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CRP.No.986 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 29.03.2023

Delivered On : 30.06.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.986 of 2021

and

CMP.No.7891 of 2021

Parvathamma @ Parvathi ... Petitioner/1st Respondent/
Petitioner/Plaintiff

Vs.

1.Ambuja ... 1st Respondent/Appellant/
2nd Respondent/2nd Defendant

2.Ramasamy Reddy ... 2nd Respondent/2nd Respondent/
1st Respondent/1st Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order passed in C.M.A.No.2 of 2018, dated 16.03.2021 on the file of the learned Additional District Judge at Hosur in reversing the fair and decreetal order passed in I.A.No.491 of 2017 in O.A.No.258 of 2017, dated 30.11.2017 on the file of the Subordinate Judge at Hosur by allowing the present Civil Revision Petition.

For Petitioner : Mr.R.Jayaprakash

For Respondent 1 : M/s.V.Srimathi

For Respondent 2 : No appearance



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ORDER

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This Civil Revision Petition has been filed against the order passed in C.M.A.No.2 of 2018, dated 16.03.2021 on the file of the learned Additional District Judge at Hosur in reversing the fair and decreetal order passed in I.A.No.491 of 2017 in O.A.No.258 of 2017, dated 30.11.2017 on the file of the learned Subordinate Judge at Hosur.

2. The learned Counsel for the Revision Petitioner submitted that the Plaintiff in the suit in O.S.No.258 of 2017 is the Revision Petitioner herein. She had purchased the property from the first Defendant an extent of 4 cents. The learned Counsel for the Revision Petitioner submits that she had put up her shop in one portion of the property and attempted construction of house in the other portion, which is shown as sketch in page no.9 of the typed set. The 2nd Defendant in the suit in O.S.No.258 of 2017 is the sister-in-law of the vendor of the Plaintiff, she had been resisting the construction of the house. Therefore, the Plaintiff had approached the Court of the learned Subordinate Judge, Hosur, by filing the suit for declaration of title and consequential relief of injunction.



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3.I.A.No.491 of 2017 in O.S.No.258 of 2017 was filed by the Revision Petitioner herein, seeking injunction. After holding enquiry, the learned Subordinate Judge, Hosur, had granted interim injunction. Aggrieved by the same, the 2nd Defendant in the suit in O.S.No.258 of 2017 had preferred an appeal in C.M.A.No.02 of 2018 dated 16.03.2021 before the learned Additional District Judge, Hosur. After hearing both parties, the learned Additional District Judge, Hosur, had allowed C.M.A.No.02 of 2018 and set aside the order passed by the learned Subordinate Judge, Hosur, in I.A.No.491 of 2017 in O.S.No.258 of 2017 dated 30.11.2017. Therefore, the Plaintiff in the suit in O.S.No.258 of 2017 had filed the Civil Revision Petition, seeking to set aside the order of the learned Additional District Judge, Hosur, and to restore the order of the learned Subordinate Judge, Hosur in I.A.No.491 of 2017 in O.S.No.258 of 2017.

4.The learned Counsel for the Revision Petitioner invited the attention of this Court that the order passed by the learned Additional District Judge, Hosur, particularly in para 13, wherein the learned Additional District Judge, Hosur, had confused herself stated that the property purchased by the Plaintiff was 7 cents and subsequently, it was partitioned. It is the case of



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the Plaintiff that the 1st Defendant had purchased the property and subsequently sold it to the Plaintiff herein. Also, the learned Counsel for the Revision Petitioner submitted that during the pendency of C.M.A.No.02 of 2018, the Plaintiff had filed I.A.No.396 of 2018, seeking for an amendment of plaint to include the relief of mandatory injunction to remove the wall in between the Plaintiff's portion and the Defendant's portion.

5.The learned Counsel for the Respondents vehemently objected to the submission of the learned Counsel for the Revision Petitioner, stating that there is no confusion of the order passed by the learned Additional District Judge, Hosur. The learned Counsel for the Respondents invited the attention of this Court to para 15 of the order passed by the learned Additional District Judge, Hosur. It has been clearly mentioned that the revenue records cannot be considered for granting an injunction. Therefore, the order passed by the learned Additional District Judge, Hosur, does not warrant any interference in the Civil Revision Petition.

6.The Plaintiff had filed the suit for declaration of title to the suit property and for permanent injunction. After filing of the suit, the Plaintiff



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had taken a Petition for appointment of Advocate Commissioner to inspect the suit property and file a report. After enquiry, the Advocate Commissioner was also appointed and interim injunction was also granted. The Advocate Commissioner visited the suit property and filed reports as Ex.C1 to Ex.C4. Ex.C-1 is the Preliminary Report. Ex.C-2 is the Rough Sketch. Ex.C-3 is the Final Report. Ex.C-4 is the Commissioner's Plan. The Defendants 1 and 2 belong to same family. After purchase of the property, the first Defendant had sold four cents to the Plaintiff. The first Defendant had put up a shop in a portion of that purchased property. Subsequently, when she started construction, the second Defendant raised objection. The second Defendant is the sister-in-law of the first Defendant. First Defendant is the vendor of the Plaintiff. Therefore, she was forced to file a suit for declaration of title to the property purchased by her viz., 4 cents (or) 1744 sq. ft. in New Sub Division S.No.24/20B2 bounded on the East by Panchayat Road and vacant land, West by 2nd Defendant's land, North by Panchayat Union Primary School and South by Panchayat Road. The Plaintiff also sought permanent injunction against the Defendants.

