



C.M.A.(MD).No.843 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.843 of 2021

and

C.M.P.(MD).No.7807 of 2021

1.Vanchimuthu

2.Sakthivel

... Appellants

Vs.

1.Chellammal

2.Muthusamy

3.Selvakumar

4.Priya

5.The Sub Registrar,
Sub Registrar Office,
Ottanchattiram,
Dindigul District.

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Order 43 Rule 1R of the Civil Procedure Code, against the fair and decretal order dated 26.04.2021 in I.A.No.118 of 2020 in O.S.No.213 of 2020 on the file of the Additional District Judge, Palani (Fast Track Court).

For Appellants

: Mr.H.Lakshmi Shankar

For R1

: Mr.M.Joseph Thathens Jerome

For R2 to R5

: No appearance



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J U D G M E N T

WEB COPY This appeal has been filed challenging the order of the trial Court granting ad-interim injunction directing the defendants not to alienate the suit property.

2. The facts of the case, which are necessary to dispose of the appeal, are as follows:

(i) One Chellammal has owned the suit property on the basis of the settlement said to have been executed by her husband on 03.11.1999. On the basis of the said settlement deed, it appears that she has executed a settlement in favour of her grandson viz., one Selvakumar. Thereafter, both the settler and the settle filed the suit in O.S.No.4 of 2013 on the file of District Munsif Court, Oddanchatram for declaration of title in favour of the settle. The said suit was decreed on 11.08.2014. During the pendency of the above said suit, one of the daughter of Chellammal viz., Mayilathal has filed a suit in O.S.No.11 of 2013 on the file of Sub Court, Palani claiming share in the property, on the ground that the properties are ancestral properties, wherein the said Chellamal / her mother also a party defendant. However, in the said suit, the said Chellammal remained ex-parte. After the decree passed in O.S.No.11 of 2013, yet another suit also filed by granddaughter of Chellammal in O.S.No.410 of 2014 on the



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file of Sub Court, Palani. Now, it appears that the suit in O.S.Nos.11 of 2013 and 410 of 2014 are transferred to Oddanchatram and pending on the file of Sub Court, Oddanchatram. The granddaughter also claimed the share in the property on the ground that it is an ancestral nature and the grand father has no right to settle the property in favour of grand mother and the above suits are pending. After that, in the year 2020, the original settler Chellammal filed the suit in O.S.No.213 of 2020 to declare the decree and judgment passed in O.S.No.4 of 2013 as null and void, on the ground that she never executed the settlement deed and the same has been obtained by fraudulently.

(ii) In the mean while, the grandson, who said to have become the owner of the property, on the basis of the settlement deed executed by Chellammal, has dealt with the property and executed a settlement in favour of his wife on 29.04.2013. Thereafter, she has dealt with the property and the appellants have purchased the property on 27.02.2020. During the pendency of the suit, in the suit filed by Chellammal to declare the judgment and decree of the suit in O.S.No.4 of 2013 is null and void, an application in I.A.No.118 of 2020 has been filed for ad - interim injunction restraining the appellants not to alienate the property and the said application is ordered. Challenging the same, the present appeal came to be filed.



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3. The learned counsel appearing for the appellants has placed various documents and also argued about the conduct of the family members, whereas the learned counsel appearing for the respondents vehemently contended that the original settlement deed itself is not executed by Chellammal and the same has been obtained by fraudulently. Besides, O.S.No.4 of 2013 also not filed by her. According to him, the other suits in O.S.Nos.11 of 2013 and 410 of 2014 are pending before the Sub Court, Oddanchatram for partition in respect of the same property. According to him, already an application filed for transfer of the suits for joint trial in O.S.No.213 of 2020 and the said transfer application is pending before the Additional District Judge, Palani. However, during the submission, the learned counsel submitted that if a direction is given by this Court to dispose of the suit, the main issue can be decided in one suit.

4. Considering the nature of the suits filed and the nature of the pleading raised by each of the parties and the family members also filed different suits, after the suit has been originally filed by the mother herself along with the grandson to validate the settlement executed by her, this Court is of the view that the present suit in O.S.No.213 of 2020 has to be decided first and the issue as to whether the settlement executed by Chellammal is valid or not to be decided next. If that suit in O.S.No.213 of 2010 is properly decided and



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answered after full trial, the other suits can be disposed of, since the other suits are filed only for partition.

5. In such a view of the matter, there shall be a direction to the First Additional District Judge, Palani to dispose of the said suit in O.S.No.213 of 2020 within a period of three months from the date of receipt of a copy of this judgment, after giving opportunity to the parties.

6. It is made clear that in order to avoid further delay by the other parties, who have already filed the transfer applications in Tr.O.P.Nos.53 of 2022 and 68 of 2022, which are pending before the Principal District Judge, Dindigul and also to avoid a conflicting decision, this Court is inclined to transfer the suits in O.S.Nos.11 of 2013 and 410 of 2014 now pending on the file of Sub Court, Palani to the First Additional District Judge, Palani. It is made clear that even after such transfer, the First Additional District Judge, Palani shall decide the O.S.No.213 of 2020 in a separate trial and dispose of the same, in a time bound manner and there will not be any joint trial in all the suits and this order has been passed only in order to avoid further delay by the parties. This order has been passed considering the manner in which the allegations are made against each other and various suits have been filed by the family members.



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7. In such a view of the matter, this Court transfer the O.S.Nos.11 of 2013 and 410 of 2014 from the file of the Sub Court, Oddanchatram to First Additional District Court, Palani, Accordingly, the transfer applications pending on the file of the Principal District Judge, Dindigul shall be closed.

8. With the above directions, the parties shall maintain *status quo* as far as the encumbrance itself. With regard to the possession, it appears that already the revenue authorities have held that the purchaser is in possession, the proceedings already culminated to Section 145 of Cr.P.C., and there is a finding with regard to the possession and the challenge made to the R.D.O., proceedings also dismissed. The interim order passed by the trial Court only with regard to the alienation of the property shall continue till the disposal of the suit.

9. In the result, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.06.2023

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To

- 1.The Additional District Judge,
Palani (Fast Track Court).
- 2.The Sub Court,
Oddanchatram.
- 3.The Principal District Judge,
Dindigul.
- 4.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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