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CMA.No.448 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :14.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.448 of 2025 and
C.M.P.No.3247 of 2025

B.Mohan Kumar

... Appellant

Vs.

1. G.Sivakumar

2.N.Chandra Vijayaraghavan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under XLIII Rule 1 of CPC, pleaded to set aside the order dated 15.10.2024 passed in I.A.No.2 of 2024 in O.S.No.194 of 2024 on the file of the Sessions Judge Mahila Court, Chengalpattu and allow the I.A.No.2 of 2024 in O.S.No.194 of 2024.

For appellant : Mr.A.Prabakara Reddy
for M/s.APR Associates

For Respondents : Mr.K.Sukumaran

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the order passed by the trial court dismissing the application seeking injunction filed by the appellant.

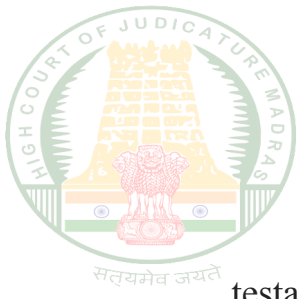


CMA.No.448 of 2025

WEB COPY

2. The appellant herein filed a suit for declaration that appellant is the successor of one Janarthana Reddiar under Will dated 10.12.2014 and consequently, he is the absolute and exclusive owner of the suit property. The appellant also sought for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The appellant also sought for a declaration that sale deed dated 12.03.2024 executed by 2nd defendant in favour of 1st defendant pertains to suit property is null and void and not binding on the plaintiff.

3. Pending disposal of the suit, the appellant filed interlocutory application in I.A.No.2 of 2024 seeking temporary injunction restraining the defendants from interfering with his alleged peaceful possession and enjoyment of the suit property. It is the specific case of the appellant that the suit property originally belongs to above mentioned Janarthana Reddiar and he executed a Will dated 10.12.2014 bequeathing the suit property in favour of appellant. It is also claimed that the testator died on 06.12.2015 and thereafter, the Will came into force and as a result, the appellant has been in possession and enjoyment of the suit property. The 2nd defendant, who is the wife of



CMA.No.448 of 2025

WEB COPY

testator's deceased brother Vijaya Raghavan, without any manner of right, claimed right over the suit property and executed a sale deed in favour of her son, 1st defendant on 12.03.2024. The respondents/defendants have also attempted to interfere with the possession of the appellant based on invalid bogus documents. Therefore, the appellant was constrained to file the above suit and sought for temporary injunction.

4. The injunction petition filed by the appellant was resisted by the respondents by filing a counter, wherein, they claimed that the property originally belongs to 2nd respondent's father-in-law, namely Subbaraya Reddy. After he died intestate, the property devolved on his two sons, namely above mentioned Janarthana Reddiar and his brother Vijaya Raghavan, husband of the 2nd respondent. It is also claimed by the respondents that the said Vijaya Raghavan died leaving behind the 2nd respondent and his two daughters. Thus, the 2nd respondent claimed 1/2 share over the suit property under Vijaya Raghavan. It is also claimed by the respondents that Janarthana Reddiar also died intestate and therefore, as Class-2 heirs, the other 1/2 share in the suit property also devolved upon the 2nd respondent's daughters. Thus, the 2nd



CMA.No.448 of 2025

WEB COPY

respondent claimed absolute right over the property and sought for dismissal of the injunction application by claiming absolute right and possession over the suit property.

5. The trial court had taken up for enquiry the petition for temporary injunction pending suit. On the side of appellant/petitioner, in injunction petition, 19 documents were marked as Exhibits P1 to P19. On the side of the respondents, 3 documents were marked as Exhibits R1 to R3.

6. The Trial Court, on appreciation of documents available on record, came to the conclusion that the appellant failed to prove his *prima facie* case and accordingly, dismissed the interlocutory application. Aggrieved by the same, the appellant has come before this court.

7. The learned counsel for the appellant submitted that the appellant claims right over the property under registered Will executed by Janarthana Reddiar, marked as Exhibit P5. The learned counsel further submitted that even as per the admitted case of the respondents, Janarthana Reddiar has got $\frac{1}{2}$ share in the property and by virtue of Will executed by Janarthana Reddiar, the appellant is entitled to at least



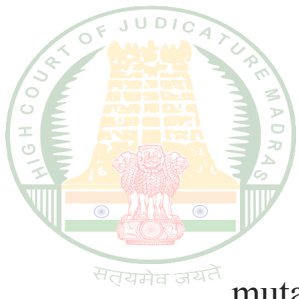
CMA.No.448 of 2025

WEB COPY

half share over the property. The trial court, without considering the same, dismissed the injunction application.

8. The learned counsel for the respondents submitted that the validity of Will relied on by the appellant is a matter for evidence. It is the specific case of the respondents that Janarthana Reddiar died intestate and hence, it is for the appellant to prove the Will in the manner known to law. He further submitted that when there is no evidence available on record to show *prima facie* possession, the Trial court was justified in dismissing the petition for injunction.

9. The appellant herein claims right over the property only by virtue of allegedly executed Will by Janarthana Reddiar. It is the case of the respondents that after the death of Janarthana Reddiar, his half share in the property will go to his Class-2 heirs namely daughters of the 2nd Respondent. The genuineness of the Will relied on by the appellant has to be proved in the trial and the same cannot be determined at this stage of considering interlocutory application. Though the appellant claimed that the Will was executed by Janarthana Reddiar on 10.12.2014 and it came into force on 06.12.2015 on testator's death, no attempt has been made by the appellant to get the revenue records of the suit property



CMA.No.448 of 2025

WEB COPY

mutated in his favour based on the Will. Therefore, the appellant has not produced any *prima facie* evidence to prove his alleged possession over the suit property on the date of filing of the petition for temporary injunction. Therefore, the Trial Court is justified in negating the relief of temporary injunction and dismissed the petition. I do not find anything to interfere with the conclusion reached by the Trial Court when the petitioner failed to prove *prima facie* possession over the subject matter of the property by any acceptable evidence.

10. The learned counsel for the appellant submitted that taking advantage of the order passed by the trial court dismissing the petition for temporary injunction, the respondents attempted to demolish the building that stands in item 2 of the suit property. The learned counsel also relied on the additional affidavit filed by the appellant/ petitioner dated 14.02.2025 wherein it is stated that the respondents have removed the tiled roof of the house in item 2 partially.

11. The learned counsel for the respondents submitted that the respondents are not committing any act of waste on the suit property and they are only repairing the suit property.



CMA.No.448 of 2025

WEB COPY

12. In the light of the submissions made by the learned counsel for the appellant/petitioner as well as the respondents, this court feels that the superstructure standing in item 2 of the property shall be preserved pending disposal of the suit. Therefore, both the parties are directed not to commit any act of waste in respect of superstructure that stands in item 2 of the suit property.

13. Taking into consideration that the pleadings were already completed and the issues were already framed, the trial court is directed to dispose of the suit as expeditiously as possible without being influenced by anything said in this order.

14. With the above directions, the Civil Miscellaneous Appeal stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

14.02.2025

Index:Yes/No



CMA.No.448 of 2025

Internet: Yes/No

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To

1. Motor Accident Claims Tribunal,
The Sessions Judge, Mahila Court, Chengalpattu.
2. The Section Officer,
VR Section,
High Court, Madras.



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CMA.No.448 of 2025

S.SOUNTHAR, J.

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