



C.M.A.No.2726 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :.27.01.2023

Judgment Pronounced on :06.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2726 of 2022

and

C.M.P.No.21603 of 2022

1.Siddamari

2.Nagaraj

... Appellants

vs.

N.Nandesh

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and the decretal order in I.A.No.1 of 2021 in O.S.No.187 of 2020 on the file of learned Additional District Judge, Hosur dated 20.04.2021.

For Appellants : Mr.J.D.Srikanth Varma
For Mr.P.Subbareddy

For Respondent : Mrs.R.Poornima



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JUDGMENT

The defendant is the appellant herein.

2. Challenging the order of injunction granted in I.A.No.1/2021 in O.S.No.187/2020 by the learned Additional District Judge, Hosur, the defendant has preferred this appeal.

3. Notice of motion was ordered.

4. Respondent entered appearance.

5. By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal.

6. The brief facts that are necessary for determination of this appeal, are as follows:–

(i) Originally, the land was owned by one Kempegowdu and he had four sons. The dispute relates to two sons -- Chenne Gowdu and Mudde Gowdu. The Mudde Gowdu died in the year 2016. After the death



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of the said Mudde Gowdu, the Chenne Gowdu appears to have filed partition suit in O.S.No.31/2017 before the learned Principal District Munsif Court, Denkanikottai, claiming partition of the suit property of an extent of 1/7th share. The 9th defendant is Nandhesh who claims to be the subsequent purchaser from the legal heirs of the Mudde Gowdu.

(ii) The 9th defendant in O.S.No.31/2017 appears to have filed O.S.No.187/2020 (the present suit) for the relief of declaration of title and for permanent injunction in respect of the suit property therein.

7. Pending the present suit, he has filed I.A.No.1/2021 for the relief of permanent injunction against the defendants from interfering with his peaceful possession and enjoyment of the petitioner's property.

8. During the trial, the respondent/plaintiff appears to have filed Exs.P1 to P9 were marked. Ex.P1 is the Sale Deed dated 02.02.2017 registered as Doc.No.334/2017 before the Sub Registrar under which the plaintiff claims title to the property and he has also produced Ex.P-2 computerized chitta for Patta No.1751 Patta and kist receipts are Ex.P3. He also filed Exs.P8 and P9, namely certified copy of the gift settlement deed in Doc.No.2352/2011 dated 06.06.2021 and another certified copy



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of the gift settlement deed in Doc.No.3292/2012 dated 07.06.2018 executed by the defendant's among themselves, wherein the property in S.No.202 was sub divided as new sub division Survey Number 202/2 and the property of his vendor namely Mudde Gowdu was shown as a one of the boundary, i.e. Northern boundary in both settlement deed and hence the plaintiff sought for injunction.

9. The trial Court, on a consideration of documentary evidence stated supra, has come to the conclusion that the plaintiff has produced proof of his possession and title and accordingly granted injunction and hence the Civil Miscellaneous Appeal is filed by the defendants.

10. Heard both sides.

11. The learned counsel for the appellants/defendants contended that the trial Court has committed an error in not considering the pendency of the partition suit and ought not to have granted interim injunction, especially when the present plaintiff is 9th defendant in the earlier suit for partition in O.S.No.31/2017 filed by the defendants as the plaintiff therein.



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12. The learned counsel for the respondent/plaintiff contended that during the lifetime of Munde Gowdu, there was an oral partition between Munde Gowdu, his other brothers and Chenne Gowdu is the present plaintiff and based upon the oral partition deed, the lands in S.No.202/2 were sub divided. On the death of Munde Gowdu in the year 2016, their legal representatives have sold the property and the present respondent has purchased the property under Ex.P1 in the year 2017 and thereafter the said Chenne Gowdu has filed the partition suit suppressing the original partition. The demarcated property was divided, which was based upon the oral partition and necessary entries of fabrication S.Nos. are also entered and he is in possession of the well defined boundaries by virtue of Ex.P1 and the oral partition and possession handing over to Munde Gowdu (vendor of the plaintiff), was inferred and referred to in the settlement deed executed by the respondent/defendant in the suit, namely the plaintiff in the partition suit, wherein the settlement deed was executed among themselves and the property was divided and allotted to Munde Gowdu (vendor of the plaintiff) which are specifically marked and there was a mention with regard to larger boundary.



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13. After hearing both the parties and also hearing the submissions and perusing the documents and orders passed by the trial Court. I find that the trial Court has rightly appreciated the facts in proper perspective before grant of ad interim injunction and the trial Court has also taken note of the fact that the sale deed executed in favour of the petitioner is Ex.P1 and as per Revenue Records, it stands in the name of Munde Gowdu (the vendor of the plaintiff) and it was the property of the father of the Munde Gowdu and the defendants before the trial Court and there was an oral partition and based upon the oral partition, the Survey number was sub divided as 201/1, 201/3 and in respect of S.No.202/3, the very same defendant in the present suit has settled the property in favour of another defendant in the suit wherein the Northern boundary refers to Munde Gowdu and therefore, a prima facie case is made out as to the plea of the oral partition as claimed by the respondent/plaintiff in the present suit.

14. Besides, the vendor of the plaintiff was allotted specific boundaries and the lands were measured and sub divisions have also been taken effect to and therefore, this Court finds that there is balance



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of convenience and there will be irreparable loss to the respondent/plaintiff herein, if the injunction is vacated. This Court has also noticed that even in the document referred to by the appellants/defendants, the Survey numbers are mentioned as 202/3.

15. When that being the case, this Court has to see as to whether the defendants appear to have suppressed the sub division and filed the partition suit in respect of S.No.202 as if no sub division has been taken effect to and hence, I find that the defendants who have filed the present appeal, have not approached the Court with clean hands and hence the appellants/defendants are not justified the filing the partition suit as per the S.No.202 when the same has been sub-divided as S.No.202/1, 202/2 and 202/3.

16. In view of the foregoing discussion, I find that the respondent herein (plaintiff before the trial Court) has made out a prima-facie case and also the balance of convenience is found to be in his favour and hence, the trial Court has rightly granted interim injunction to protect the proceedings and possession, since it was the land which was purchased from the vendor with specific boundaries and the same is duly corroborated by the documents of the defendants in the suit.



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17. Hence, I do not find that any finding rendered by the trial Court suffers from any illegality or irregularity warranting interference in this case. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. The interim injunction is granted by the trial Court is hereby confirmed. Consequently connected C.M.P is closed.

06.02.2023

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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To

1. The Additional District Judge, Hosur
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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RMT.TEEKAA RAMAN, J.,

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