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CMP Nos. 160 of 2025 and 15673 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-03-2025

CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

CMP No. 160 of 2025

and

CMP NO. 15673 OF 2022

in

AS NO. 433 OF 2022

CMP.No.160 of 2025

D.Ilavarasi

Appellant(s)

Vs

1.S. Duraimanickam

2.S.D.S.Selvam

3.Bharathi

Respondent(s)

Prayer: The Civil Miscellaneous Petition is filed under Section 151 of the Code of Civil Procedure, 1908 to vacate the order of interim stay dated 30.09.2022 passed in CMP.No.15673 of 2022 in the above appeal suit.

For Appellant(s): Mr. Niranjan Rajagopalan

For M/s.G.R.Associates



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For Respondent(s): Mr.M.Stalin For R1
Mr.M.Abdulwariq for M/s. Pass
Associates For R2
R3-No appearance

CMP.No.15673 of 2022

S.Duraimanickam

Appellant

VS

1.D.Ilavarasi
2.S.D.S.Selvam
Saunthala (deceased)
3.Bharathi

Respondents

Prayer: This Civil Miscellaneous Petition is filed under Section 151 of Code of Civil Procedure, 1908 to grant stay of operation of the Judgment and Decree dated 17.12.2021 made in OS.No.8953 of 2019 on the file of the XVI Additional City Civil Court, Chennai pending disposal of the above appeal.

For Appellant : Mr.M.Stalin

For Respondents : Mr.Niranjana Rajagopalan
for M/s.G.R.Associates for R1
: Mr.M.Abdul Wariq
for M/s.Pass Associates for R2
: R3- No appearance

**ORDER**

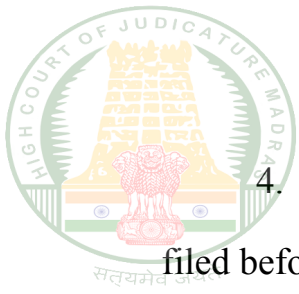
(Order of the Court was made by S.M.Subramaniam J.)

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The vacate stay petitioner is the daughter of Mr.S.Duraimanickam, who is the appellant and Ms.Bharathi, is the third respondent and the fourth defendant in the original suit.

2. The vacate stay petitioner states that her parents got separated in the year 2002 and during the mutual consent divorce proceedings as part of the terms of the said proceedings, the suit property was handed over towards the maintenance vide Ex.A3 Gift Settlement Deed dated 21.03.2002 by the appellant / father of the vacate stay petitioner.

3. Admittedly, the Gift Settlement Deed dated 21.03.2002 has not been challenged by the appellant/vacate stay petitioner's father. However, possession had not been handed over even after the execution of the Settlement Deed in the year 2002. Thus, the suit for recovery of possession came to be instituted. The Trial Court decreed the suit in favour of the plaintiff and ordered for delivery of possession. The findings of the trial court is that the settlement deed dated 21.03.2002 has been admittedly executed by the father of the vacate stay petitioner during the course of mutual consent divorce proceedings and the possession had not been handed over consequent to the said settlement deed. Thus the trial Court decreed the suit in favour of the plaintiff and ordered for delivery of possession.



4. Challenging the said judgment and decree, the appeal suit has been filed before this Court.

5. Balance of convenience is to be considered while granting interim order in appeal suit. No party shall be prejudiced on account of interim order of the Courts and therefore, the *prima facie* case is to be ascertained by the Courts while granting interim order.

6. In the present case, the Gift Settlement Deed is admitted between the parties. The trial Court decreed the suit in favour of the plaintiff and ordered for delivery of possession. Thus, the balance of convenience stands in favour of the vacate stay petitioner.

7. In view of the said factum, the interim stay granted in CMP.No.15673 of 2022 stands dismissed and the vacate stay petition in CMP.No.160 of 2025 stands allowed.

8. All other grounds shall be adjudicated during the course of hearing of the appeal suit.

Post the appeal suit after three weeks.

(S.M.SUBRAMANIAM J.) (K.RAJASEKAR J.)
28-03-2025

veda



CMP No. 160 of 2025

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To

1.S. Duraimanickam

S/o.Late S.D.Somasundaram, No.11,
4th Cross Street, Kalaimagal Nagar,
Ekkatuthangal, Chennai - 600 097.

2.S.D.S. Selvam

S/o. Late S.D. Somasundaram, No.2,
Third Street, Lotus Colony, Nandanam,
Chennai - 035 Sakunthala (Died)

3.BHARATHI

D/o. V.S. Renganathan, No.12/26,
Vantage Spring, 2nd Main Road,
Srinivasapuram, Chennai - 041.

CMP No. 15673 of 2022

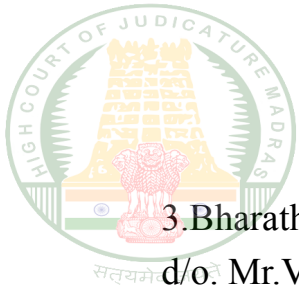
To

1.D.Ilavarasai

D/o. Mr. Duraimanickam, No.12/26,
Vantage Spring, 2n Main Road,
Srinivasapuram, Chennai - 41.

2.S.D.S. Selvam

S/o. Late Mr,S.D. Somasundaram,
No.2, Third Street, Lotus Colony,
Nandanam, Chennai - 35. Sakunthala
(deceased)



3.Bharathi

d/o. Mr.V.S.Renganathan, No.12/26,
Vantage Spring, 2nd Main Road,
Srinivasapuram,Chennai - 41.

AS No. 433 of 2022

To

1.D.Ilavarasai

D/o. Mr. Duraimanickam, No.12/26,
Vantage Spring, 2n Main Road,
Srinivasapuram, Chennai - 41.

2.S.D.S. Selvam

S/o. Late Mr,S.D. Somasundaram,
No.2, Third Street, Lotus Colony,
Nandanam, Chennai - 35. Sakunthala
(deceased)

3.Bharathi

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Vantage Spring, 2nd Main Road,
Srinivasapuram,Chennai - 41.



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S.M.SUBRAMANIAM J.
AND
K.RAJASEKAR J.
veda

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