



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the Sixteenth day of June Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN

C.M.P. (MD)No.2643 of 2022
in
A.S(MD) .No.67 of 2022

C.MALAIRAJA

... PETITIONER / APPELLANT

Vs

M.RAJU

... RESPONDENT / RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to pass an order of interim injunction restraining the respondent not to alienate or encumber the petitioner's suit schedule property pending disposal of the above First Appeal.

PRAYER IN A.S(MD).No.67 of 2022:

To set aside the judgment and decree dated 28.10.2021 in O.S.No.33 of 2016 on the file of the Principal District Judge, Theni.

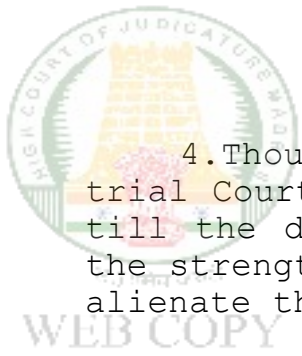
ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.K.GUHAN, Advocate for the petitioner and of MR.M.V.VENKATASESHAN, Advocate on behalf of the Respondent, the court made the following order:-

This petition has been filed by the petitioner/appellant/plaintiff for interim injunction till the disposal of the Main Appeal. The petitioner herein/plaintiff had filed the suit in O.S.No.33 of 2016 for specific performance.

2.After full-fledged trial, the Court below has dismissed the said suit on 28.10.2021 and against the said dismissal of the suit, this First appeal has been preferred by the petitioner.

3.The only reason stated by the petitioner in the paragraph No.10 of the affidavit that on the strength of the Judgment and Decree, dated 28.10.2021 in O.S.No.33 of 2016 on the file of the Principal District Court, Theni, the respondent is now trying to alienate or encumber the petitioner's suit schedule property.

<https://hcservices.mca.gov.in/hcservices>



4.Though there was no injunction petition filed before the trial Court and got an interim injunction from the date of the suit till the disposal of the suit. The plaintiff has alleged that on the strength of the judgment and decree, the respondent has tried to alienate the suit property.

5.Now, even in the affidavit the petitioner has not stated that as on what date and to whom, the respondent is trying to alienate the property. He has not satisfied with the ingredients of the Order 39 Rule 1 & 2 of Civil Procedure Code which clearly shows that there is no such proof by means of affidavit or otherwise by saying name of the 3rd party specific steps alleged to have taken by the respondent to alienate the suit property and without any material particulars only by presumption and assumption and also an apprehension, he has filed this petition.

6.This Court is not satisfied with the reasons stated in the affidavit filed in support of the petition that the respondent is trying to alienate the property.

7.Under the above circumstances, the plaintiff has not proved by means of affidavit or otherwise that he has got prima facie case, the balance of convenience in his favour and if interim injunction is not granted, irreparable loss and injury would be caused to him.

8.In view of the foregoing reasons, this Civil Miscellaneous Petition is dismissed.

sd/-

16/06/2022

/ TRUE COPY /

22/06/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ENCL: Xerox Copy of Schedule of Property.

TO
THE JUDGE,
PRINCIPAL DISTRICT COURT,
THENI.

+1. C.C. to Mr.K.GUHAN Advocate SR.No.5763.

+1. C.C. to Mr.M.V.VENKATASESHAN, Advocate SR.No.5681.

ORDER

IN

C.M.P. (MD)No.2643 of 2022

in

A.S (MD) .No.67 of 2022

Date :16/06/2022

KSA

<https://hmcjce1469a-bv.tlce2v2es06.2022/2P/4C>