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CMA.No.538 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Dated 24.02.2025**

CORAM:

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CMA No.538 of 2025**

1. Murugesan
2. Arunkumar
3. Devipriya

... Appellants

**Vs.**

1. K.S.Balasubramanian
2. The Sub Registrar,  
Veppanthattai Taluk,  
Perambalur District.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Order XLIII Rule 1 CPC to set aside the fair and decreetal order dated 20.12.2024 made in I.A.No.3 of 2024 in O.S.No.59 of 2024 by the Principal District Judge, Perambalur.

For appellants : Mr.A.S.Balaji



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## **JUDGMENT**

This civil miscellaneous appeal is filed challenging the order passed by the learned Principal District Judge, Perambalur in I.A.No.3 of 2024 in O.S.No.59 of 2024, dated 20.12.2024, granting temporary injunction, restraining the first appellant/first defendant from alienating or encumbering or in any way dealing with the subject matter of the properties, pending disposal of the suit.

2. The learned counsel for the appellants would submit that the above said interlocutory application was posted for filing counter by the appellants on 20.12.2024 and on that day, immediately after filing counter by the appellants, the impugned order has been passed by the concerned court, without giving any opportunity for arguments by the counsel for the appellants/defendants.

3. The preamble portion of the impugned order reads as follows.

"This petition is coming up before me for final hearing in the presence of Thiruvallargal S.A.Gandhi, G.Subashcandirabose, P.Udaya and T.S.Arunkumar, Advocates for the petitioner and Thiru M.P.Senthilkumar, advocate for 1st respondent and Thiru



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P.Sakthivel, advocate for the 2nd and 3rd respondents and Government Pleader appeared for the 4th respondent and upon perusing the petition, counter and other relevant records, this court has passed the following:"

4. It is clear from the above order that the matter was posted for final hearing on 20.12.2024 and on that day, the impugned order was passed in the presence of Mr.M.P.Senthilkumar, learned counsel, who entered appearance before the trial court on behalf of the first appellant herein. If the above said recording made by the Trial Court in the impugned order is not correct, it is for the parties to approach the very same court by filing appropriate application, when the matter is afresh in the memory of the concerned court. However, it is not open to the appellants to file an appeal and dispute the recording made by the court that matter was finally heard in the presence of counsel. In this regard, it would be useful to refer to the decision of Apex court in ***State of Maharashtra Vs. Ramdas Srinivas Nayak reported in 1982 (2) SCC 463*** and the judgment of Division Bench of this Court in ***The Director, Sri Mookambika Institue of Medical Science Vs. Balasundar Raj reported in MANU/TN/0120/2013***. Hence, if the said recording is not



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correct, it is open to the appellants to file application before the concerned court stating that the counsel for the appellants were not heard by the concerned court before passing the impugned order and seek appropriate relief.

5. Therefore, this court is not inclined to entertain this appeal. However, the order of dismissal of this appeal will not stand in the way of the appellants, seeking appropriate remedy before the concerned court. There shall be no order as to costs.

**24.02.2025**

Index:Yes/No  
Internet:Yes/No  
mst

**To**

1. The Principal District Judge,  
Perambalur.



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**S.SOUNTHAR, J.**

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**24.02.2025**