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C.M.A.No.886 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.886 of 2023

and C.M.P.No.8244 of 2023

Dr.T.Jayaraman

...Appellant

Vs.

Thirunavukarasu

...Respondent

PRAYER : The Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of CPC., against the order and decree dated 01.03.2023 in I.A.No.3 of 2023 in O.S.No.364 of 2019 on the file of the III Additional District Judge, Salem.

For Appellant : Mrs.AL.Gandhimathi

For Respondent : Mr.T.S.Vijaya Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/4th defendant against the order dated 01.03.2023 made in I.A.No.3 of 2023 in O.S.No.364 of 2019 on the file of the III Additional District Judge, Salem.



2. The appellant is the fourth defendant in the suit filed for partition by the respondent in O.S.No.364 of 2019 on the file of the III Additional District Judge, Salem. The respondent filed an application under Order 39 Rules 1 and 2 and Section 151 CPC praying to restrain the appellant herein by means of a temporary injunction, from making any construction in the suit property till the disposal of the suit. The trial Court, after considering the petition filed by the respondent and counter of the appellant and on hearing the submissions of the parties, held that the respondent is entitled to an order of interim injunction, since the appellant cannot put up construction when there is a dispute with regard to the title over the property between the appellant's predecessor in title and the respondent herein. Aggrieved by the said order, the appellant has preferred this appeal.

3. Mrs.AL.Gandhimathi, learned Senior counsel for the appellant submitted that the property in question was purchased by the appellant in the year 2018 from one Iniyaselvam. The said Iniyaselvam acquired the property by virtue of a settlement deed executed by his sister one Pooneshwari and she inturn acquired the property by virtue of a settlement deed dated 27.02.2008 executed by her father one Nallathambi, who is the first defendant in the suit. The property originally belonged to one Malaiappan, who is the father of the



respondent herein and the said Nallathambi. Malaiappan executed a settlement deed in favour of the said Nallathambi on 05.07.1978. While so, the suit for partition filed by the respondent is not maintainable, since no challenge had been made to the settlement deed executed in favour of Nallathambi and the subsequent settlement deeds and the sale deed in favour of the appellant. Therefore, the order of injunction is not justified, since the respondent had not made out any prima facie case or established balance of convenience in his favour. The learned Senior counsel further submitted that since the appellant had spent substantial money for purchasing the property, he may be permitted to put up construction, which is meant for a hospital and that the appellant would undertake not to claim equities in the event of the respondent succeeding in the partition suit.

4. Per contra, the learned counsel for the respondent submitted that the settlement deed in favour of Nallathambi, the subsequent settlement deed in favour of his daughter, the settlement deed in favour of the applicant's predecessor in title and the sale deed in favour of the appellant are not binding on the respondent. The settlement deed of the year 1978 executed in favour of the said Nallathambi was not acted upon. The said Nallathambi and his brothers including the respondent herein had executed a sale agreement in favour of the



appellant herein as early as in the year 2007 and therefore, the said Nallathambi had given up his exclusive right over the property. The learned counsel further submitted that if a construction is put up by the appellant, then it would be very difficult for the respondent to claim possession of the property in the event of his succeeding in the partition suit.

5. This Court, on perusal of the impugned order and on hearing the submissions made by the learned counsel on either side, finds that the first defendant namely Nallathambi acquired the property by virtue of a settlement deed dated 05.07.1978. The agreement of sale referred to by the learned counsel for the respondent is only a receipt acknowledging receipt of an advance amount of Rs.10 lakhs by the said Nallathambi in the year 2007. Incidentally, it is seen that the other brothers of the said Nallathambi including the respondent herein have signed in the said receipt. The reading of the receipt does not disclose that the said Nallathambi had given his right over the property. In any case, the issue as to whether the said receipt issued by the said Nallathambi and signed by the other brothers has to be construed as waiver of Nallathambi's exclusive right over the property by virtue of a settlement deed, has to be adjudicated only in the suit filed by the respondent. The appellant is a bonafide purchaser and his predecessor's in title had acquired the property by a



settlement deed in the year 2013, whose father acquired it by a registered settlement deed in the year 1978. While so, this Court finds that the respondent in the facts and circumstances of the case had not established prima facie case for seeking injunction as prayed for. Hence, this Court is of the view that the order passed by the trial Court deserves to be set aside and the Civil Miscellaneous Appeal is allowed. It is made clear that in the event of the respondent succeeding in the partition suit, the appellant shall not claim any equities for the construction that he proposes to make in the disputed property.

6. The learned III Additional District Judge, Salem, is directed to expedite the process of trial and conclude it within a period of one year from the date of receipt of copy of this order, without being influenced by any of the observations made in the order.

05.07.2023

Index: Yes/No

Internet: Yes/No

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To

1.The III Additional District Judge,
Salem.

2.The Section Officer

VR Section, High Court of Madras.



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SUNDER MOHAN,J.

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