



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Wednesday, the Twenty Third day of February Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE M.DURAIWAMY

AND

THE HON`BLE MRS.JUSTICE T.V.THAMILSELVI

CMP.No.13357 of 2021

IN AS.No.277 of 2021

SRIVATSAN [PETITIONER]
S/O. JAYARAMAN,
REP. BY POWER OF ATTORNEY
GOMATI W/O JAYARAM
AGED ABOUT 67 YEARS
RESIDING AT NO. E-4, MORNING ROSE
RC VICTORIA GARDEN, AIR FORCE STATION ROAD
EAST TAMBARAM, CHENNAI - 59

Vs

1 PATTU [RESPONDENTS]
2 SUNILARI K.PATEL

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the proceedings in EP.No.209 of 2011 in OS. NO.20 of 2007 on the file of the III Additional District Court, Puducherry. (IN CMP.NO.13357/2021)

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.P.CHOCALINGAM, Advocate for the petitioner and of M/S.C.A.DIWAKAR, Advocate for the 2nd Respondent and of 1st Respondent not appearing either in person or by an Advocate, the court made the following order:-

(Order of the Court was made by M.DURAIWAMY, J.)

As against the dismissal of the suit in O.S.No.66 of 2014 on the file of the III Additional District Court, Puducherry, the plaintiff has filed the above Appeal.



2. In the said Appeal, the appellant had filed the above Civil Miscellaneous Petition to stay the proceedings in E.P.No.209 of 2011 in O.S.No.20 of 2007 on the file of the II Additional District Court, Puducherry. The suit in O.S.No.20 of 2007 was filed by the 2nd respondent as against the 1st respondent for specific performance. The Trial Court, by its judgment and decree dated 28.03.2022, decreed the suit. Pursuant to the decree granted by the Trial Court, the 2nd respondent filed an Execution Petition in E.P.No.209 of 2011 to execute the decree. The petitioner/appellant filed a suit in O.S.No.66 of 2014 to declare the judgment and decree passed in O.S.No.20 of 2007 as null and void. The Trial Court dismissed the said suit by its judgment and decree dated 18.06.2021.

3. On a perusal of the judgment passed in O.S.No.66 of 2014, it could be seen that the appellant/petitioner failed to examine himself as a witness. The said issue can be decided at the time of hearing the First Appeal. When the 2nd respondent has obtained a decree as against the 1st respondent for specific performance, the same cannot be stalled at the instance of the petitioner/appellant, whose suit was also dismissed by the Trial Court. Even if a Sale Deed is executed in favour of the 2nd respondent by the 1st respondent, in the event of the petitioner/appellant succeeding in the First Appeal, the Sale Deed can be set aside.

4. In such view of the matter, the interim order granted on 17.09.2021 stands vacated and the Civil Miscellaneous Petition in C.M.P.No.13357 of 2021 is dismissed. However, in the event of the petitioner/appellant succeeding in the First Appeal, it is open to him to initiate appropriate legal steps for getting the Sale Deed cancelled.

-sd/-

23/02/2022

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE III ADDITIONAL DISTRICT JUDGE,
PUDUCHERRY.



COPY TO

THE II ADDITIONAL DISTRICT JUDGE,
PUDUCHERRY.

C.C. to M/S.C.A.DIWAKAR, Advocate SR.NO. 1193/2022.

Order
in

CMP.No.13357 of 2021

IN AS.No.277 of 2021

Date :23/02/2022

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
TP (23/09/2021)
TP (28/02/2022)