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C.R.P. (MD) No. 905 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.04.2024**

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

C.R.P. (MD) No. 905 of 2024
and
C.M.P. (MD) No. 4977 of 2024

Krishnnadas

... Petitioner

Vs.

E.Jebaraj

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair order dated 13.02.2024 made in I.A. No. 1 of 2022 In A.S. No. 37 of 2022 on the file of the Subordinate Judge, Kuzhithurai, and allow this Civil Revision Petition as prayed for.

For Petitioner

: Mr. S.M.Mohan Gandhi

ORDER

The suit in O.S. No. 266 of 2011 before the I Additional District Munsif (hereinafter referred to as the 'Trial Court' for short) had been laid by the Plaintiff asserting that he was the owner of the property which has been illegally trespassed by the Defendant and had sought for recovery of its possession, which was granted by the judgment and decree dated 30.07.2022 against which the Defendant has filed the appeal in A.S. No. 37 of 2022



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before the Subordinate Court, Kuzhithurai (hereinafter referred to as the 'Appellate Court' for short), which is pending.

2. The parties are hereinafter referred to as per the description in the suit in O.S. No. 266 of 2011 before the Trial Court for the sake of clarity and convenience.

3. The Appellate Court by the impugned order has stayed the said judgment and decree of the Trial Court by order dated 13.02.2024 in I.A. No. 1 of 2022, which is challenged by the Plaintiff in this Civil Revision Petition.

4. Heard Mr. S.M.Mohan Gandhi, Learned Counsel appearing for the Plaintiff, and perused the materials placed on record, apart from the pleadings of the parties.

5. The pivotal attack on the impugned order is that the Defendant has transferred the property in favour of his wife after the Trial Court had passed the judgment and decree in the suit and consequently, the appeal preferred by him before the Appellate Court cannot be prosecuted, much less any interim



stay could be granted during its pendency.

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6. It is beyond any pale of doubt that the transfer of the property said to have been made by the Defendant in favour of his wife would be subject to the result of the appeal before the Appellate Court in view of the doctrine of *lis pendens* envisaged in Section 52 of the Transfer of Property Act, 1882. In other words, the said transfer of the property cannot prejudicially affect the right of the Plaintiff, when he succeeds in the appeal. At the same time, no transferee of the property from the Defendant can claim any right to the prejudice of the Plaintiff in respect of the property, and such transferee would bound by the ultimate outcome of the appeal, irrespective of the fact as to whether or not he/she had been impleaded therein. The law in this regard has been summarized by the Hon'ble Supreme Court of India in the decision in ***K.N.Aswathnarayana Setty -vs- State of Karnataka*** [(2014) 15 SCC 394] in the following words:-

11. The doctrine of *lis pendens* is based on legal maxim *ut lite pendente nihil innovetur* (during a litigation nothing new should be introduced). This doctrine stood embodied in Section 52 of the Transfer of Property Act, 1882. The principle of “*lis pendens*” is in



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accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. A litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. However, it must be clear that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The law simply postulates a condition that the alienation will, in no manner, affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court. The transferee cannot deprive the successful plaintiff of the fruits of the decree if he purchased the property pendente lite. (Vide *K. Adivi Naidu v. E. Duruvasulu Naidu* [*K. Adivi Naidu v. E. Duruvasulu Naidu*, (1995) 6 SCC 150] , *Venkatrao Anantdeo Joshi v. Malatibai* [*Venkatrao Anantdeo Joshi v. Malatibai*, (2003) 1 SCC 722] , *Raj Kumar v. Sardari Lal* [*Raj Kumar v. Sardari Lal*, (2004) 2 SCC 601] and *Sanjay Verma v. Manik Roy* [*Sanjay Verma v. Manik Roy*, (2006) 13 SCC 608] .)

7. Since the litigation has commenced in the year 2011, the Appellate Court shall endeavour to decide the appeal expeditiously following the prescribed procedure after affording full opportunity of hearing to all the parties concerned dealing with each of the contentions raised by them on



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merits and in accordance with law.

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In the result, this Civil Revision Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

05.04.2024

Index : Yes/No

NCC : Yes/No

TO:

- 1.The Subordinate Judge, Kuzhithurai.
- 2.The First Additional District Munsif, Kuzhithurai.
- 2.The Section Officer (VR Section),
Madurai bench of Madras High Court,
Madurai.



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P.D.AUDIKESAVALU, J.

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