



C.M.A.(MD) No.1008 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1008 of 2023

G.G.Ramachandran.

... Appellant

Vs.

1.G.K.Jenarthanan (died),

2.G.J.Suriyamani,

3.G.J.Kumaran,

4.G.J.Hanumanthan,

5.G.M.Easwari,

6.Minor.G.M.Nagarajan,

7.Minor.G.M.Krishnan.

(R6 & R7 are represented by their mother and guardian/

5th respondent herein)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule I (r) of the Civil Procedure Code, to set aside the fair and decretal order dated 22.08.2023 made in I.A.No.1 of 2023 in O.S.No.27 of 2023 on the file of the Additional District Court, Paramakudi.

For Appellant : Mr.D.Senthil

For Respondents :
for R2 to R7 : Mr.A.R.Kannappan



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JUDGMENT

The instant appeal has been filed challenging the dismissal of the injunction application filed by the appellant herein.

2. The appeal arises under the following circumstances:

a. The appellant filed a suit for partition in O.S.No.27 of 2023 before the Additional District Court, Paramakudi. He filed I.A.No.1 of 2023 for an injunction restraining the first and second respondents herein from alienating the suit property.

b. Initially, an order was passed in the said I.A.No.1 of 2023 restraining the respondents herein from alienating the suit property. After the respondents entered appearance and had filed a counter, the interim injunction was vacated and I.A.No.1 of 2023 was dismissed by the Trial Court.

3. The learned counsel for the appellant submitted that the appellant



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and the first respondent purchased the suit schedule property jointly by Ex.A1/Sale deed; that since the appellant was living in Andra Pradesh for business purposes, he had executed a General Power of Attorney in favour of the first respondent, who had misused the General Power of Attorney and executed a sham and nominal Sale deed in favour of the second respondent, who is his wife; and that he came to know about the said Sale deed only in the year 2022 and had filed the suit for partition; that a *prima facie* case is made out and balance of convenience was in favour of the appellant for granting injunction; and that the Trial Court ought not to have dismissed his petition for interim injunction.

4. The learned counsel for the respondents 2 to 7, per contra, submitted that it is true that they jointly purchased the suit schedule property in the year 1994; that thereafter, on 28.11.2007, the appellant had executed the General Power of Attorney in favour of the first respondent (since deceased) giving power to alienate the property; that the Sale deed was executed in 2014 in favour of the second respondent and eight years thereafter, in order to grab the property, the appellant filed the suit and injunction; and that therefore, the Trial Court was right in dismissing the injunction petition.



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5. The only point for consideration in the instant appeal is '*whether the appellant is entitled to an order of interim injunction as prayed for?*'

6. It is seen from the records that the General Power of Attorney was executed in the year 2007 and the Sale deed in favour of the second respondent by the first respondent was executed on 26.06.2014. The suit was filed in the year 2023. Considering the above facts and the fact that the terms of the General Power of Attorney have not been violated, this Court is of the view that the finding of the Trial Court that the appellant had not established a *prima facie* case cannot be faulted. Point No.1 is answered accordingly.

7. In view of the above, the appeal is liable to be dismissed. However, the Trial Court may decide the suit on merits without being influenced by any of the observations made in this order or in the impugned order.



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8. In the result, this Civil Miscellaneous Appeal is dismissed. No

costs.

25.09.2024

Index: Yes/ No

NCC: Yes / No

Speaking Order / Non-Speaking Order
apd

To:

1.The Additional District Court, Paramakudi.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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