



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No.1078 of 2011 and
C.M.A(MD)No.592 of 2011
and
MP(MD).1, 1 & 2 of 2011 &
MP(MD).1 of 2014

C.R.P(MD)No.1078 of 2011

A.Arivuchandran

... Petitioner

Vs.

1. A.Arivalagan

2. S.Bennet

3. Housing Development Finance Corporation Limited,
2nd Floor, ITC Centre,
760, Anna Salai, Chennai-600 002.

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Fair and Decretal Order passed in I.A.No.345 of 2011 in O.S.No.194 of 2010 dated 01.04.2011 on the file of the Additional District Court, Fast Track Court, Madurai.

For Petitioner : Mr.B.Saravanan, Senior Counsel,
for Mr.C.Jeganathan

For Respondents : M/s.P.Jessi Jeeva Priya, for R-1 & 2
: Mr.N.S.Karthikeyan, for R-3

**C.M.A(MD)No.592 of 2011**

A.Arivuchandran

... Appellant

Vs.

1. A.Arivalagan
2. S.Bennet
3. Housing Development Finance Corporation Limited,
2nd Floor, ITC Centre,
760, Anna Salai, Chennai-600 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (5) of the Civil Procedure Code, to set aside the Fair and Decreetal Order passed in I.A.No.346 of 2011 in O.S.No.194 of 2010 dated 01.04.2011 on the file of the Additional District Court, Fast Track Court, Madurai and allow the said application and grant an order of temporary injunction.

For Appellant	: Mr.B.Saravanan, Senior Counsel, for Mr.C.Jeganathan
For Respondents	: M/s.P.Jessi Jeeva Priya, for R-1 & 2 : Mr.N.S.Karthikeyan, for R-3

COMMON JUDGMENT

The present Civil Revision Petition is filed by the plaintiff to set aside the Fair and Decreetal Order passed in I.A.No.345 of 2011 in O.S.No. 194 of 2010 dated 01.04.2011 on the file of the Additional District Court, Fast Track Court, Madurai.



2. The plaintiff is the revision petitioner and defendants are the respondents herein. The suit is filed for specific performance against the 1st defendant and to direct the 1st defendant to execute the “deed of cancellation of sale” to cancel the Sale Deed dated 21.05.2003 in Document No.2227 of 2003 and permanent injunction restraining the defendant from interfering in peaceful possession and enjoyment of the suit property.

3. The plaintiff had filed I.A.No.345 of 2011 under Order 26 Rule 9 read with section 151 of the Civil Procedure Code inter alia praying to appoint an Advocate Commissioner directing him to visit the suit property and to note down the physical features of the same with special reference to the location of the rooms and utility of the same, to measure the rooms etc., of the building and to file a report with a plan drawn to scale enabling to order for all further proceedings.

4. The petitioner/plaintiff is claiming right over the property based on a sale deed dated 25.09.2002. Further the plaintiff is claiming that after purchasing the property the plaintiff had started construction and 65% construction was over. In the meantime, the 1st defendant who is the brother of the plaintiff had approached the plaintiff and stated that he had incurred heavy debts and he was not able to repay the debts, hence he sold the



property located at Nagamalai Pudukottai to one of the creditors. In order to repay the other loans, the 1st defendant requested the plaintiff to help for getting LIC loan, for which the suit property ought to be shown as 1st defendant property. Since the 1st defendant being the brother of the plaintiff, the plaintiff had agreed to transfer the property in the name of the 1st defendant.

5. But the contention of the 1st respondent/1st defendant is that the plaintiff / petitioner had not put any construction in the site, since the petitioner had not funds. Hence the petitioner sold the western portion of the site to the defendant for valuable consideration under registered sale deed dated 21.05.2003. Till then no building was constructed in the site though the building plan was approved on 20.11.2002. From the date of purchase the 1st defendant was in possession and enjoyment of the western portion Plot No.16 admeasuring east west 30 feet and north south 35 feet. Subsequent to the sale, it was decided to put up construction on the petitioner's eastern portion and 1st defendant's western portion by raising housing loan from LIC Housing Finance Limited for which the petitioner had also accepted. However, due to the wish of the father the house was constructed as one unit. Hence it is not necessary for appointing Advocate Commissioner.



