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CMA.No.2832 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.2832 of 2024 and
C.M.P.No.23291 of 2024

Hari

... Appellant

VS.

1. S.Gopalakrishnan

Balasubramanian (died)

2. Sriram

3. Kumar

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 C.P.C., against the orders and decretal orders dated 24.04.2024 in I.A.No.4/2024 in O.S.No.501/2022 on the file of the II Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.A.M.Krishnamoorthy

J U D G M E N T

Challenging the orders passed in I.A.No.4/2024 in O.S.No.501/2022 by the II Additional Judge, City Civil Court, Chennai, the present appeal is filed by the appellant/plaintiff.



2. The appellant is the plaintiff in O.S.No.501/2022. He filed the said suit for partition of his family property in old door no.21, New no.25, Salai Street, Mylapore, Chennai measuring 750 sq.ft., into three equal shares and to allot one such share to him. He further prayed for a declaration that the settlement deed executed by his mother Seethalakshmi in respect of the suit property in favour of his brother, the I defendant in the suit, as null and void.

3. In the plaint, the appellant/plaintiff had contended that the property originally belonged to his grandfather and after his death, his wife Sankarambal and his daughter Seethalakshmi became entitled to the said property. The plaintiff is the son of Seethalakshmi. According to the plaintiff, his mother Seethalakshmi executed a settlement deed in favour of the first defendant (his brother) without his knowledge. The defendants filed their written statement and the suit is now posted for trial. At that juncture, the plaintiff filed I.A.No.4/2024 under Order XXXIX Rule 1 and 2 C.P.C., seeking for an injunction, restraining the first respondent (first defendant) from putting up any construction in the suit property. The first respondent/first defendant filed a detailed counter and the trial Court, on



merits, dismissed the said petition vide orders dated 24.04.2024 by
observing thus:

5.POINT:

Admittedly, the suit property belonged to the maternal grand father of the petitioner as well as the 1 respondent. Whether the suit property is an ancestral, property, joint family property or joint property has to be decided only in the suit. Already, the 1 respondent's mother has executed a settlement deed in favour of the 1" respondent in the year 2006. The petitioner had knowledge about the settlement deed in the year 2007 itself. He has issued a notice to the 1" respondent in the year 2007. It is not known why the petitioner immediately did not file the suit after receiving the reply notice from the 1" respondent. The plaintiff waited for five years and has filed the present suit in the year 2022. The question of limitation has to be gone into at the time of trial. Now it has to be seen, whether the 1st respondent is doing any act of waste. However, the suit is ripe for trial; the petitioner shall get on with the trial and get a decree and shall get his property. It is not the case of the petitioner, that the 1" respondent is doing act of waste in the suit property. In fact the 1 respondent is developing the suit property. If the petitioner is the co-owner along with the 1st respondent, then the petitioner should be happy to*



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see the 1st respondent developing the property. Any co-owner develop the common property then it is for the benefit of the other co-owner also. Since, the 1st respondent did not do any act of waste the petitioner cannot seek to prevent the 1st respondent from putting up any construction. There is no merit in this petition.

4. Aggrieved over the orders passed by the trial Court, the present appeal is filed by the appellant.

5. Heard Mr.A.M.Krishnamoorthy, learned counsel for the appellant.

6. The main contention of the learned counsel for the appellant is that is that the first defendant is putting up construction in the suit property and the same would affect the plaintiff's right over the said property. It is seen from the records that the plaintiff issued a legal notice dated 26.06.2007 to the defendants to partition the suit property for which the first defendant sent a reply, dated 23.07.2007 contending that the suit property has already been settled in his favour vide a settlement deed,



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dated 01.12.2006 registered as document number 3483/2006 on the file of

Sub Registrar Office, Mylapore, Chennai, by his mother Seethalakshmi.

Thus it is clear that the plaintiff was in know of the execution of the settlement deed even in the year 2007. The suit is filed in the year 2022.

In the circumstances, the observation of the trial Court that the question of limitation in filing the suit has to be gone into at the time of trial, cannot be found fault with. Moreover, even if the appellant succeeds in his suit, any construction put up in the suit property would not affect the share of the plaintiff. It appears that the plaintiff is only attempting to protract the proceedings as far as possible. In the circumstances, I do not find any reason to interfere with the orders passed by the Trial Court. Hence, the Civil Miscellaneous Appeal is dismissed at the admission stage itself. The trial Court, II Additional Judge, City Civil Court, Chennai is directed to dispose of O.S.No.501/2022 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

22.10.2024

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes / No



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R.HEMALATHA, J.

vum

To

1. The II Additional Judge,
City Civil Court, Chennai.
2. The Section Officer, VR Section,
Madras High Court, Chennai.

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