



C.M.P.(MD) No.14732 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserving the Order	Date of Pronouncing the Order
29.01.2025	31.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.M.P.(MD) No.14732 of 2024
in
A.S.(MD) No.179 of 2023
and
C.M.P.(MD) No.10099 of 2023

V.Kalusivalingam

... Petitioner

-vs-

V.Lakshmanan

... Respondent

Petition filed under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure to pass an order of injunction restraining the respondent from entering into the portion in B-Schedule, which is wrongly specified as "ABEDFGHIJK" Marriage Hall and "BCDE" Dyeing factory building in the first instance judgment in O.S.No.7 of 2016, dated 31.01.2023, on the file of the Additional District Court, Virudhunagar.

For Petitioner : Mr.V.Kalusivalingam, Party-in-person

For Respondent : Mr.Selva Aditya, Advocate



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ORDER

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This miscellaneous petition is filed seeking for injunction restraining the respondent from entering into the portion in B-Schedule property, which is wrongly mentioned as “ABEDFGHIJK” Marriage Hall and “BCDE” Dyeing Unit at the first instance Judgment, dated 31.01.2023, in O.S.No.7 of 2016, on the file of the Additional District Court, Virudhunagar.

2. The petitioner and the respondent are brothers.

3. The respondent filed a suit in O.S.No.7 of 2016, for partition of A-Schedule property consisting of six items of properties, B-Schedule property, which is a Dyeing Unit, Marriage Hall and vacant site.

4. The plaint proceeds on the basis that A-Schedule property is the ancestral property and in respect of B-Schedule property i.e., Dyeing Unit and Marriage Hall, the land was purchased in the joint name of the petitioner and the respondent and subsequently, the land was developed.

5. The petitioner filed the written statement, wherein he has admitted the details of the sale deed in respect of the A-Schedule property. The respondent never paid any amount towards the sale consideration. The entire money was paid by the petitioner and the name of the respondent is only a name lender. The respondent is



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running the Dyeing Unit on the eastern portion of the B-Schedule property is admitted and his occupation is only a permissive occupation. He would further contend that injunction as against the co-owner cannot be granted even admitting the averments in the plaint.

6. Necessary issues have been framed and exhibits have been marked.

7. Exs.A1 to A6 are the sale deeds executed in favour of the both the petitioner and the respondent and Exs.B2 to B4 are the sale deeds executed in favour of the petitioner.

8. The Trial Court has come to the conclusion that the respondent is entitled for half share in the B-Schedule property and also held that he is entitled for injunction against the petitioner from not to interfere with his possession in the property or to evict him without due process of law and accordingly, granted injunction in favour of the respondent and also granted a direction to the petitioner to render accounts of the Marriage Hall and granted injunction restraining the petitioner from altering the name of the Marriage Hall and refused to direct the respondent to hand over the sale deeds and also granted mandatory injunction in respect of BCDE plaint plan.

9. The Trial Court has also come to the conclusion that since the respondent is also a purchaser as per Exs.A1 to A6, he is entitled to half share in the



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B-Schedule property and accordingly, granted a preliminary decree.

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10. Challenging the same, the defendant in the suit has filed the present appeal suit, wherein he has filed this civil miscellaneous petition seeking for stay of the passing of final decree proceedings in the suit.

11. This Court, by order dated 07.11.2023, has stayed the passing of final decree proceedings alone.

12. After hearing the rival submissions of the respective parties, we find that the suit is filed by the younger brother for partition. The suit has been decreed by the Trial Court. The elder brother has preferred the present appeal. In the written statement before the Trial Court, he has taken a stand that all the properties belong to him as he has purchased the same from and out of his earnings derived by him by working as Engineer in the Highways Department, however, purchased the same along with the younger brother / respondent. The said plea was rejected by the Trial Court.

13. According to the petitioner, he has wrongly purchased the property in the name of his younger brother as well.

14. As stated supra, this Court, by order dated 07.11.2023, has stayed the passing of final decree proceedings alone. It appears that the respondent filed an interlocutory application before the Trial Court for final decree. An Advocate



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Commissioner was appointed and the Advocate Commissioner has filed a report.

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We called for the copy of the Advocate Commissioner's report filed in the suit. But, by mistake, the learned Trial Judge has sent the Advocate Commissioner's report filed in the final decree proceedings.

15. Be that as it may, it is open to the petitioner to file appropriate objection for the Advocate Commissioner's report before the Trial Court.

16. In this civil miscellaneous petition, the petitioner is seeking for injunction restraining the respondent from entering into the B-Schedule property, which is wrongly mentioned as "Marriage Hall" and "Dyeing Unit".

17. Admittedly, the learned Trial Judge has granted injunction as against the petitioner in respect of the B-Schedule property till the final decree is passed.

18. It remains to be stated that in a partition suit, both parties are entitled to half share. When that being the case, there cannot be an injunction against one co-owner and in favour of another co-owner. Hence, we find that the Issue No.3 granted by the Trial Court has to be necessarily suspended.

19. Issue No.3 is in respect of as to whether the respondent is entitled to get permanent injunction restraining the petitioner from altering the name of the Marriage Hall. The said relief can also not be granted as the cleaning and maintenance of the Marriage Hall has to be done by the petitioner, who is in



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possession of the Marriage Hall.

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20. Further, it appears that the Trial Court has taken a double stand between the brothers while granting injunction in respect of one portion of the property in favour of the respondent and granting injunction as against the elder brother / petitioner from not to do any repair work in the Marriage Hall and it is against equity. Accordingly, Issue Nos.3 and 4 of the Judgment of the Trial Court are hereby suspended..

21. In respect of Issue No.2 regarding rendition of accounts, the petitioner is directed to maintain accounts and also it is open to him to do the necessary repair works in the Marriage Hall, which is in his possession.

22. For the maintenance work of the Marriage Hall, the petitioner is permitted to carry on maintenance work and to maintain necessary accounts for the same.

23. Accordingly, this civil miscellaneous petition is ordered.

sd/-
31/01/2025

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/02/2025
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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To

The Additional District Judge,
Virudhunagar

Copy to:

The Section Officer,
V.R.Section
Madurai Bench of Madras High Court, Madurai.

ORDER

IN

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in

A.S.(MD) No.179 of 2023

and

C.M.P.(MD) No.10099 of 2023

Date :31/01/2025

ED/ VR /SAR- (07/02/2025) 7P / 3C

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17/07/2023