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Civil Miscellaneous Appeal Nos.1609 & 1610 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.1609 & 1610 of 2024

and

C.M.P.No.13330 of 2024 in C.M.A.No.1610 of 2024

G.Sugunarani
W/o.Jaganathan

... Appellant in both appeals

Vs.

Rajan S.Gnanamuthu
S/o.Late K.Gnanamuthu
represented by his Power Attorney,
Ms.Shobal Lovelyin

... Respondent in both appeals

Civil Miscellaneous Appeals filed under Order 43 Rule 1 of Civil Procedure Code against the judgment and decree dated 18.10.2022 in I.A.Nos.4 and 3 of 2022 in O.S.No.151 of 2022 passed by learned IV Additional District Judge, Coimbatore.

For Appellant : Mr.A.Parthasarathi
[in both appeals]

For Respondent : Mr.Vishnu Varadhan
[in both appeals]



Civil Miscellaneous Appeal Nos.1609 & 1610 of 2024

COMMON JUDGMENT

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These appeals have been filed against the common order passed in I.A.Nos.3 and 4 of 2022 in O.S.No.151 of 2022 passed by learned IV Additional District Judge, Coimbatore.

2. The respondent/plaintiff filed the suit on the ground that the mother of the respondent/plaintiff filed a suit in O.S.No.45 of 1996 against the appellant/defendant seeking for the relief of declaration of title and possession with respect to the subject property. This suit was decreed and execution petition was filed in E.P.No.9 of 1997. The possession was also delivered to the mother of the respondent/plaintiff by the bailiff appointed by the Court on 10.03.1997. While so, the appellant/defendant, taking advantage of the absence of the respondent/plaintiff, who had gone to United States, managed to get a Will executed in her favour on 26.11.2012. Based on the same, the appellant/defendant started making a claim over the suit property and was retaining the possession. Under these circumstances, the present suit was filed in O.S.No.151 of 2022 seeking for the relief of declaration of title and for possession and to declare the Will executed in favour of the



Civil Miscellaneous Appeal Nos.1609 & 1610 of 2024

appellant/defendant dated 26.11.2012 as null and void and for other consequential reliefs. The written statement was also filed by the appellant/defendant.

3. In this suit, the respondent/plaintiff filed two interim applications. I.A.No.3 of 2022 was filed seeking an order of interim injunction restraining the appellant/defendant from demolishing the existing structure and putting up any new structure. I.A.No.4 of 2022 was filed to restrain the appellant/defendant from creating any encumbrance over the suit property.

4. Both the above applications were contested by the appellant/defendant. The Court below, on considering the facts and circumstances of the case and on appreciation of the materials placed before the Court, came to a conclusion that the respondent/plaintiff has made out a *prima facie* case and also found the balance of convenience in favour of the respondent/plaintiff. The Court below also came to a conclusion that if such an order of interim injunction is not granted, the respondent/plaintiff will be put to irreparable loss and hardship.



Challenging the common order passed in both these applications, these appeals have been filed before this Court.

5. Heard Mr.A.Parthasarathi, learned counsel for appellant and Mr.Vishnu Varadhan, learned counsel for respondent.

6. This Court carefully considered the submissions made by learned counsel on either side and the materials available on record.

7. On carefully reading the order passed by the Court below, it is seen that the Court below has taken into consideration the earlier suit filed against the appellant/defendant by the mother of the respondent/plaintiff and the decree that was passed in that suit. The Court below also took into consideration the execution petition filed and delivery of possession that was recorded. On a *prima facie* reading of the Will that is said to have been executed in favour of the appellant/defendant, the Court below found that the executor only had a life interest in the property. On consideration of these materials, the



Civil Miscellaneous Appeal Nos.1609 & 1610 of 2024

WEB COPY

Court below found that the respondent/plaintiff will be entitled for an order of interim injunction in his favour pending disposal of the suit.

8. The order passed by the Court below does not suffer from any illegality or perversity. The Court below has properly applied its mind to all the materials that were available and the Court below also properly applied the triple test while granting the order of interim injunction in favour of the plaintiff.

9. In view of the same, this Court is not inclined to interfere with the order passed by the Court below in both the applications.

10. It is brought to the notice of this Court that pleadings are complete, issues have been framed and the case is now at the stage of trial. Hence, this Court is inclined to fix a time limit for completion of the suit, which was filed in the year 2022.

In the result, these Civil Miscellaneous Appeals are dismissed.

There shall be a direction to the IV Additional District Court,



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Civil Miscellaneous Appeal Nos.1609 & 1610 of 2024

N.ANAND VENKATESH, J.

gm

Coimbatore, to dispose of O.S.No.151 of 2022 within a period of four (4) months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

19.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

The IV Additional District Judge,
Coimbatore.

Civil Miscellaneous Appeal Nos.1609 & 1610 of 2024