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C.M.P.Nos.12126 and 12129 of 2022
in
S.A.Nos.581 and 582 of 2022

P.T.ASHA, J.,

C.M.P.No.12126 of 2022 is filed to suspend the judgment and decree dated 26.03.2011 made in O.S.No.77 of 2004 on the file of the District Munsif Court, Kangeyam in respect of Item Nos.2 to 4 of the suit schedule properties, which is confirmed by the judgment and decree dated 04.03.2022 made in A.S.No.48 of 2017 on the file of the Sub Court, Kangeyam.

2. C.M.P.No.12129 of 2022 is filed to suspend the judgment and decree dated 04.03.2022 made in Cross Appeal No.47 of 2017 in A.S.No.48 of 2017 on the file of the Sub Court, Kangeyam, reversing the judgment and decree dated 26.03.2011 made in O.S.No.77 of 2004 on the file of the District Munsif Court, Kangeyam in respect of Item No.1 of the suit schedule properties.

3. A.S.No.48 of 2017 arises out of the judgment and decree in O.S.No.77 of 2004 on the file of the District Munsif Court, Kangeyam. This suit was filed by the fourth respondent herein and



one Achiyammal before the learned District Munsif, Kangeyam seeking a permanent injunction restraining the defendants, their men, agents and assignee from interfering with the peaceful possession and enjoyment of the suit properties.

4. The first plaintiff/Achiyammal would submit that she had inherited the properties from her father and that all the revenue records have been mutated in her name. The first defendant is the son-in-law of the first plaintiff through her daughter Maragatham. The third defendant is the grand son of the plaintiff born to defendants 1 and 2. The fourth defendant is the wife of the third defendant.

5. The plaintiffs would submit that the defendants have joined together to somehow evict them from the properties. However, the plaintiffs have managed to put off the same. Since there was a threatened trespass, the plaintiffs had come forward with the suit in question. The first plaintiff/Achiyammal died and the second plaintiff, who is her son, was brought on record as legal representative on the basis of the registered Will dated 18.12.1986 executed by the first plaintiff in favour of the second plaintiff. The defendants had denied the claim of the plaintiffs and had set up a independent title to the



property in question. The suit was decreed with reference to item Nos. 2 to 3 and in respect of the Item No.1, the suit was dismissed stating that there was a confusion with reference to survey numbers. Aggrieved by the judgment and decree in O.S.No.47 of 1999 dated 26.03.2011, the defendants had filed an appeal in A.S.No.48 of 2017 on the file of the Subordinate Court, Kangeyam. The second plaintiff had also filed a Cross Appeal No.47 of 2017, challenging the order refusing to grant the injunction in respect of the item No.1 of the suit schedule properties. A.S.No.48 of 2017 was dismissed and the Cross Appeal No.47 of 2017 was allowed. Challenging the dismissal of their appeal in A.S.No.48 of 2017 and allowing of the Cross Appeal No.47 of 2017, the defendants 3, 5 and 6 are before this Court.

6. These second appeals were admitted by this Court on 18.07.2022.

7. The petitioners/appellants have now filed these applications seeking suspension of the decree granting injunction consequent to the dismissal of A.S.No.48 of 2017 and allowing of the Cross Appeal No.47 of 2017.



8. A perusal of the affidavit filed in support of the said applications would indicate that the plaintiffs are seeking to suspend the decree for injunction as the respondents are trying to take the possession of the suit properties, by virtue of the judgment and decree dated 04.03.2022. Therefore, the learned counsel for the appellants would submit that there is an imperative need for obtaining the suspension order.

9. Per contra, Mr.K.Govi Ganesan, learned counsel for the fourth respondent herein would submit that till the disposal of the suit, the plaintiffs had the benefit of injunction. Ultimately, the decree for injunction came to be passed. The appellants, who had taken up the same on appeal, have not got the interim order suspended. It is now seen that the Appellate Authority has reversed the judgment and decree of the Trial Court in respect of all the properties and also granted decree for injunction in respect of all the suit properties.

10. Considering the above, I am of the view that the decree for injunction cannot be suspended, since the appellants had not taken any steps to suspend the injunction pending the appeal and the plaintiffs had the benefit of injunction till now. As regards the Item



No.1 of the suit properties, for which initially the suit had been dismissed with the Cross Appeal being decreed, the order of injunction has been granted in respect of the first item as well and the same would revert back to the date of the judgment passed in O.S.No.77 of 2004. Consequently, these civil miscellaneous petitions are dismissed.

11.08.2022

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