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CMA.Nos.333 and 334 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 14.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA Nos.333 and 334 of 2025 and
CMP Nos.2508 and 2512 of 2025

S.Ganesan

... Appellant
in both appeals

Vs.

S. Balaji

... Respondent
in both appeals

Prayer in both CMAs: Civil Miscellaneous Appeals filed under Order XLIII Rule 1 of Civil Procedure Code to set aside the fair and decretal order passed by the XVII Additional Judge, City Civil Court in I.A.Nos.2 and 3 of 2024 in O.S.No.2011 of 2024, dated 15.10.2024.

For appellant : Mr.K.P.Shanthosh

For Respondent : Mr.G.Ilangovan



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COMMON JUDGMENT

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These Civil Miscellaneous Appeals are filed against the order passed by the Trial Court on the applications filed by the respondent/plaintiff seeking temporary injunction, pending suit.

2. The respondent/plaintiff filed a suit in O.S.No.2011/2024 for a declaration that he is the absolute owner in possession and enjoyment of pathway described as B schedule of the plaint and also for a permanent injunction restraining the appellant/defendant from keeping any vehicle or goods or fixing CCTV cameras over the suit B schedule pathway or from interfering with the respondent's/ plaintiff's peaceful possession, free usage and enjoyment of B schedule pathway. He also sought for a declaration that he is the absolute owner in possession and enjoyment of the open space described as C schedule in the plaint and for permanent injunction restraining the appellant/defendant from encroaching the C schedule property or in any way interfering with the respondent's/plaintiff's peaceful possession and enjoyment of the C schedule property.



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3. It is the case of the respondent/plaintiff that the suit A, B, C and D schedule properties originally belonged to their father Sivasubramanian and he settled the said properties in favour of the appellant and the respondent under a settlement deed dated 05.06.2009 giving 50% of undivided share to each of them in the suit property. Thereafter, the appellant and the respondent executed reciprocal release deeds dated 08.02.2019 in favour of each other and started enjoying separate portions of the above mentioned properties individually, as per the reciprocal release deeds. As per the reciprocal deeds executed by the plaintiff and the defendant in favour of each other, the respondent/plaintiff had become absolute owner of the suit A schedule, B schedule pathway and C schedule open space. Likewise, the suit D schedule property had become the absolute property of the appellant/ defendant. It is also claimed by the respondent that as far as the B schedule pathway is concerned, as per the recitals in the release deed executed by the appellant, he was entitled only to the right of running lines for drains, water ways and electricity and all other rights were placed with the respondent/plaintiff. It is further claimed by the respondent/plaintiff that the appellant started disturbing the possession of the



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respondent by parking vehicle in B schedule pathway and also claimed to have fixed CCTV cameras, without express authorization from the respondent/ plaintiff. It is also claimed by the respondent that he is the absolute owner of suit B schedule property and is entitled to use and enjoy the same without any manner of restriction by the appellant, as mentioned above. Therefore, the respondent filed I.A.No.2/2024 and I.A.No.3/2024 seeking interim injunction .

4. In I.A.No.2/2024, the respondent sought for interim injunction restraining the appellant from encroaching C schedule open space or any way interfering with his possession. In I.A.No.3 of 2024, the respondent sought for interim injunction restraining the appellant from keeping any vehicles, goods or fixing CCTV cameras over the suit B schedule pathway or in any way interfering with his possession, usage and enjoyment of the suit B schedule pathway.

5. During enquiry of interlocutory applications, 10 documents were filed on behalf of the respondent/plaintiff and no document was filed on behalf of the appellant/defendant.



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7. The Trial Court, on enquiry, came to the prima facie conclusion that the respondent is entitled to enjoy the property and allowed the applications. Aggrieved by the same, the appellant has come before this court by way of the present appeals.

8. The learned counsel for the appellant vehemently contended that injuncting the appellant/ defendant from installing the CCTV cameras in B schedule property would jeopardize the safety of the appellant, who is having D schedule property on the rear side. He further submitted that allowing the appellant to park the vehicles in the B schedule property pathway will not affect the right of the respondent/plaintiff as the same is highly inequitable. The learned counsel also submits that the interlocutory applications were mechanically allowed in the absence of any documentary evidence for disturbance or obstruction by the appellant.

9. The learned counsel for the respondent by relying on the recitals contained in Ex.P4, release deed executed by the appellant, submits that the appellant has no right over the B schedule property,



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except the right for usage as pathway and taking lines for drains, water ways and electricity. He further submitted that in view of the release deed executed by the appellant, he cannot claim any right over the C schedule property also.

10. It is not in dispute that the property described as A, B, C and D schedule to the plaint were originally belonged to the father of the parties and he executed the settlement deed in favour of the appellant and the respondent on 05.06.2009 under Ex.P3, settling undivided half share to each of them. Thereafter, for the sake of convenience and enjoyment of specific portions, the plaintiff and the defendant executed reciprocal release deeds dated 08.02.2019 giving up their half share in the property agreed to be released in favour of each other. The reciprocal release deed executed by the appellant in favour of the respondent/plaintiff was marked as Ex.P4. The release deed executed by the respondent in favour of the appellant was marked as Ex.P6.

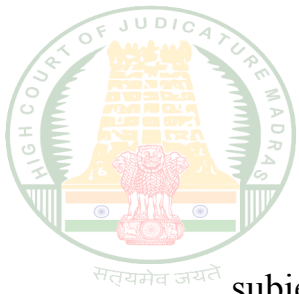
11. The appellant executed Ex.P4 in favour of the respondent/plaintiff, releasing his right over the suit A, B, C properties, which was



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described as A schedule property in Ex.P4. Since the appellant released his half share in favour of the respondent in respect of suit B and C schedule properties under Ex.P4, he is not entitled to claim any right over the said properties, as a matter of right. In fact, the Trial Court clearly observed that the appellant has reserved only the right of way and right to carry lines for drains, water ways and electricity lines in B schedule property, in other aspects, his half share was released in favour of the respondent. In such circumstances, the appellant is not entitled to claim that he can park his vehicle in B schedule property, since he had already released his right in favour of the respondent/plaintiff. Likewise, the appellant is also not entitled to install any CCTV cameras in the suit B schedule property. If at all he wants to install CCTV cameras, it is for him to install the same in the wall of suit D schedule property, so as to have a watch over the suit B schedule passage. Likewise, under Ex.P4, the appellant released his half share in suit C schedule property in favour of the appellant and hence, the appellant has no right over to interfere with the possession of the respondent. The very fact that the appellant attempts to park vehicles and claims right to install CCTV Cameras in the property, which is



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subject matter of release deed executed by him, under Ex.P4, would indicate his intention to interfere with the right of the respondent. Therefore, this court finds no error in the prima facie conclusion reached by the Trial Court that as per the right conferred under Ex.P4 executed by the appellant/defendant, the respondent/plaintiff is entitled to the temporary injunction as prayed for. Since the learned counsel for the appellant has not pointed out any error on the prima facie conclusion reached by the Trial Court, the submission made by him on the ground of equity, cannot be considered in the light of concrete recitals found in Ex.P4.

12. Accordingly, both the civil miscellaneous appeals are dismissed, by confirming the orders passed by the Trial Court. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

14.02.2025

Index:Yes/No
Internet:Yes/No
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To

The District Judge,
XVII Additional Court,
City Civil Court, Chennai.



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S.SOUNTHAR, J.

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