



CMP(MD) No.16385 of 2023

WEB COPY

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

Thursday, the Twenty Seventh day of June Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice N.SESHASAYEE
and
The Hon`ble Mrs.Justice L. VICTORIA GOWRI

CMP(MD) No.16385 of 2023
in
AS(MD) No.303 of 2023

MUTHIAH SAMY

... Appellant / Plaintiff

Vs

1 N.SELVAM

2 N.GNANASEKAR

3 N.MANIKANDAN,

4 R.NAVANITHYA

5 R.GOPERUNTH DEVI

... Respondents / Respondents

Civil Miscellaneous Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to permit this Petitioner/ Appellant/Plaintiff to run the 1st item of the schedule property-rice mill, with the same condition and terms, already this petitioner underwent as in the orders of IA No.106 of 2017 and in CMA No.1065 of 2017 on the file of this Honourable Court.



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Prayer in AS(MD). 303/ 2023 :

Appeal Suit filed under section 96 of Civil Procedure Code to allow this First Appeal Suit, by setting aside the Judgment and Decree of the Trial Court in OS No.61/2017 dated 25.08.2023, on the file of the Additional District Judge Court (FTC), Tenkasi.

ORDER : This civil miscellaneous 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 M/S.F.X.EUGENE, Advocate for the petitioner and of Mr.S.KUMAR, Advocate on behalf of the Respondent No.3 and of Mr.J.C.RATNAVEL PANDIAN, Advocate on behalf of the Respondent Nos.4 & 5, the Court made the following order:-

This appeal arises out of a preliminary decree for partition at the instance of the plaintiff, who apparently is not satisfied with the share declared by the trial court.

2. This Court is informed that the 1st defendant, the mother of the plaintiff and the defendants 2 and 3 and the grand-mother of the defendants 4 and 5, have filed written statement seeking exclusive title to a property set aside by her husband for life. The trial court appeared to have granted a decree in favour of the 1st defendant accepting her counter claim and the 3rd defendant challenged that in A.S.(MD) No.310 of 2023.

3. Be that as it may, the present appellant/plaintiff has preferred this petition seeking to permit him to be in possession of item No.1 of the plaint schedule property. In this property, a rice mill is being run and the plaintiff is in possession



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thereof. Indeed, even the trial court has held that the plaintiff is in possession but added a rider that his possession is also on behalf of his other co-sharers. Earlier, the trial court had passed an order of interim injunction restraining the defendants from peaceful possession of item No.1 and this also came to be confirmed by this Court in C.M.A(MD)No.1063 of 2017.

4. Subject to the outcome of this appeal, the appellant/plaintiff in the suit is entitled to be in physical possession of item No.1 and he is permitted to run rice mill. The appellant is directed to maintain books of accounts in fair and honest and directed to produce a quarterly statement of accounts in every succeeding month commencing from 01.07.2024.

5. This petition is accordingly disposed of.

sd/-
27/06/2024

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28/06/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CM

To

The Additional District Judge (FTC),
Tenkasi.



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+1 CC to M/s.F.X.EUGENE, Advocate (SR-7080[I] dated 28/06/2024)

ORDER
IN
CMP(MD) No.16385 of 2023
in
AS(MD) No.303 of 2023
Date :27/06/2024

ED/ /SAR- (28/06/2024) 4P / 3C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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