



WEB COPY



A.No.4605 of 2022

A.No.4605 of 2022
in
C.S.No.64 of 2022

C.V.KARTHIKEYAN,J.,

In O.A.No.208/2022, originally notice was directed to the respondents/defendants and after that by an order dated 18.07.2022 an order was passed by my learned predecessor whereby, the learned Single Judge had observed as follows:

“Therefore, the learned counsel for the applicant would submit that the respondents are making attempt to alienate and encumber the schedule mentioned properties, which would create unnecessary third party interest.”

2. It is thus seen that the focus of the order of grant of injunction was to restrain the respondents from alienating and encumbering the suit schedule properties and it would create unnecessary third party interest. Thereafter, it had been further stated in the order as follows:

“5. In view of the above facts and circumstances of the case, this Court is of the view that the applicant/plaintiff has made out a prima facie case and the balance of convenience is also in favour of the applicant/plaintiff and if interim injunction is not granted, it will cause great prejudice to the



WEB COPY



A.No.4605 of 2022

applicant/plaintiff. Hence, there shall be an order of interim injunction as prayed for until further orders.”

3. It is therefore clear that the order of injunction is only with respect to alienation and with respect to creating any encumbrances on the properties.

4. However, a perusal of the relief sought in the application shows that even the relief of restraining the defendants from demolishing the property and putting up further construction had also been sought. That had not been addressed in the order of the learned single Judge of this Court.

5. Now the present application has been filed seeking to vacate the said order claiming that the order has been passed ex-parte on 18.07.2022.

6. But however, even prior to the said date, it is seen that on 19.04.2022, notice had been directed to the respondents and private notice was also permitted.

7. Batta had been paid and there is a noting by the registry that Court notice had been served to R1 and R6 and then R3 was not available. An affidavit of service was also filed on 04.07.2022.



A.No.4605 of 2022

WEB COPY

8. On 10.06.2022, a learned Single Judge of this Court had observed that there was no representation on behalf of the respondents and it is stated that in the affidavit of service filed, the 2nd, 4th and 6th respondents had received the notice or rather that the notice issued had been delivered and that notice issued to R1 and R5 had been returned as “no such person”. With respect to the notice issued to the 3rd respondent, the notice had been returned as “unclaimed”.

9. The Court directed substituted service for R5 in one publication of “Malai Malar” for the hearing date namely 18.07.2022.

10. On 18.07.2022, it was again observed that the notice to R2, R4 and R6 had been “delivered” and notice to R1 and R5 had been returned as “no such person” and notice to R3 had been returned as “unclaimed” and paper publication has been effected with respect to R5.

11. Taking into consideration the non-appearance of the respondents, the said respondents/R1 to R5 was set ex-parte.

12. Thereafter, the order extracted above had been passed which was focused only on restraining the respondents/defendants from alienating or encumbering the said property.



13. The learned counsel has now placed reliance on the valuation made in the affidavit and on paragraph No.6, wherein it had been stated that a counsel had been engaged to appear but the order had been obtained hoodwinking the respondents herein.

14. In view of the nature of the relief sought namely partition and separate possession and further in view of the stand taken in the written statement that there had been already a partition effected and that the property which is the subject matter of the suit, had been allotted to D4, D5 and D6 who are the legal representatives of the deceased's son in the family, who had taken possession to demolish the building, let me retain an undivided 1/4th share to the advantage of the plaintiff.

15. If at all the plaintiff's make out a case that they are entitled to an undivided 1/4th share in the suit property then, they can always claim it after tendering evidence. With respect to the entitlement overriding an earlier registered Partition Deed, that is a subject matter of the suit and written statements have already been filed. Any construction put up by D4, D5 and D6 would be at their own risk 1/4th share of such newly added construction can be claimed by the plaintiff.

16. If at all the plaintiff is able to succeed in the suit and able to obtain a preliminary decree relating to an undivided 1/4th share, it must be



A.No.4605 of 2022

WEB COPY

kept in mind that the preliminary decree only declares the share and that share is an undivided portion and in the suit schedule property in whatever manner in which rebuilt, the plaintiff's right to an undivided 1/4th share can always be declared. It is for the parties now take a decision about it.

17. The earlier order of the learned Judge that there shall be no encumbrance or alienate from the property is retained and shall remain till the disposal of the suit.

14.11.2022

ssi



WEB COPY



A.No.4605 of 2022

C.V.KARTHIKEYAN,J.

ssi

A.No.4605 of 2022
in C.S.No.64 of 2022

14.11.2022