



C.M.A.No.1493 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1493 of 2022

and

C.M.P.No.11062 of 2022

1.Kale Gowdar
2.R.V.Muthuyan

... Appellants

Vs.

1.Lakshmi
2.Kasthuri Sivaraj
3.Bagyam Shanmugam
4.A.Pragadeeshwaran

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 43 of the Code of Civil Procedure, 1908, to set aside the fair and final order dated 04.04.2022 made in I.A.No.1 of 2022 in O.S.No.94 of 2022 on the file of the II Additional District Court, Erode.

For Appellants : Ms.D.Sathya

For Respondents : Mr.V.Kadhirvelu, for R1 to R3



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JUDGMENT

This Civil Miscellaneous appeal is filed challenging the order passed by the learned II Additional District Judge, Erode in I.A.No.1 of 2022 in O.S.No. 94 of 2022 granting the relief of temporary injunction as prayed for by the respondents.

2. The brief facts leading to the filing of the above appeal are as follows:-

The respondents herein filed a suit for partition in respect of 3 items of properties mentioned in the schedule to the suit. It is the case of the respondents/plaintiffs that the appellants are their brothers; that the suit schedule properties originally belonged to the father of the parties; that the appellants had not agreed for partition of the properties and hence, the suit for partition.

2.1 Along with the suit, the respondents had also filed I.A.No.1/2022 praying for injunction restraining the appellants from interfering with their possession of the suit schedule properties and also for injunction not to alienate the properties.



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2.2 The appellants resisted the said applications. In their counter

to the said petition, they had stated that item 2 of the property exclusively belonged to the second appellant herein, as the said property was settled by their father by virtue of settlement deed dated 29.06.1983; that item 3 was bequeathed by a Will dated 30.01.1998 equally in favour of the appellants; that therefore, the respondents were not entitled to partition of the properties. They also stated that the respondents are not in exclusive possession of the property and therefore, they are not entitled to injunction as prayed for.

2.3 The learned II Additional District Judge, Erode, *prima facie* found that item 2 of the suit schedule property was settled in favour of the second appellant. As regards item 1 and 3, the learned Judge found that the question as to whether the Will is valid, has to be adjudicated in the suit, and hence, the respondents are entitled to injunction in respect of item 1 and 3 of the suit schedule property.

3. The learned counsel for the appellant submitted that the order of injunction passed by the learned II Additional District Judge, Erode is erroneous. Even as per the averments made in the affidavit filed in support



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of the I.A.No.1/2022, the respondents have admitted that they are not in exclusive possession of the suit properties. Further, item 3 of the suit schedule property was bequeathed absolutely in favour of the appellants, after giving a life interest to the mother of the appellants. The mother passed away on 02.12.2017. Thus, the appellants are entitled to item 3 of the property. Further, even as per the finding of the trial Court, it is seen that item 1 of the suit schedule property is in a dilapidated condition and could not have been in the exclusive possession of the respondents. Therefore, the learned counsel submitted that the order of injunction not to disturb the possession of the respondents is unwarranted. In any case, the learned counsel submitted that the appellants would not alienate the property till the disposal of the suit.

4. The learned counsel for the respondents per contra submitted that it is the case of the respondents that the settlement deed in favour of the second appellant is invalid. Further, the first respondent herein is in exclusive possession of item 1 of the suit schedule property. Though initially it was in dilapidated condition, the first respondent had repaired the said property and now is in exclusive possession. The Will said to have



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been executed by the father in favour of the appellants is doubtful. The appellants are attempting to alienate the property on the strength of the said Will and hence, in such circumstances, the order of the learned Judge granting injunction cannot be faulted. Therefore, the learned counsel prayed for dismissal of the appeal.

5. This Court finds that the application filed by the respondents is for temporary injunction restraining the appellants from disturbing the possession of the respondents and not to alienate the properties. Even as per the averments made in the affidavit filed in support of the said interim application, the respondents have stated that the properties are in the common and joint possession of all the appellants and the respondents who are the legal heirs of Venkataramana Gowdar. Thus, this Court is of the view that an injunction as regards possession cannot be granted as against the appellants who are co-owners.

6. However, this Court is of the view that in order to avoid creation of third party interest, there can be an order of injunction against the appellants not to alienate item 1 and item 3 of the suit schedule



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properties. The injunction application was dismissed by the trial Court in respect of item 2 of the suit property. It is also admitted by both the counsels that item 2 of the suit schedule property was alienated by the appellants and the respondents have also taken steps to implead the subsequent purchaser of the said property.

7. Be that as it may, since the question as to whether the Will is valid or not also has to be adjudicated in the suit and *prima facie*, there is no dispute with regard to the fact that item 1 of the suit schedule property has to be partitioned, there shall be an order restraining the appellants from alienating item 1 and 3 of the suit property pending disposal of the suit.

8. However, the learned II Additional District Judge, Erode is directed to expedite the trial in the suit and in any event, complete it preferably, within a period of six months from the date of receipt of copy of this judgment.



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9. With the above observation, this Civil Miscellaneous Appeal is

disposed of. Consequently, connected miscellaneous petition is closed.

There shall be no order as to costs.

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Index: Yes/No

Neutral Citation: Yes/No

AT

To

1.The II Additional District Court, Erode.

2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

AT

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