



CMP(MD) No.10247 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Eleventh day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CMP(MD) No.10247 of 2024

in

SA(MD) No.315 of 2024

VIRUDHUNAGAR DISTRICT
RAJAPALAYAM TALUK,
CHIDAMBARAPURAM VILLAGE,
YADAVAR COMMUNITY.
THROUGH ITS PRESIDENT

... PETITIONER/ APPELLANT

Vs

1 VIRUDHUNAGAR DISTRICT
RAJAPALAYAM TALUK,
CHIDAMBARAMPURAM VILLAGE,
DEVENDRAKULA VELALAR COMMUNITY
THROUGH ITS PRESIDENT.

2 K.S.RAJAIYA
3 R.SUBBURAJ
4 R.MAHALAKSHMI

... RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to grant an order of Interim Injunction restraining the 1st respondent and his men or agents or any toher persons claiming any right under the 1st respondent herein from any way interfering with the petitioner`s Community`s peaceful possession and enjoyment of the subject matter of the suit property in O.S. No.172 of 2017 on the file of the Additional Sub Court, Srivilliputhur till pending disposal of the above said second appeal.



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Prayer in SA(MD). 315/ 2024 :

To set aside the Judgement and decree dated 25.03.2024 made in A.S.No.34 of 2021 on the file of the Additional District and Sessions Court, Srivilliputhur, Virudhunagar District reversing the Judgement and Decree dated 24.03.2021 made in O.S.No.172 of 2017 on the file of the Additional Sub Court, Srivilliputhur, Virudhunagar District.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.S.MEEENAKSHI SUNDARAM, Senior Counsel for M/S.G.GOMATHISANKAR, Advocate for the petitioner and of MR.M.VIJAYA RATHINAM, Advocate on behalf of the 1st Respondent and none appeared either in person or by an advocate on behalf of the Respondent Nos.2 to 4, the court made the following order:-

Date of Reserved	02/08/2024
Date of Pronounced	11/09/2024

Suit in OS No.172 of 2017 was filed by the appellant herein against the respondents herein seeking the relief of declaration that sale deed, dated 25/06/1999 is not valid under law and not binding upon the plaintiff and consequently declaring that the suit property absolutely belongs to them.

2.Written statement was filed by the respondents herein disputing the title and possession.

3.After full trial, the suit was decreed as prayed for with costs. Against which, AS No.34 of 2021 was filed by the defendants before the Additional District and Sessions Judge, Srivilliputhur, Virudhunagar District. The appellate court allowed the appeal and dismissed the suit by setting aside the decree and judgment passed by



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the trial court.

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4. Against which, second appeal is preferred by the appellant herein. Pending appeal, CMP(MD) No. 10247 of 2024 was filed by the petitioner/appellant seeking the relief of interim injunction with the following averments:-

Originally the suit property is a Village Natham. It was obtained by the appellant community people and they were in possession and enjoyment. They collected funds from their community people and constructed a school called 'Sri Ramakrishna Primary School' and obtained reorganization from the Government. One Muthaiah Konar was selected as 'Correspondent' and he is managing the school and running upto 1994 without any issue. Subsequently the strength of the students gradually decreased. So, the school was closed. Building also collapsed. The appellant community people were using the property as cattle shed and also used for taking out Mulaipari procession. But that was restricted or resisted by the 1st respondent stating that they purchased the property from the 2nd respondent in the year 1999. On verification of records, it was found that the second respondent executed a sale deed in favour of the first respondent. On that account only, the suit was filed.

5. The trial court after going through the entire records and evidence, decreed the suit as prayed for with costs. But the first appellate court without proper appreciation allowed the appeal on the ground that the suit is barred by res-judicata,



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forgetting or omitting to notice that the earlier suit was between two individuals, in which the appellant community was not a party. In pursuance of the judgment of the first appellate court, the first respondent entered into the suit property, interfered in the peaceful possession and enjoyment and installed their community board also and put up a shed. Over which, a complaint was registered before the Inspector of Police, Thalaivaipuram Police Station. Revenue Officials along with the police came to the spot and directed the first respondent to remove the shed. The first respondent removed the shed from the suit property. They advised the appellant herein to approach this court for appropriate interim orders. The property was originally occupied by one Muthaiah Konar, who belongs to the appellant community. He was running a school in the name and style of "Sri Ramakrishna Primary School" from 1953. In 1960, he transferred the management to his own brother namely Subbaiya Konar. After the death of Subbaiya Konar, his son namely the second respondent herein was in-charge of the administration of the school. But in the Natham Settlement Register, the name of the appellant community was entered without any proper verification and ownership. The first respondent challenged the same before the Assistant Settlement Officer. That order was modified, on 04/04/1995. Revision was preferred before Revenue Divisional Officer. He dismissed the revision.