7.In the counter, the second Respondent had specifically stated that



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she had put up house construction in 2001 itself prior to the purchase by the Plaintiff. The Plaintiff purchased the property in 2012. In the purchased property, the Plaintiff put up construction of shops and got service connection in SC No.368 and 368 respectively. Property tax also paid to the Hosur Municipality without any default. When the Plaintiff attempted to put up construction for a house, the second Defendant objected whose site is situated on the Western side of the property. The second Defendant attempted to encroach on the property on the western side of the property. Therefore, the Plaintiff was forced to file the suit. The second Defendant had in the counter stated that she had already put up construction in 2001 prior to the purchase of the property by the Plaintiff. The Plaintiff had only purchased four cents. Whereas seven cents of property was in joint possession of the first and second Defendants. The measurement stated in the plaint is 1744 sq. ft. which is not on ground, it is only on paper. Therefore, the measurement stated in the sale deed of the Plaintiff is disputed by the Defendants. It is the contention of the second Defendant that after grant of injunction when the Advocate Commissioner visited the property, he had filed a report wherein common wall is mentioned in the report under Ex.C-1 to Ex.C-4. Based on the Advocate Commissioner's



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report, the Plaintiff had filed I.A.No.396 of 2018 in O.S.No.258 of 2017 to amend the plaint by including prayer for mandatory injunction. Therefore, it is the contention of the Plaintiff that if the Plaintiff had not come to Court with clear facts, that is available on the ground, the grant of injunction will cause prejudice to the second Defendant who had put up construction in 2001 which is sought to be removed by mandatory injunction by the Plaintiff after her purchase in 2012. Therefore, the grant of interim injunction by the learned Sub Judge, Hosur in I.A.No.491 of 2017 in O.S.No.258 of 2017 dated 30.11.2017 is erroneous and is to be set aside. If there is dispute to the title, when the second Defendant, who had already put up construction in 2001 and which is on the western side of the boundaries of the Plaintiff, the contention of the Plaintiff that the second Defendant attempted to encroach and subsequent filing of Petition to amend the plaint by including the prayer for mandatory injunction to remove the wall on the western side disclosed that there is dispute regarding the extent in possession of the rival parties. When the suit is for declaration of title, grant of injunction to the Plaintiff amounts to defeating the claim of the Respondent before ever the suit is decided. Therefore, the second Defendant had filed C.M.A.No.2 of 2018 before the learned Additional District Judge,



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Hosur seeking to set aside the order of interim injunction granted by the learned Sub Judge, Hosur.

8.Point for consideration:

Whether the order passed by the learned Additional District Judge, Hosur, in C.M.A.No.2 of 2018, dated 16.03.2021 is to be set aside and the order passed by the learned Sub Judge, Hosur in I.A.No.491 of 2017 in O.S.No.258 of 2017, dated 30.11.2017 is to be restored?

9.On appreciation of the rival submissions and on perusal of the records available before the learned Sub Judge, which was placed before the learned Additional District Judge, Hosur, the learned Additional District Judge at Hosur had arrived at a just conclusion that the grant of injunction by the learned Sub Judge, Hosur, is erroneous since the Plaintiff had filed I.A.No.396 of 2018 seeking amendment to the plaint including the prayer for removal of the wall on the western side of the boundary of the Plaintiff.

10.On perusal of the counter filed by the second Defendant as Respondent in the injunction application in I.A.No.491 of 2017, the second Defendant had clearly stated that the measurement given in the sale deed to



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the Plaintiff viz., 1744 sq. ft., is not available on ground. Therefore, the objection by the second Defendant for putting up construction is justified. In the light of the above, till the title to the suit property is declared by the Court after trial, grant of injunction will cause prejudice as the Plaintiff had filed petition to remove the wall on the western side also as part of the plaint prayer seeking mandatory injunction. When the second Defendant had put up construction in the year 2001 itself, the contention of the Plaintiff that the second Defendant encroached and objected to the Plaintiff to put up construction is found to create confusion regarding claim of the Plaintiff. Therefore, under those circumstances, grant of injunction itself cause prejudice to both parties. Therefore, till the suit is disposed of, the order passed by the learned Additional District Judge is well reasoned order and does not warrant any interference.

11.In the light of the above discussion, the point for consideration is answered partly in favour of the Revision Petitioner. The order passed by the learned Sub Judge, Hosur, in I.A.No.491 of 2017 in O.S.No.258 of 2017, dated 30.11.2017 is modified.



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In the result, the **Civil Revision Petition is partly allowed**. The order passed by the learned Sub Judge, Hosur, in I.A.No.491 of 2017 in O.S.No.258 of 2017, dated 30.11.2017 is modified. Instead of vacating the order of injunction, it has been modified as both parties shall maintain *status quo* as is available under Ex.C1 to Ex.C4 till the trial is concluded. The learned Sub Judge, Hosur is directed to proceed with the trial in O.S.No.258 of 2017 and dispose of the same on priority basis. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2023

cda/srm

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

- 1.The Additional District Judge,
Hosur.
- 2.The Subordinate Judge,
Hosur.
3. Section Officer,
V.R.Section,
High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.



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CDA/SRM

Order made in
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