



CMA.No.873/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.06.2022

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CMA.No.873/2022 & CMP.No.6451/2022

1.R.Muthaiya
2.M.Sridhar

.. Appellants

Versus

1.Sathiyavani
2.Subashini
3.Deepak Raj

.. Respondents

Prayer:- Civil Miscellaneous Appeal filed under Order XLIII Rule [1][s] of CPC against the fair and decreetal order in IA.No.2/2020 in OS.No.121/2020 dated 22.10.2021 on the file of the learned Additional District Judge, Namakkal.

For Appellants : Mr.K.Govindarajan

For Respondents : Notice not issued



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JUDGMENT

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(1)Defendants 1 and 2 in OS.No.121/2020 now pending on the file of the learned Additional District Judge, Namakkal, are the appellants herein.

(2)The suit in OS.No.121/2020 had been filed by the plaintiffs seeking partition and separate possession to divide the suit property into two shares and to allot 1/6th share to each one of the three plaintiffs and to put them in separate possession of such allotted share and also to declare that a particular Will dated 22.12.2018 alleged to have been executed by the husband of the 1st plaintiff/Natarajan in favour of the 1st defendant as null and void and to further declare that the Settlement Deed registered as Doc.No.2534/2019 dated 21.11.2019 registered on the file of the Sub Registrar, Moganur, in favour of the 2nd defendant as null and void and for a mandatory injunctions to direct the 3rd defendant, namely the aforementioned Sub Registrar, to remove the forged Settlement Deed in Doc.No.2534/2019 dated 21.11.2019 from the Book-I of the Registers and also for cost of the suit.



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(3) In the said suit, the plaintiffs appeared to have filed IA.No.2/2020 seeking an order of interim injunctions restraining the defendants, particularly, defendants 1 and 2 / appellants herein, from dealing with or alienating their property. After hearing both sides, injunction was granted by order dated 22.10.2021. Aggrieved by the said order, defendants 1 and 2 in the suit are now on appeal before this Court.

(4) Heard the learned counsel for the appellants.

(5) This is an issue in which orders can be passed even without issuing notice to the respondents/plaintiffs.

(6) The primary relief sought for in the suit is for partition and separate possession. In a suit for partition, the Court should first adjudicate the respective shares and a preliminary decree will have to be passed. In this case, this requires deeper adjudication of the evidence, particularly because the plaintiffs also allege that a particular Will has to be set aside as null and void and a particular Settlement Deed has to be declared as forged. The appellants herein claim right and title under the said Will. Therefore, unless a preliminary decree is passed adjudicating the shares of the parties, the appellants herein cannot seek any relief before this



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Court and will have to go back to the Trial Court, since they are the propounders of the Will, prove the same in manner known to law.

(7)The appellants are deeply aggrieved by the order of injunctions granted restraining them from dealing with or alienating the property. Neither the Court below nor the parties appear to have taken recourse to Section 52 of the Transfer of Property Act. There can be no encumbrance without the leave of the Court.

(8)Therefore, the order under appeal is modified by stating that without obtaining specific leave of the Court in writing and without putting the plaintiffs on notice, the appellants herein cannot deal with the property. Even if the leave of the Court is obtained, the appellants, if any document is executed, will necessarily have to mention about the pendency of the suit, namely, OS.No.121/2020 and further state that it is pending on the file of the Additional District Court, Namakkal and also further state that the Will under which the appellants seek right, is also a subject matter of the suit and a specific relief has been sought to declare that the said Will as *non est* and also to declare the Settlement Deed under which the appellants also claim right, as a forged document. All these aspects must



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be mentioned in the Deed granting conveyance. Therefore, the appellants must

(1) obtain leave of the Court before dealing with the property.

(2) Must put the plaintiffs on notice before dealing with the property.

(3) The Court must pass specific orders either granting leave or denying leave.

(4) In any document executed by the appellants in the nature of conveyance, the appellants must state about the pendency of the suit and must also disclose about the nature of relief sought.

(9) The order under appeal is modified. If all these conditions are satisfied, the appellants may after obtaining necessary leave, deal with the property in manner known to law.

(10) The Civil Miscellaneous Appeal stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2022

AP
Internet : Yes



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To

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- 1.The Additional District Judge
Namakkal.
- 2.The Section Officer
VR Records, High Court
Madras.



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C.V.KARTHIKEYAN, J.,

AP

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