



Civil Miscellaneous Appeal No.3054 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.3054 of 2024
and CMP Nos.28856 and 28857 of 2023

P.S.Chezhian

... Appellant

Vs.

1. Mrs.Jambukeswari

2. Mrs.Malathy

... Respondents

Civil Miscellaneous Appeal filed under Order 43 Rule 1 (r) of CPC to set aside the order made in I.A.No.447 of 2018 in O.S.No.39 of 2018 dated 04.07.2023 on the file of the 2nd Additional District Judge of Tiruvallur at Poonamallee.

For Appellant : Mr.Ali Hassan Khan

For Respondents : Mr. V.Rajasekar

JUDGMENT

The plaintiff is the appellant in this appeal and this appeal has been filed against the fair and decreetal order dated 04.07.2023 made



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in I.A.No.447 of 2018 O.S.No.39 of 2018 on the file of the II Additional District Judge, Thiruvallur, dismissing the application filed by the appellant seeking for the relief of interim injunction restraining the 2nd defendant from putting up any further construction in the suit property, pending disposal of the suit.

2. Heard Mr.Ali Hassan Khan, learned counsel for the appellant and Mr. V.Rajasekar, learned counsel for respondents.

3. The appellant filed the suit on the ground that the suit property was allotted to the appellant by way of a oral partition which was subsequently reduced to writing in a Koor Chit dated 16.02.1996. Thereafter, the appellant was in possession and enjoyment of the suit property. The further case of the appellant is that the 1st defendant is his elder brother and the property was purchased initially in the name of the 1st defendant by the father and whereas, the entire sale consideration was paid only by the father. There was no intention to recognise the 1st defendant as the owner of the suit property. The partition took place subsequently and the suit property was also allotted in favour of the



appellant.

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4. The grievance of the plaintiff is that the 1st defendant issued a legal notice dated 27.06.2012 to the appellant calling upon the appellant to vacate and hand over vacant possession of the property. On receipt of this notice, the appellant gave a reply dated 01.07.2012, denying the right and title of the 1st defendant and informing the 1st defendant that there was no obligation on the part of the appellant to vacate and hand over the possession of the suit property. Thereafter, an attempt was made to interfere with the possession and enjoyment of the property and hence, the appellant filed O.S.No.25 of 2018 before the District Munsif Court, Poonamallee, seeking for the relief of permanent injunction. Notice was also ordered to the 1st defendant in the injunction application that was filed in the said suit. On 27.01.2018 a group of persons forcibly entered into the property and demolished the entire superstructure. The complaint given by the appellant to the police also did not evoke any response. Therefore, the present suit was filed seeking for the relief of possession under Section 6 of the Specific Reliefs Act.



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5. During the pendency of the above suit, the appellant also filed I.A.No.447 of 2018 seeking for the relief of interim injunction restraining the 2nd defendant from putting up any further construction on the ground that the 1st defendant sold the suit property in an hasty manner to the 2nd defendant and the 2nd defendant was taking steps to put up further construction.

6. Notice was ordered to the defendants and they contested the interim injunction application. The Trial Court on considering the facts and circumstances of the case and the materials placed before the Court, came to a conclusion that the appellant has not made out a *prima facie* case and the balance of convenience was not in his favour. That apart, the trial Court also came to a conclusion that no irreparable loss and hardship will be caused to the appellant if the order of interim injunction is not granted in favour of the appellant. Accordingly, the injunction application was dismissed by the Trial Court. Aggrieved by the same, the present appeal has been filed before this Court.

7. The learned counsel for the appellant submitted that the suit



property was given in favour of the appellant by virtue of a partition among the family members and the 1st defendant was allotted a different property in the partition. The 1st defendant had dealt with the property and was attempting to trespass into the suit property taking advantage of the sale deed dated 26.06.1974 that stands in her favour. The learned counsel submitted that originally the 1st defendant had issued a notice calling upon the appellant to vacate the property and for this notice, reply was also sent and a permanent injunction suit was also filed in O.S.No.25 of 2018. However, the 1st defendant decided to take law into her own hands and engaged rowdy elements and took forcible possession of the property and demolished the superstructure. The property was also sold in favour of the 2nd defendant, who was attempting to put up a structure. The learned counsel submitted that the manner in which the possession was taken away from the appellant with the help of rowdy elements was completely disregarded by the Court below. That apart, the Court below also did not appreciate the documents that were relied upon by the appellant. It was therefore submitted that the appellant will be put to irreparable loss and hardship, if the construction is put up in the suit property and it will become very difficult for the appellant to seek for the



relief of recovery of possession. The learned counsel therefore wanted this Court to interfere with the order passed by the Court below.

8. Per contra, the learned counsel for respondents 1 and 2 submitted that the appellant does not have any right or title over the suit property. The learned counsel further submitted that the entire construction has been completed by the 2nd defendant and as on today, the application itself has become infructuous and there is nothing to be decided in this appeal. The learned counsel submitted that the suit is now at the stage of commencement of trial and therefore, directions can be issued to the Court below to proceed further with the trial and to complete the suit within a time frame.

9. The 1st defendant is claiming right over the suit property by virtue of a registered sale deed dated 26.06.1974. According to the appellant, the property was actually purchased by the father in the name of the 1st defendant and the 1st defendant did not have any independent source of income to purchase the suit property. The appellant had taken a stand that there was a partition and it was reduced to writing by way of a



Koor chit in the year 1996. As per that partition, the suit property was allotted in favour of the appellant and the 1st defendant was given yet another property. There was absolutely no material before the Court to substantiate this stand taken by the appellant. It was also contented by the appellant that the 1st defendant had dealt with the property that was given to her at the time of partition. Even to substantiate this stand, there is no material available. If only the appellant had substantiated the above stand before the Court below, there was no reason for the Court below to deny the relief of interim injunction in favour of the appellant.

10. The learned counsel for the appellant wanted this Court to take note of the photographs that were also filed along with the plaint in order to demonstrate that forcible possession was taken and the building was demolished. It was also brought to the notice of this Court that the investigation has been transferred to CBCID and the same is pending.

11. The suit was filed in the year 2018 and the application for interim injunction was also filed along with the suit. The appeal is coming up in the year 2024 (after nearly six years). By now, the



construction itself would have been completed. Therefore, to really go in to the merits of this case at this stage will be like whipping a dead horse. Ultimately, if the appellant is able to establish before the Trial Court his right and title over the suit property, with or without construction, the appellant will be able to get the possession of the property. Therefore, just because a construction has been put up in the suit property, that by itself will not defeat the rights of the appellant, if the appellant otherwise is able to establish his right and title over the suit property.

12. In the light of the above discussion, this Court is not inclined to interfere with the order passed by the Court below at this stage. Accordingly, the order passed by the Court below is hereby confirmed.

13. The case is now at the stage of trial. Therefore, there shall be a direction to the learned II Additional District Judge, Thiruvallur, to proceed further with the suit in O.S.No.39 of 2018 and complete the case within a period of three months from the date of receipt of a copy of this order. The Trial Court shall not be influenced by any observations made



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by this Court in the present appeal and the Trial Court shall decide the case on its own merits and in accordance with law. The Trial Court will not grant any unnecessary adjournment in this case and the parties shall co-operate for the completion of the case within the time frame fixed by this Court.

14. This Civil Miscellaneous appeal is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

24.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J

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To,

II Additional District Judge of Tiruvallur at Poonamallee.

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