



WEB COPY



C.M.A.No.786 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.786 of 2023
and
CMP.Nos.7252 & 7255 of 2023

E.Karunanidhi ... Appellant
vs.

R.M.Murugesan ... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (r) of C.P.C., to setaside the order and decree dated 23.02.2023 made in I.A.No.2 of 2022 in O.S.N.5887 of 2022 passed by the learned XXII Additional Judge, City Civil Court at Allikulam, Chennai – 3.

For Appellant : Mr.S.Sathish Rajan

For Respondent : Mr.J.Selvarajan

* * * * *

J U D G M E N T

This Civil Miscellaneous Appeal is filed C.P.C., to setaside the order and decree dated 23.02.2023 made in I.A.No.2 of 2022 in O.S.N.5887 of 2022 passed by the learned XXII Additional Judge, City Civil Court at



C.M.A.No.786 of 2023

Allikulam, Chennai – 3.

WEB COPY

2.The appeal is filed by the defendant/respondent in the suit. The I.A.No.2 of 2022 was filed by the plaintiff for an ad-interim injunction restraining the defendant/respondent from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property.

3.The defendant/respondent filed a memo in the I.A. adopting the written statement as counter.

4.It is submitted by the learned counsel for the appellant that the order passed by the learned Judge was erroneous, absurd and non speaking. He further submitted that as averred in paragraph No.4 of the affidavit that, the Junior counsel on record appeared at the time of calling and the matter was passed over. While the matter was in pass over the Junior counsel went to the other Court and at that time the learned Judge called the matter and passed a one line order allowing the injunction application stating that defendant/respondent had not appeared. The learned counsel therefore



C.M.A.No.786 of 2023

submitted that an opportunity may be given to the defendant/respondent to contest the I.A.No.2 of 2022 in O.S.No.5887 of 2022 on merits by setting aside the impugned order and remitting the case to the Court for fresh consideration.

5.The learned counsel for the respondent in this appeal has no objection for remitting the matter to the lower Court for fresh consideration.

6.This Courts finds the reasons assigned by the appellant to be justified. It is seen that the order passed by the learned Judge is a non-speaking order and hence this Court finds that the order in I.A.No.2 of 2022 in O.S.No.5887 of 2022 deserves to be setaside.

7.In view of the same, the order dated 23.02.2023 made in I.A.No.2 of 2022 in O.S.No.5887 of 2022 passed by the learned XXII Additional Judge, City Civil Court at Allikulam, Chennai – 3 is setaside and the matter is remitted to the trial Court. It is submitted by the learned counsel for the appellant that the case is listed on 28.07.2023, for further trial. Therefore,



C.M.A.No.786 of 2023

the trial Court is directed to take the I.A.No.2 of 2022 in O.S.No.5887 of 2022 afresh and dispose the same before 28.07.2023 on merits and pass fresh orders, after giving opportunity to both the parties.

8.Accordingly, this Civil Miscellaneous Appeal stands allowed.

There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

23.06.2023

Index : yes/no

Internet : yes/no

ah

NOTE: ISSUE ORDER COPY ON 30.06.2023

To

1.The XXII Additional Judge,
City Civil Court at Allikulam,
Chennai – 3.

2.The Section Officer,
V.R.Section,
High Court, Madras.

4/5



WEB COPY



C.M.A.No.786 of 2023

N.MALA, J.

ah

C.M.A.No.786 of 2023

23.06.2023