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C.M.A.Nos.639 & 640 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.639 and 640 of 2021

and

C.M.P Nos.3906 and 3909 of 2021

M.N.Mahalingam

... Appellant
in both the appeals

..Vs..

P.Anbarasu

...Respondent
in both the appeals

Prayer in C.M.A No.639 of 2021: Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) of the Code of Civil Procedure, 1988 against the fair order of the Principal District Court at Dharmapuri dated 15.02.2021 passed in I.A No.2 of 2020 in O.S No.21 of 2020.

Prayer in C.M.A No.640 of 2021: Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) of the Code of Civil Procedure, 1988 against the fair order of the Principal District Court at Dharmapuri dated 15.02.2021 passed in I.A No.3 of 2020 in O.S No.21 of 2020.



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For Appellant : Mr.P.Valliappan
For Respondent : Mr.N.Manokaran

COMMON JUDGMENT

These two appeals have been filed by the plaintiff in the suit O.S No.21 of 2020 on the file of the Principal District Court, Dharmapuri aggrieved by separate orders both dated 15.02.2021 passed in I.A No.2 of 2020 and I.A No.3 of 2020 in O.S No.21 of 2020.

2. I.A No.2 of 2020 was filed by the plaintiff before the trial Court seeking for injunction to restrain the respondent/defendant not to interfere with the appellant/plaintiff's peaceful possession and enjoyment of the suit bus. I.A No.3 of 2020 was filed seeking for injunction not to transfer the route permit. By separate orders both dated 15.02.2021, the trial Court dismissed the I.A No.2 of 2020 and I.A No.3 of 2020 by giving the following reasons:

a) Admittedly, Ex.P5 mortgage deed was executed in favour of the respondent by the appellant.



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b) The suit was not filed for redemption of mortgage and was filed only for a declaration which is not maintainable.

c) Proper court fee was not paid by the appellant/plaintiff.

d) The contentions raised by the plaintiff in the interlocutory applications can be decided only after trial.

3. The contention of the appellant/plaintiff both before the trial Court as well as this Court is that he was always ready and willing to repay the mortgage loan to the respondent/defendant. However, admittedly, till date the loan has not been repaid. The trial Court has decided only the Interlocutory Applications and not the main suit. The trial Court exercised its discretion by refusing to grant injunction as prayed for by the appellant/plaintiff in the Interlocutory Applications in I.A No.2 of 2020 and I.A No.3 of 2020.



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4. As seen from the impugned order, the discretion exercised by the trial Court in refusing to grant interim relief as prayed for in the Interlocutory Applications in I.A No.2 of 2020 and I.A No.3 of 2020 cannot also be held to be perverse. The appellant/plaintiff should establish *prima facie* case, balance of convenience and irreparable hardship. Admittedly, till date the appellant/plaintiff has not repaid the loan to the respondent/defendant. These appeals were filed in the year 2021. Admittedly, no interim order was granted in favour of the appellant/plaintiff in these appeals till date, that is for more than 3 years. The impugned order was passed on 15.02.2021. Having exercised its discretion by not granting interim orders as prayed for in the Interlocutory Applications in I.A No.2 of 2020 and I.A No.3 of 2020 which is based only on the *prima facie* consideration and the reason given by the trial Court cannot also be considered to be perverse, this Court does not find any infirmity in the impugned orders passed by the trial Court in the Interlocutory Applications in I.A No.2 of 2020 and I.A No.3 of 2020. The trial Court has also in the impugned order has correctly held that the contentions raised by the appellant/plaintiff can be considered only after the trial and not at the



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interlocutory stage. This Court does not find any infirmity in the orders passed by the trial Court.

5. Accordingly, separate orders both dated 15.02.2021 passed in the Interlocutory Applications in I.A No.2 of 2020 and I.A No.3 of 2020 in O.S No.21 of 2020, on the file of the Principal District Court, Dharmapuri, are confirmed and these two Civil Miscellaneous Appeals are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

24.06.2024

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order
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To

- 1.The Principal District Court
Dharmapuri
- 2.The Section Officer
V.R.Section, High Court of Madras.



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ABDUL QUDDHOSE, J.

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and
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24.06.2024