



C.M.A(MD)No.1262 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.1262 of 2023

and

C.M.P.(MD) No.16744 of 2023

1.C.Thirumalaiyandi

2.T.Rajesh

3.T.Vinoth

... Appellants

.VS.

Vani

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 and Section 104 of CPC, to set aside the fair and decreetal order of the Additional District Court (Fast Track Court), Tenkasi in I.A.No.2 of 2022 in O.S.No.399 of 2022 dated 02.09.2023 granting temporary injunction restraining the defendants and their men from disturbing the possession enjoyment of the suit property by the plaintiffs.

For Appellants :Mr.S.Muthukrishnan



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JUDGMENT

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This appeal is filed challenging the order passed in I.A.No.2 of 2022 in O.S.No.399 of 2022 dated 02.09.2023 on the file of the Additional District Court (Fast Track Court), Tenkasi.

2.The respondent filed a suit for injunction against the appellants claiming that the suit properties were allotted to her father in partition. As the sole legal representative of her father, she is in possession and enjoyment of the suit properties. The appellants, who are close relatives taking advantage of the fact that the respondent is a female tried to usurp the property by creating certain encumbrances. In the said circumstances, the suit for injunction along with I.A.No.2 of 2022 seeking temporary injunction, till the disposal of the suit was filed.

3.In the counter filed by the appellants, the relationship between the parties and the fact that the suit properties were allotted to the father of the plaintiff are admitted. However, a tall claim is made that the father of the plaintiff had executed a registered Will in respect of the suit properties in favour of the first appellant. The executant died on 11.06.2022 and therefore, the Will had come into force. The appellants



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are in possession and enjoyment of the suit property. On considering the rival submissions, the learned Additional District Judge (Fast Track Court) Tenkasi, allowed the injunction petition.

4.It is the submission of the learned counsel for the appellants before this Court that when a registered Will was executed in favour of the first appellant, the first appellant is in possession and enjoyment of the property. Therefore, granting injunction in favour of the respondent is not correct.

5.On going through the order of the learned Additional District Judge (Fast Track Court) Tenkasi, this Court finds that the learned Additional District Judge (Fast Track Court) Tenkasi, granted an order of injunction on the basis that the property was allotted to the respondent's father in a partition; respondent is the sole legal heir; that patta stands in the name of the respondent along with the revenue records and thus granted injunction in favour of the respondents.

6.Primarily, the appellants especially the first appellant claims right over the suit property on the basis of the Will dated 15.09.2020



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alleged to have been executed by respondent's father, Manickavasagam.

No efforts have been taken to prove the Will. In the absence of the proof of Will, no reliance can be based on the Will dated 15.09.2020, whether it is registered Will or an unregistered Will. In the said circumstances, this Court is of the view that grant of injunction in favour of the respondent from the available materials cannot be found fault with. There is no merits in this appeal for entertaining it.

7.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No

12.12.2023

mm

To

The Additional District and Sessions Judge,
Tenkasi.



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G.CHANDRASEKHARAN,J.

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