



C.M.A.(MD)No.961 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.961 of 2022
and
C.M.P(MD)No.9533 of 2022

A.Gnanasekar

...Appellant/Petitioner/Plaintiff

Vs.

1.A.Arumugam
2.A.Karuppannan
3.M.Sivakami
4.P.Devi
5.P.Shobana
6.P.Harini
7.B.Subha
8.B.Hariselvam
9.B.Tharani
10.G.Lakshmi
11.G.Mugi
12.G.Guhan
13.Minor G.Lithika

...Respondents/Respondents/
Defendants

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(r) of the Civil Procedure Code, to call for the records and set aside the fair and executable order dated 09/07/2022 passed in I.A.No.1 of 2022 in O.S.No.3 of



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2022 on the file of the Additional District Court, Paramakudi, so far as the properties against which the temporary injunction petition is dismissed and allow the Civil Miscellaneous Appeal and pass an order of temporary injunction till the disposal of the suit in respect of all the suit properties.

For Appellant : Mr.J.Bharathan

For R1, R4, R5,
R7 & R8 : Mr.D.Senthil

For R2, R3,R6,
R9 to R12 :No appearance

JUDGMENT

This appeal is filed against the fair and decreetal order passed in I.A.No. 1 of 2022 in O.S.No.3 of 2022.

2.The brief facts of the case are as follows:

The plaintiff has filed a suit for partition in respect of the suit properties. Pending the suit, he has filed an interlocutory application seeking injunction restraining the respondents from alienating the suit properties. However, the trial Court has granted an order of injunction restraining the respondents herein from alienating the suit property only in respect of S.No.237/8B, 329/13, 329/14,



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74/51A1 and 237/8B and rejected the claim of the petitioner in respect of other survey numbers. Challenging the same, the present appeal came to be filed.

3.The only submissions made by the learned counsel appearing for the appellant that the trial Court, without going to prima facie case and balance of convenience and irreparable injury, by going into the merits of the suit decided the substantial issues in the interlocutory application. According to him, the interlocutory application is filed only for temporary injunction, not to alienate the suit, pending trial. The trial Court has failed to consider the fact that even any transaction takes place during the pendency of the appeal, such transaction will fall within the ambit of Section 52 of the Transfer of Property Act. Such being the position, the trial Court dwelling upon the merits of the case, is not in accordance with law.

4.The observation made by the trial Court with regard to the merits of the case, should not be taken as a precedent and if the same has been allowed and the same finding is not interfered, it will give undue advantage to the respondent even to take a plea of *res judicata* in the pending proceedings.



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5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

6. Now, the following point that arose for consideration is:

Whether the trial Court right in deciding to the merits of the issues, while deciding an interlocutory application filed for bare injunction restraining the respondents from alienating the suit property?

7. The Interlocutory application is filed only for bare injunction in a partition suit as against the defendants not to alienate the suit properties. The trial Court has failed to take note of the fact that if any transfer is made, during the pendency of the suit, such transfer will fall within the ambit of doctrine of *lis pendens*.

8. Such being the position, the trial Court has gone into the merits of the case and rendered a finding with regard to the validity of certain documents, which is not at all warranted. Accordingly, this Court is of the view that the finding with regard to the merits of the documents and the issues in the suit has to be set aside. Any observation with regard to the merits of the case, certainly will have an impact during the trial.



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9. Such view of the matter, every fact and validity of the document has to be decided only on the face of the evidence adduced in trial and not by way of a interlocutory application. Such being the matter, the findings rendered by the trial Court touching upon the merits of the issue and documents, is set aside and however, the injunction is granted in certain S.Nos.237/8B, 329/13, 329/14, 74/51A1 and 237/8B alone stands confirmed. The trial Court shall not be influenced by the order passed in I.A, while deciding the suit on merits.

10. With the observation, this Civil Miscellaneous Appeal is disposed of.
No costs. Consequently, connected miscellaneous petition is closed.

16.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1. The Additional District Court,
Paramakudi.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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