



CMA.(MD)No.550 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 550 of 2024

and

CMP (MD) No. 7032 of 2024

1.M.Vasudevan
2.M.Ravichandran
3.Ganesh Babu
4.Ramesh Babu

: Appellants/Respondents/
Defendants

Vs.

Vanjimuthu

: Respondent/Petitioner/
Plaintiff

PRAYER:-Civil Miscellaneous Appeal is filed under Order XLIII, Rule 1(r) of the Civil Procedure Code, 1908, to set aside the fair and decretal order, dated 30/04/2024 passed by the Principal District Judge, Dindigul, in IA No.6 of 2024 in OS No.276 of 2019.

For Appellants : Mr.L.Rajah
Senior Counsel
for Mr.Rohini Ravikumar

For Respondent : Mr.V.Janakiramulu

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking an order to set aside the fair and decretal order, dated 30/04/2024 passed by the Principal District Judge, Dindigul, in IA No.6 of 2024 in OS No.276 of 2019.



CMA.(MD)No.550 of 2024

2. The facts in brief:-

Suit in OS No.276 of 2019 was filed by the respondent herein as plaintiff seeking the relief of declaration that the suit property absolutely belongs to him by virtue of sale deed dated 18/03/2003, permanent injunction and costs. Pending further process, IA No.6 of 2004 was taken out by the plaintiff under Order 39 Rule 1 and 2 CPC seeking temporary injunction with the following averments mostly repeating the averments made in the plaint. So, it is not necessary for the present discussion to extract the averments in detail.

3. Only relevant facts are stated herein. The suit property called as 'Senthil Residency' belongs to the defendants 1 to 4. The plaintiff became a lessee in 2000. In 2003, there was sale deed dated 11/08/2003 between the plaintiff and the defendants 1 and 2 for sale consideration of Rs.1,15,00,000/-. The plaintiff undertook to settle the encumbrance to the tune of Rs. 45,40,323/- to the defendants 1 to 4 and 69 creditors. After deducting that amount, the balance sale consideration was received by the defendants 1 to 4. The plaintiff was put in possession.



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CMA.(MD)No.550 of 2024

4.Later the plaintiff came to know that because of the default committed by M/s.Ravi and Co, attachment order was passed by the Government. Property was seized and sealed by the competent authority. He approached the competent authority and possession was handed over to him. Attachment order was raised in view of the settlement of dues to the creditors. These are the plaint averments in brief.

5.When the sale deed is executed in favour of the plaintiff, the defendants have no right in the property and so they should not alter the physical features by making construction, demolition, etc. With that, he filed the petition seeking interim injunction.

6.When the matter was came up before the trial court on 26/04/2024, along with some photos and memos, it was submitted on the side of the plaintiff/petitioner that pending the suit, the defendants/respondents are making alternations. So, *status quo* must be maintained.

7.Appellants counsel appeared before the trial court and stated that they starting the alternation work with the permission of the Corporation. Both were heard by the trial court and it was posted for orders on 30/04/2024. On that date, the impugned order was passed.



CMA.(MD)No.550 of 2024

8.Challenging the impugned order directing the appellants herein to maintain the *status quo* till the disposal of the main IAs, this Civil Miscellaneous Appeal is preferred.

9.Heard both sides.

10.The learned Senior Counsel appearing for the appellants would straightaway draw the attention of this court to the judgment of the Hon'ble Supreme Court in ***Kishore Kumar Khaitan and another Vs. Praveen Kumar Singh [(2006) 3 SCC 312]*** as to passing of the orders in the manner now passed by the trial court.

11.What he tries to impress upon the court is that ordering *status quo* is an omnibus order, which ought not to have been passed by the trial court without ascertaining the physical features or the present status of the alternation or construction as the case may be.

12.Per contra, the learned counsel appearing for the respondent/plaintiff would submit that since opportunity was given to the appellants to put forth their counter, in-spite of that, they are dragging the matter to that advantage. Now they are putting up alteration and



CMA.(MD)No.550 of 2024

modification of the structures even without the prior permission from the local authorities. Apart from that, it is also submitted by him that by virtue of the sale deed, he was put in possession of the property. If any alternation or modification is made, it will affect his interest. According to the respondent, the suit was filed in 2019. No statement was filed. He invested more than Rs.2 Crores and the appellants taken away all the articles belonging to them from the premises.

13.Per contra, the learned Senior Counsel appearing for the appellants would submit that the three principles of consideration, which are the basis for considering the interim injunction were not considered by the trial court. Title is now under dispute. There is no *prima facie* case, balance of convenience and the question of irreparable loss were not considered by the trial court.

14.But suffice to say that what was ordered by the trial court is only the interim order directing the appellants to maintain the *status quo*. In effect, the meaning of the order is that the appellants should not make any further construction, alternation, etc.



CMA.(MD)No.550 of 2024

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15. But the problem lies here, what was the present stage or status as well as the physical feature of the building was not brought to the notice of the court. Only photos appears to have been filed. What was the status that was prevailing on the date of passing the order was not brought on record in a proper manner. Mere photos will not give any clear picture over the status of the building. Alternations were also admitted by the appellant herein. To maintain the *status quo* ought to have been passed by the trial court after ascertaining the physical features now available, at least by appointing Advocate Commissioner to note down the physical features. Had it been done, even this court would have known the present physical features. So that the *status quo* order will have some meaning and effect. So without ascertaining the correct position, passing of omnibus order will lead to complications, consequences and issues.

16. Consequence of passing such omnibus orders was indicated by the Hon'ble Supreme Court in the judgment reported in ***Kishore Kumar Khaitan and another Vs. Praveen Kumar Singh [(2006) 3 SCC 312]***. Passing of orders of this nature is not approved.



CMA.(MD)No.550 of 2024

17.Without ascertaining the present position of the building, the order has been passed by the trial court. On that sole ground, the order passed by the trial court requires interference and accordingly, it is interfered.

18.At the conclusion of the enquiry, the learned Senior Counsel appearing for the appellants as well as the counsel appearing for the respondent submitted that they are ready to cooperate with the trial court to complete the trial process. But it appears that amendment application is also pending. In such of the nature, this Civil Miscellaneous Appeal is **allowed** by setting aside the order passed by the trial court directing it to dispose all the pending Interlocutory Applications within a month and proceeded to take up the trial and complete the same as expeditiously as possible. This will meet the ends of justice. No costs. Consequently, connected Miscellaneous Petition is closed.

12/06/2024

Index:Yes/No
Internet:Yes/No
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CMA.(MD)No.550 of 2024

To,

1.The Principal District Judge,
Dindigul.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA.(MD)No.550 of 2024

G.ILANGOVAN, J

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CMA (MD) No. 550 of 2024

12/06/2024