



WEB COPY



*CMP.No.24641 of 2024
in AS.No.519 of 2023*

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in

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R.SUBRAMANIAN, J

and

C.KUMARAPPAN, J

*(Order of the Court was made by **R.SUBRAMANIAN, J**)*

The petitioner seeks a direction to the first respondent not to construct a building in the suit schedule property. The Original Suit in O.S.No.6 of 2013 was filed by the first respondent and his mother Valambal seeking 7/12th share for the plaintiffs, who are the wife and son of one Ramanujam on the claim that the suit properties are ancestral properties and the 2nd plaintiff, as the son of the first wife would be entitled to 1/2 share as a coparcener and the wife would be entitled to 1/12th share.

2. The suit was resisted by the appellants herein contending that the deceased Ramanujam had left a Will dated 25.06.2012 bequeathing the entire property to the first defendant, who is the son through the 2nd wife. The Trial Court disbelieved the Will as well as the contention of the plaintiff that the properties are ancestral in nature. It, therefore, granted a decree for 2/6th share i.e., 1/6th each to the plaintiffs. Aggrieved, the defendants have come up with this appeal.



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3. It is stated that the plaintiff has also filed an appeal and the same is pending in SR stage.

4. In this appeal, we have granted stay of passing of a final decree alone.

5. It is the contention to the petitioners, who are the appellants in the appeal that the first respondent is constructing in a portion of one of the items in the suit properties viz., Survey Nos.69/7 and 69/8. If any construction is put up pending appeal, it would prejudice their rights. She would also fault the Trial Court for having disbelieved the Will.

6. The learned counsel for the respondent has filed a counter admitting the fact that he is putting up a construction. He would justify it stating that he is employed in Chennai. His wife and children were staying in a portion of the ancestral house. After the decree, they have been thrown out of the ancestral home by the petitioners and they have been rendered homeless. Therefore, in order to provide them shelter, he is putting up a construction in a portion of the property in Survey Nos.69/7 and 69/8, which measures about 4 acres 37 cents. The extent of construction is only about 693 sq.ft. Therefore, no prejudice



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would be caused to the petitioners by that construction.

7. We have considered the rival submissions.

8. As of today, the respondent is entitled to a 2/6th share in the suit property, as per the decree granted by the Trial Court. The extent of Survey Nos.69/7 and 69/8 is about 4 acres 37 cents. The extent of the construction is only about 693 sq.ft. It is not even 2 cents. Therefore, no prejudice would be caused and equities can be worked out at the time of final decree. Even assuming that the petitioners succeed in this appeal and the Will is upheld, the construction can be removed. We therefore find that balance of convenience is on the side of the respondent and an injunction restraining him at this stage will only cause more prejudice to him than the advantage that is caused to the petitioners.

9. In view of the same, we do not deem it fit to grant a direction as prayed for. We make it clear that the construction shall not be above 693 sq.ft and the construction will be subject to the result of the appeal. It is also made clear that the respondent will not put up any other construction apart from the dwelling house measuring about 693 sq.ft.

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**and
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10. With the above observations, this CMP is dismissed.

**[R.S.M., J.] [C.K., J.]
25.11.2024
(1/2)**

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