



C.M.A.No.3023 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 13.03.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.3023 of 2023

and

C.M.P.No.28608 of 2023

Kirubakiri

... Appellant

Vs.

1. Lalitha Parameshwari
2. S.Gandhimathi
3. S.Priyadharshini
4. Kumaresan
5. Manikandan

...Respondents

Civil Miscellaneous Appeal filed under Order XLIII Rule 1 CPC against the fair and final order dated 16.08.2023 made in I.A.No.2 of 2022 in O.S.No.65 of 2021 on the file of the III Additional District Judge, Erode, Gobichettipalayam.

For Appellant : Mr.A.Sriram

Respondents 1 to 3 : Mr.G.K.Muthukumar

For Respondents 4 & 5 : Mr.A.Ram Kumar



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JUDGEMENT

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The challenge in this Appeal is to the order passed by the learned III Additional District Judge, Erode, Gobichettipalayam (hereinafter, referred to as the Trial Court) in I.A.No.2 of 2022 in O.S.No.65 of 2021 dated 16.08.2023, whereby, the said Interlocutory Application filed by the appellant herein was dismissed.

2. The brief facts are as follows:-

i) The appellant herein filed a Suit in O.S.No.65 of 2021 on the file of the Principal District Court, Erode, praying for a judgment and decree for division of the suit properties into four equal shares by metes and bounds and to allot one share to the appellant/plaintiff; ii) for declaration that the sale deed dated 12.08.2021, registered as Document No.4356 of 2021 in Sub Registrar Officer, Sathyamangalam in favour of the respondents/defendants 4 and 5 as null and void and iii) for an order of permanent injunction restraining respondents/defendants 1 to 5 from alienating the suit property in any manner, whatsoever.



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ii) Pending suit the appellant/plaintiff filed an Application for appointment of an Advocate Receiver to manage the affairs of the suit property, including the collection of income derived from the suit properties and to deposit the same into the Court.

iii) The learned trial Judge dismissed the said Application.

iv) Feeling aggrieved against the said dismissal, the plaintiff/petitioner is before this Court by way of the present Appeal.

3. Heard Mr.A.Sriram, the learned counsel for the appellant and Mr.G.K.Muthukumar and Mr.A.Ram Kumar the learned counsel for respondents 1 to 3 and respondent 4 and 5 respectively and perused the materials available on record.

4. On a cursory glance of the impugned order, it is seen that the appellant himself has admitted before the Trial Court that the suit properties are agricultural lands. Thus, when the suit property, being an agricultural



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land, the same may sometimes be cultivated and may not be cultivated, and it is impossible to determine whether the said property would fetch continuous and permanent income. Further, when this Court pointed out that for the purpose of cultivation and harvest of an agricultural land, substantial sums of money is required, atleast a sum of Rs.5,00,000/- in advance and in case of not maintaining the land, it would lose its fertility and would become barren land and when this Court posed a question to learned counsel for the appellant as to whether the appellant could afford the said sum for the purpose of looking into the affairs of the agricultural land, its cultivation and the like, the learned counsel for the appellant expressed certain financial constraints being faced by the appellant.

4.1 Thus, under the aforesaid circumstances, this Court is of the view the order passed by the Trial Court in dismissing the application filed by the appellant is correct. However, the learned counsel for the appellant has expressed his grievance that the respondents/defendants are enjoying the benefits reaped from cultivation of the agricultural properties and also mismanaging the suit properties by selling the soil from the lands to the



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outsiders and also cutting the trees and in this regard, a criminal complaint was also given, and the appellant also moved the application for appointment of Receiver. If that be the case, as rightly held by the Trial Court, the appellant ought to have filed application under Order 20 Rule 12 CPC seeking mesne profits. Therefore, I am of the view that the trial Court was right in dismissing the Application filed by the plaintiff/appellant and I do not find any infirmity in the impugned order passed by the Trial Court.

5. At this juncture, it is brought to the notice of this Court by the learned counsel for the respondents that the plaintiff is the appellant herein and the defendants are the respondents, already the trial was over and case was posted for arguments, and at this stage, there is no necessity to interfere with the order passed by the Trial Court, and hence, prayed for dismissal of the Appeal.

6. In the light of the above, this Court deems fit not only to dismiss the present Appeal but also to impose cost of Rs.50,000/- on the appellant for having preferred a frivolous Appeal, but, considering the fact



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that the matter is being contested by the junior counsel, is not inclined to do
so.

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

13.03.2024

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To

The III Additional District Judge,
Erode, Gobichettipalayam.

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Krishnan Ramasamy,J.,
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