
(2011) 02 MAD CK 0231

In the Madras High Court

Case No : O.S.A. No's. 163 and 240-241 of 2010

K. Mala

APPELLANT

Vs

S. Vasu, Mrs. Dayanandhini and Indermal Ramani
Mrs.
Dayanandhini Vs K. Mala and S. Vasu and Indermal Ramani

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2011) 02 MAD CK 0231

Hon'ble Judges : R. Banumathi, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : T. Srinivasa, for Raghavan Shankar Associates, for the Appellant; N. Muralikumaran, for the Respondent

Judgement

M.M. Sundresh, J.—The Plaintiff and the first Defendant in O.A. No. 1280 of 2008 are sister and brother. The second Defendant is the

wife of the first Defendant. The suit property originally belonged to the father of the Plaintiff and the first Defendant. The father died intestate

leaving behind the Plaintiff and the first Defendant as the legal heirs claiming one half share in the suit property. The Plaintiff has filed the Suit in C.S.

No. 1145 of 2008 before this Court, seeking the following relief:

(a)for partition of the schedule mentioned property into 2 equal shares by metes and bounds with reference to the value thereof and allot one such

share to the Plaintiff herein;

(b)for consequential declaration to declare that the Settlement deed dated 12.11.2003 registered as Document No. 3061 of 2003 on the file of the

Sub-Registrar of Millipore, executed by the 1st Defendant to and in favour of the 2nd Defendant as null and void and not binding on this Plaintiff;

(c)appointing an Advocate Commissioner to divide the suit properties as per the terms of the preliminary decree by metes and bounds and with reference to value and put the Plaintiff in possession of his 1/2nd share therein; (d)directing the Defendants to pay the costs of the suit; and (e)for such other relief or reliefs as this Hon"ble Court may deem fit and proper in the circumstances of the case and thus render justice.

2. The Plaintiff filed an Application in A. No. 5923 of 2008, seeking a direction to deposit the rental income derived from the suit property into the Court. Another application was filed in O.A. No. 1280 of 2008 not to alienate the suit property. The second Defendant has filed an application in A. No. 3970 of 2009 to vacate the exparte order of injunction dated 11.12.2008 granted in O.A. No. 1280 of 2008. Another application was filed by the second Defendant in A. No. 3971 of 2009 to reject the plaint filed by the Appellant. Before the learned single Judge, the first Defendant did not appear and contest the applications. The learned single Judge allowed the Application in A. No. 5923 of 2008 in part and directed the second Defendant to deposit 50% of the total rental amount pertaining to the suit property. Subsequently, O.A. No. 1280 of 2008 and A. No. 3970 of 2009 have been allowed in part by granting an order of interim injunction restraining the second Defendant from alienating the eastern portion of the suit property. Application No. 3971 of 2009 seeking to reject the plaint was dismissed.

3. Challenging the orders passed in Application Nos. 3970 and 3971 of 2009 and 5923 of 2008, the second Defendant filed the appeals in O.S.A. No. 240 to 242 of 2010. Similarly, O.S.A. No. 163 of 2010 was filed by the Plaintiff against the order passed in O.A. No. 1280 of 2008.

4. During the pendency of the appeals, miscellaneous petitions have been filed by the Defendants in M.P. No. 3 of 2010 in O.S.A. No. 163 of 2010, M.P. No. 1 of 2010 in O.S.A. No. 240 of 2010, M.P. No. 3 of 2010 in O.S.A. No. 241 of 2010 and M.P. No. 3 of 2010 in O.S.A. No. 242 of 2010 seeking to impale the proposed purchaser of the western half of the suit property as a party Respondent in the appeals. Those petitions have been allowed by this Court in and by the order dated 14.02.2011. The Plaintiff in O.S.A. Nos. 240 to 242 of 2010 has also filed an affidavit stating that, the eastern portion of the suit property will not be sold.

Another affidavit of undertaking was filed in all the applications stating that 50% of the total rental income after deducting the expenses incurred towards the payment of statutory dues and maintenance charges, would be deposited to the credit of the suit in C.S. No. 1145 of 2008 before this Court.

5.O.S.A. No. 163 of 2010

5.1. The learned Counsel appearing for the Appellant in O.S.A. No. 163 of 2010 submitted that the entitlement of the parties with reference to the

specific share will have to be decided at the time of final decree proceedings. The learned single Judge has committed an error in dividing the suit

property into two and restricting the order of the injunction to the eastern portion alone. The third party rights would be created by the sale of the

suit property. It is further submitted that the claim of the second Defendant over the suit property is in doubt and therefore, any alienation by her

would seriously affect the rights of the Plaintiff. Until and unless the suit property is actually divided in pursuant to the final decree to be passed, the

order of the learned single Judge cannot be sustained. Therefore, it is submitted that the appeal will have to be allowed by granting an order of

interim injunction restraining the Defendants from alienating the suit property.

