



C.M.A.(MD).No.609 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.01.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

C.M.A.(MD).No.609 of 2021
and

C.M.P.(MD).Nos.5891 of 2021 and 2719 of 2022

1.A.Mahmutha Begum

2.M.A.Nehmath Kubra

3.M.A.Haseena Thahsin

4.Minor M.A.Sufiya Banu

5.Minor M.A.Aneeqah

.. Appellants/Petitioners/Plaintiffs

*(The minors 4 and 5 appellants represented
by her mother and natural guardian, the 1st
appellant)*

Vs.

1.Mohamed Abu Backer

2.Swarnamalya

.. Respondents/Respondents/Defendants



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PRAYER: Civil Miscellaneous Appeal filed under Order XLIII, Rule 1(r) and Section 151 of Civil Procedure Code, praying to set aside the impugned order dated 20.04.2021 passed in I.A.No.2 of 2021 in O.S.No.17 of 2021 on the file of Family Court, Tiruchirappalli in respect of 'B' and 'D' schedule properties and allow the I.A.No.2 of 2021 in O.S.No.17 of 2021 on the file of the Family Court, Tiruchirappalli in its entirety.

For Appellants : Mr.Shangar Murali

For R-1 : Mr.Ajmal Khan
Senior Counsel for Mr.A.Thirumurthy

For R-2 : No appearance

JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

This Civil Miscellaneous Appeal is filed being not satisfied with the interim relief granted in a family dispute arising between the father and daughters, who belong to Muslim community.

2. Sans of facts, which are not relevant for the disposal of this Civil Miscellaneous Appeal, this Court, after hearing the learned counsels on both sides, finds that the first respondent herein had married the second



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respondent and presently living with her. The appellants are the daughters of the first respondent. The contention of the appellants is that they have been neglected and they had not been taken care of by the first respondent. They also apprehend that the property held by the first respondent may be alienated and that they might be deprived of the property which would succour for their marriage and maintenance.

3. The Trial Court, while considering the interlocutory application, wherein, three items of the property held by the first respondent were sought to be restrained from alienation, taking note of the fact that the first respondent, as on date, is paying Rs.91,000/- per month towards maintenance of the appellants herein and also given an undertaking that he will not alienate the 'C' schedule property, had disposed of the application in I.A.No.2 of 2021. Being aggrieved, the present Civil Miscellaneous Appeal is filed stating that 'C' schedule property is of very less value, whereas, 'B' and 'D' schedule properties are of high value, which have continuously been encumbered and ultimately, the right of the appellants may be defeated, if no restraint order is passed.



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4. The learned Senior Counsel appearing for the first respondent submitted that there is no question of alienating the property, since the first respondent is running a business successfully and the properties have been mortgaged to raise running capital for the business. He would further contend that if any restraint order is passed, it will affect the business and flow of money. Precisely, the Trial Court, taking note of this fact, has not entertained the plea of the appellants to pass a restraint order.

5. This Court, after considering the submissions and the available records, is of the view that unless and until the suit is disposed of on merits fixing the liability and requirement of the plaintiffs for their maintenance and marriage expenses, a blanked restraint order from creating encumbrance of the property held by the first respondent may not be in the interest of justice. It is also brought to the notice of this Court that subsequent to the order passed in I.A.No.2 of 2021 dated 20.04.2021, the monthly maintenance has been enhanced from Rs.91,000/- to Rs.1,00,000/- and the first respondent is paying the same regularly.



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6. In the light of above discussion, this Court is of the view that without adverting to the other merits canvassed by the learned counsel for the appellants, this Civil Miscellaneous Appeal is disposed of with a direction to the Trial Court to conclude the trial in O.S.No.17 of 2021 within a period of two (2) months from the date of receipt of a copy of this order. In the meanwhile, if the first respondent has any intention to alienate the 'B' and 'D' schedule properties, he shall get appropriate leave of the Trial Court and proceed with the same. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(G.J.,J.) (C.K.,J.)
24.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Family Court,
Tiruchirappalli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Note: Issue order copy by 30.01.2024.



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DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

Lm

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