6. Based on the rival submissions the Trial Court has gone through the pleadings and come to the conclusion that the only question to be decided is whether it is necessary to appointment an Advocate Commissioner to find out the physical features of the suit property. Further held that the parties had admitted that the building consists of three bed rooms, but it can be divided into two equal halves at any time by putting a partition wall. Hence the plea of the plaintiff was denied, aggrieved over the same the present civil revision petition is filed.

7. The specific plea of the petitioner/plaintiff is that the Trial Court ought to have appointed Advocate Commissioner to ascertain whether the suit property can be divided into two half or not? Even according to the 1st defendant, the eastern portion belongs to plaintiff and western portion belongs to the 1st defendant. But the house was constructed as one unit based on the wish of the father. However, the contention of the plaintiff that the entire site belongs to the plaintiff and in order to help the defendant to obtain loan, the western portion was sold to the defendant. This Court is of the considered opinion when the plaintiff is disputing the ownership of the defendant, the defendant ought not to have constructed the house as one unit by citing the father's wish. However, it is seen even according to the defendant the house can be divided into two portions. In order to ascertain



the same, it is necessary to appoint advocate commission. Therefore, this Court is of the considered opinion that the Trial Court had erred in denying the plea of the plaintiff to appoint the Advocate Commissioner and hence the Fair and Decreetal order passed in I.A.No.345 of 2011 is liable to be set aside.

8. The C.M.A(MD)No.592 of 2011 is filed by the plaintiff to set aside the Fair and Decreetal Order passed in I.A.No.346 of 2011 in O.S.No. 194 of 2010 dated 01.04.2011 on the file of the Additional District Court, Fast Track Court, Madurai. The I.A.No.346 of 2011 was filed for interim injunction. The contention of the plaintiff is that he is owner of the property and he is still residing in the said property. However, the contention of the defendants / respondents is that half of the property belongs to the respondents as per sale deed and the sale deed is not set aside as known of law. Therefore, he becomes co-owner of the suit property, hence injunction cannot be granted against the co-owner.

9. In the present case, the contention of the petitioner is that the said sale deed was executed for the purpose of helping the defendants to raise loan for his debts and it is not a sale deed at all. Even according to the defendant initial the entire property belonged to the plaintiff, but subsequent



to the sale of western portion to the defendant, he had become owner of the property. But the issue between the parties is whether the sale is true or it was executed to help the defendant. But the said plea ought to be proved before the Court of law, until then the plaintiff is entitled to interim injunction. Infact the defendants/respondents have also accepted the plaintiff / petitioner is in possession of the property. But the only contention of the defendants is that the defendant is paying electricity bill and property tax. It is settled principle of law that mere payment of electricity bill and property tax will not confer title and the parties ought to prove the same independently. When the defendant had admitted the possession is with the plaintiff, the balance of convenience is in favour of the plaintiff/petitioner. Therefore, this Court is of the considered opinion that the Trial Court had erred in declining the interim injunction, hence the impugned order passed in I.A.No.346 of 2011 in O.S.No.194 of 2010 dated 01.04.2011 is liable to be set aside.

10. Accordingly, this Court is passing the following orders:

(i). C.R.P(MD)No.1078 of 2011 is allowed and the Fair and Decreetal Order passed in I.A.No.345 of 2011 in O.S.No. 194 of 2010 dated 01.04.2011 is set aside. The Learned Additional District Judge, Fast Track Court, Madurai, is directed to appoint Advocate Commissioner to records the



physical features of the suit property. After receipt of the report of the Advocate Commissioner, the issue shall be considered as per Law. However, the suit shall be completed within a period of one year from the date of receipt of a copy of the order.

(ii) C.M.A(MD)No.592 of 2011 is allowed and the impugned order passed in I.A.No.346 of 2011 in O.S.No.194 of 2010 dated 01.04.2011 is set aside. The petitioner/plaintiff is entitled for interim injunction until disposal of the suit. However, the rights of the parties shall be proved independently before the Trial Court and the Trial Court uninfluenced by any observations stated supra shall independently consider the issues between the parties.

(iii) No Costs. Consequently, connected miscellaneous petitions are closed.

03.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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1. The Additional District Court/
Fast Track Court,
Madurai.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Common Judgment made in
C.R.P(MD)No.1078 of 2011 and
C.M.A(MD)Nos.592 of 2011**

03.07.2024