6.Heard both sides.



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addressed.

7. For considering the interim injunction, the following basis principles must be

- (1) Whether the petitioner has made out a prima facie case?
- (2) Whether the balance of convenience is in his favour?
- (3) Whether any irreparable loss or prejudice will cause to the petitioner in the event of refusing the interim injunction?

8. Now we will go to the disputed question.

9. The learned Senior counsel appearing for the petitioner would submit that throughout the proceedings before the appellate court as well as the trial court, they enjoyed the interim injunction.

10. Judgment of reversal, which is called in question in the second appeal.

11. The learned Senior Counsel appearing for the petitioner would further submit that the school still in existence, this is proved by the entry made by the Adangal. When a proposal was made to shift the school, it was damaged. So, a new proposal has been made to build a new school. The appellate court has committed wrong in recording a finding that res-judicata will apply since the counter claim made in the previous suit, he is not a party or representing the petitioner/appellant Association. The above said proposed person filed the counter claim in his individual capacity and not in the capacity of the one of the office-bearers. The title document



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was also not produced. The property description also differs. In OS No.238 of 1997, the respondents were not added as parties. Now the school is shifted. If any interference is made pending the appeal process, it may cause prejudice to them. So, temporary injunction must be granted pending the appeal process.

12.Per contra, the learned counsel appearing for the respondents would submit that the original vendor was running the school. He only filed the suit. During the patta proceedings, objections were made, but patta was transferred in 1999; only site was purchased and later school was also shifted; Only the respondents conducted the earlier suit. So according to her, no prejudice will cause. No case is made out by the petitioner to grant an order of temporary injunction.

13.To find out whether prima facie case is available in favour of the petitioner, now admittedly the property lies vacant. Originally. it is a vacant site. According to the respondents, originally one Muthaiah Konar was in occupation. He belonged to the petitioner's community. He runs the school called 'Sri Ramakrishna Primary school'. Later the management was transferred to his brother namely Subbaiya Konar. After the death of Subbaiya Konar, his son namely the second respondent herein was in charge of the management. Later. he sold the property in favour of the first respondent. So, the right or title by the first respondent is through Muthaiah Konar. The suit in OS No.238 of 1997 was filed by the second respondent herein



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against* several persons. The first defendant was Thalaimalai Konar. The first defendant namely Thalaimalai Konar contended that the school belongs to the Yadavar community people, who is the petitioner herein. The second respondent also belongs the Yadavar community. By collecting taxes from the community people, the school was established. Muthaiah Konar was appointed as only Manager. Muthaiah Konar never was the owner of the property including the school. Later Subbaiya Konar became the management. After his death, the second respondent herein has become the administrator. The school belongs to the second respondent independently. So, according to her, the property as well as the school never belongs to Yadavar Community, who is the petitioner herein. So the first issue before the trial court was whether the property belongs to the second respondent herein and the 4th respondent namely R.Mahalakshmi. The second issue was whether the school belongs to Yadavar community people; and the third issue was whether the third respondent herein is only the administrator of the school. These are the main issues.

14.The trial court recorded a finding that both sides failed to prove the title over the property. On the basis of the possession, decree was granted in favour of the second respondent and the 4th respondent. But the defendants failed to prove the title.

15.The next contention on the part of the petitioner is that the first defendant in the suit namely Thalaimalai Konar defended the suit in his individual capacity; So



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that judgment will not bind the Association. That is the core issue to be decided in the appeal. As stated above, now it is kept vacant. Possession follows title is the basic principle with regard to the issue here. There is a finding by the appellate court that Thalaimalai Konar was the President of the community. On that account, a finding was recorded that the present suit is barred by res-judicata and abuse of the process of the court.

16.Prima facie, I find that the above said finding shows that the petitioner/appellant is not the owner of the property. As mentioned above, the finding of the appellate court has to be decided on its own merit in the appeal.

17.Since, the possession of the petitioner/appellant has not been established in the earlier round of litigation and it is a vacant site, I find no reason to grant temporary injunction and accordingly this petition is liable to be dismissed.

18.In the result, this civil miscellaneous petition is dismissed. The Registry is directed to list the main appeal before the roster Bench for hearing.

sd/-
11/09/2024

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/09/2024
Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

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1 THE ADDITIONAL DISTRICT JUDGE, SRIVILLIPUTHUR.

2 THE ADDITIONAL SUBORDINATE JUDGE, SRIVILLIPUTHUR.

COPY TO:

THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-11184[I] dated 11/09/2024)

ORDER

IN

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in

SA(MD) No.315 of 2024

Date :11/09/2024

RS/VR/SAR-(25.09.2024) 9P 5C

Madurai Bench of Madras High Court is issuing
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