5.2. The learned Counsel appearing for the second Respondent submitted that the learned single Judge has directed the parties to produce the

rough sketch of the suit property. Accordingly, both the parties have filed the rough sketches. Taking note of the rough sketches produced by the

parties, an equitable order was passed restraining the order of injunction to the eastern portion alone, considering the fact that even assuming the

suit is decreed, the Appellant will not have more than 50% of the suit property. There is an absolute necessity to sell the western portion of the suit

property. The Appellant and the first Respondent have colluded together in order to harass the second Respondent, for which, a complaint was

given by the second Respondent against the first Defendant. The mere fact that the first Respondent has not chosen to file any counter affidavit and

contest the applications itself, would exemplify the said fact. All the revenue records including the patta, property tax and water tax, stand in the

name of the second Defendant. Hence, no prejudice would be caused to the Appellant by the order of the interim injunction granted. Therefore,

the learned Counsel submitted that the appeals will have to be dismissed.

6.O.S.A. Nos. 240 to 242 of 2010

6.1. Even though the second Respondent has filed three appeals challenging the orders passed in Application Nos. 3970 and 3971 of 2009 and

5923 of 2008, no serious challenge has been made to the orders passed. On the contrary, the second Respondent has filed an affidavit stating that

the eastern portion of the suit property would not be alienated and no claim would be made against the said portion. A further affidavit of

undertaking was also filed stating that 50% of the rent ordered by the learned single Judge would be deposited in the Court.

7. Heard the learned Counsel appearing for the Appellant as well as the learned Counsel appearing for the Respondents.

8. The question as to whether the Appellant is entitled for partition of the suit property or the settlement deed is true or genuine will have to be

decided in the suit. Admittedly, the first Respondent has been set exparte in the applications and he has not chosen to contest the same. It is the

case of the second Respondent that there is an urgent need for the alienation of half of the portion of the suit property, namely, the western portion.

An affidavit was also filed stating that the eastern portion will not be alienated and even though an appeal has been filed against the order of the

learned single Judge granting deposit of 50% of the rent, an affidavit of undertaking was filed by the second Respondent accepting to deposit the

amount before the Court.

9. In pursuant to the order passed by this Court in impleading the third party purchaser, the rights of the Plaintiff/Appellant is sufficiently protected.

It is submitted by the learned Counsel for the impleaded purchaser that in pursuant to the order passed by the learned single Judge, a sale deed has

been effected pertaining to the western portion of the suit property. Therefore, in view of the subsequent development, the relief sought for against

the second Respondent, no longer survives in so far as the western portion of the suit property is concerned. However, considering the fact that the

purchaser has already been impleaded in the appeals and in the interest of justice with a view to avoid further alienation, we deem it fit to pass an

order of interim injunction restraining the impleaded purchaser in M.P. No. 3 of 2010 in O.S.A. No. 163 of 2010, M.P. No. 1 of 2010 in O.S.A.

No. 240 of 2010, M.P. No. 3 of 2010 in O.S.A. No. 241 of 2010 and M.P. No. 3 of

2010 in O.S.A. No. 242 of 2010 from further alienating or encumbering the western portion of the suit property, pending disposal of the suit. He is further restrained from putting up any construction over the said portion of the suit property.

10. In so far as O.S.A. Nos. 240 to 242 of 2010 are concerned, we find that the orders of the learned single Judge do not require any

interference. The second Defendant has filed an affidavit of undertaking to deposit the rental amount collected from the tenants in the eastern

portion. It is further stated that the eastern portion will not be alienated. As observed by the learned single Judge, the question of limitation being a

mixed question of facts and law cannot be a ground to invoke the power of the Court under Order VII Rule 11 of the Code of Civil Procedure.

Further, the evidentiary value of the release deed as well as the documents showing possession produced by the second Respondent can only be

decided in the suit. Therefore, we are of the view that O.S.A. Nos. 240 to 242 of 2010 are liable to be dismissed and accordingly, the same are

dismissed, confirming the orders passed by the learned single Judge. However, considering the request of the Appellant/2nd Defendant, we grant

time of four weeks from the date of receipt of a copy of this order to comply with the order passed by the learned single Judge in A. No. 5923 of

2008 towards the deposit of the amount ordered for.

11. Accordingly, O.S.A. No. 163 of 2010 is disposed of, by granting an order of interim injunction restraining the third Respondent from alienating

or encumbering the western portion of the suit property pending disposal of the suit. The third Respondent is further restrained from putting up any

further construction over the suit property pending its disposal. O.S.A. Nos. 240 to 242 of 2010 are dismissed. We make it clear that we have not

expressed any opinion on the merits of the matter. In the circumstances of the case, there is no order as to costs in these appeals. Consequently, all

M. Ps are closed.