



S.A.No.550 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.06.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.550 of 2023
and
C.M.P.No.17290 of 2023

1.C.Duraisamy

Lakshmi (Deceased)

2.Shanmugasundaram

3.Mallika

... Appellants

vs.

1.Kandasamy

Periyammal (Deceased)

Saraswathi (Deceased)

2.Palaniammal

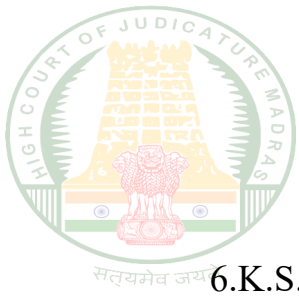
3.K.R.Sigamani

4.C.Eswaramoorthi

P.Jaganathan (Deceased)

5.P.K.Sivanmalai

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6.K.S.Shanmugam

7.K.Rajeswari

8.K.Dhakshinamoorthi

9.Anitha

10.A.Sivakumar

11.Meenakshi

12.Mani @ Duraisamy

13.G.Parvathi

14.Eswari

15.Sivasubramaniam

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 15.07.2022 made in A.S.No.50 of 2018 on the file of 1st Additional Subordinate Judge, Erode confirming the judgment and decree dated 30.08.2018 made in O.S.No.52 of 2013 on the file of 1st Additional District Judge, Erode.

For Appellants : M/s.V.V.Sathya

For R1 : Mr.N.Manoharan

For R2 to R4, R7,
R8 and R10 to R12 : No Appearance



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J U D G M E N T

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The unsuccessful plaintiffs are the appellants. They filed a suit for bare injunction restraining the respondents/defendants 1 to 16 from alienating the suit property pending disposal of second appeal in S.A.No.478 of 2008 on the file of this Court. The suit was dismissed by the Trial Court and the judgment and decree of the Trial Court were affirmed by the First Appellate Court. Challenging the concurrent findings, the plaintiffs have come before this Court.

2. It is the case of the appellants that they filed a suit for partition in respect of the very same property in O.S.No.76 of 1996 on the file of Subordinate Court, Erode. The suit was decreed in their favour. Aggrieved over the same, the respondents herein, who were arrayed as defendants therein filed an appeal in A.S.No.40 of 2005 on the file of the Principal District Court, Erode. The First Appellate Court reversed the findings of the Trial Court and dismissed the suit. Aggrieved by the same, the plaintiffs herein filed second appeal in S.A.No.478 of 2008 and the same is pending on the file of this Court. While second appeal was pending, the respondents attempted to alienate the suit property and hence, the present suit was filed seeking injunction.



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3. The respondents 1, 5 to 8 and 10/defendants 1, 8 to 11 and 13 filed written statements and resisted the suit on the ground that the prayer sought for in the plaint seeking injunction restraining the defendants 1 to 16 from alienating the suit property pending second appeal was not at all maintainable.

4. Before the Trial Court, the 1st plaintiff was examined as PW.1 and two other witnesses were examined as PW.2 and PW.3. On behalf of the plaintiffs, 7 documents were marked as Exs.A1 to A7. On behalf of the defendants, one Jagadeesh was examined as DW.1 and no document was marked on their behalf.

5. The Trial Court found that the present suit filed by the plaintiffs seeking injunction restraining the defendants 1 to 16 from alienating the suit property pending disposal of the second appeal was not at all maintainable as proper course for the plaintiffs is to file an interim application in pending second appeal in S.A.No.478 of 2008. Hence, the suit was dismissed by the Trial Court by relying on Section 41 (h) of the Specific Relief Act.



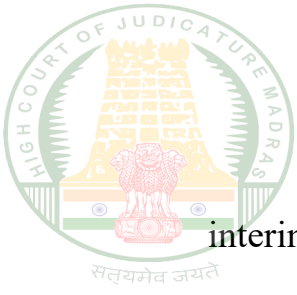
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6. Aggrieved by the said judgment and decree, the appellants/plaintiffs filed an appeal and the First Appellate Court also found that the separate suit filed by the plaintiffs pending disposal of the second appeal in S.A.No.478 of 2008 is not maintainable. Aggrieved by the same, the plaintiffs have come before this Court.

7. The learned counsel appearing for the appellants/plaintiffs would submit that when the appellants established the cause of action for the suit regarding attempt made by the respondents/defendants to alienate the suit property, the Courts below ought not have dismissed the suit.

8. It is seen from the typed-set of papers the subject property of the present suit and the subject matter of the second appeal are one and the same. It is also seen the respondents 1, 2, 6 and respondents 11 to 15 are parties to the pending second appeal in S.A.No.478 of 2008.

9. If the respondents/defendants attempted to alienate the subject property to third parties, the proper course for the appellants/plaintiffs is to file an appropriate interim application in the pending second appeal and it is not open to them to file a separate suit seeking injunction pending disposal of the second appeal. The prayer sought for in this suit is in the nature of



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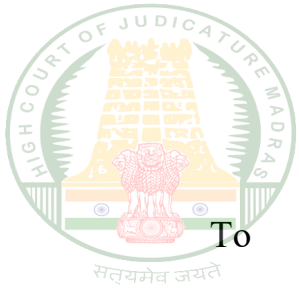
interim relief pending second appeal. Instead of filing appropriate interim application before this Court in the pending second appeal, the appellants/plaintiffs are not entitled to file a separate suit seeking interim relief pending second appeal. Both the Courts below on proper appreciation of legal position, dismissed the suit filed by the appellants/plaintiffs. I do not find any legal error in the said findings of the Courts below. The appellants have not made out any substantial question of law for consideration in this second appeal.

10. **In Nutshell:-**

- (i) The Second Appeal stands dismissed.
- (ii) Consequently, the connected civil miscellaneous petition is closed.
- (iii) In the facts and circumstances of the case, there will be no order as to costs.

09.06.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

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1.The 1st Additional Subordinate Court,
Erode.

2.The 1st Additional District Court,
Erode.



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S.SOUNTHAR, J.

dm

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