It was made clear that the injunction would not cover the portion of the property covered in the gift deed dated 09.05.2013 executed by the 3rd plaintiff in favour of the Noushadkhan.

10. Challenging the said order the appeal has been filed.

11. From a perusal of the order impugned and the pleadings it is seen that the property originally belonged to Shoukath @ Shoukathullakhan and he had gifted a portion of 962.5 Sq.ft. in favour of his son Irshad Khan, the remaining extent out of 3000 Sq.ft. was retained by him. The 3rd plaintiff, Irshad Khan had only gifted 962.5 Sq.ft to his brother Noushadkhan under Ex.P.3, Gift Deed. Therefore, with reference to the remaining extent, on the death of Shoukath @ Shoukathullakhan all the children of Shoukath @ Shoukathullakhan gets a right to the property. However, the defendants 1 to 3 have encumbered an extent of 1750 Sq.ft covered under Ex.P.7, sale deed. The extent of 1750 Sq.ft under Ex.P.7 sale deed includes the property over which the defendants 1 to 3 do not have any independent right.

12. The defendants 1 to 3 have pleaded an oral partition, which has not been proved by them. In fact, the learned Judge observed that the Gift deed, Ex.P.3 does not refer to such an oral partition. In these circumstances, the 5th defendant is a total stranger to the family.

13. The property that has been gifted by the 3rd plaintiff in favour of Noushadkhan has been described within 4 boundaries. A perusal of the schedule shown in the plaint would clearly indicate that this property and the property that has been gifted to Noushadkhan are different properties. The plaintiffs



have prima facie proved their case.

14. Therefore, the learned Judge has rightly allowed the petition and I see no reason to interfere with the same. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To,

1.The Additional District Judge,
Hosur.

+1cc to Mr.G.Vijayakumar, Advocate, S.R.No.24503
+1cc to Mr.R.Balaguru Swamy, Advocate, S.R.No.24490

C.M.A.No.575 of 2022

SR-II(CO)
CT 17/05/2022