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C.M.A.NO.1506 OF 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.A.NO.1506 OF 2025 &
CMP.No.13200 of 2025

1. S. Vanathai
2. Selvam
3. Lakshmi

.. Appellants

Vs

Savithri

.. Respondent

Prayer: Civil Miscellaneous Appeal filed under Order XLIII, Rule 1 of CPC., to set aside the fair and decretal order dated 07.04.2025 made in I.A.No.7 of 2024 in O.S.No.47 of 2021 on the file of Additional District and Sessions Court, Villupuram by allowing the present Civil Miscellaneous Appeal.

For Appellants : Ms. K. Indupriya

For Respondent : Mr.N. Umapathi

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the fair and decretal order dated 07.04.2025 made in I.A.No.7 of 2024 in O.S.No.47 of 2021 on the file of Addl. District and Sessions Court, Villupuram by the defendant.

2. The parties are indicated herein as per their litigative status and



C.M.A.NO.1506 OF 2025

ranking before the trial Court.

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3. The details of the affidavit filed in I.A.No.7 of 2024 is stated in brief as follows:

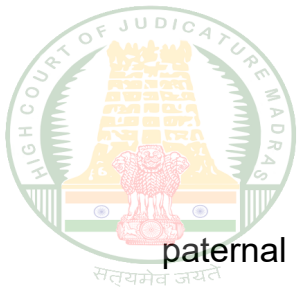
3.1 Petitioner is the plaintiff in the suit. She has laid the suit for the relief of partition of $\frac{1}{2}$ share in the suit properties. Along with the plaint, an application not to alienate or encumber the suit properties was filed in I.A.No.1 of 2021.

3.2 The said petition was ordered on 20.03.2024 to the effect that the respondents/defendants shall not alienate or encumber the suit properties. On the next day on 21.03.2024, the 2nd defendant sold the 5th item of the suit property (S.No.102/2 – 0.22 cents) to one Murugan, Son of Senthil Kumar. Likewise, a Mortgage Deed in favour of one Murthy was executed on 08.05.2024 in respect of Item Nos.2,3 and 4 of the suit properties.

3.3 Thereby, the 2nd respondent/2nd defendant has disobeyed the orders of the trial Court. As he has disobeyed the order of the trial court passed in I.A.No.1 of 2021, he be punished suitably by sending him to the civil prison.

4. The counter details of respondents 1 to 3 is stated in brief:

4.1 The suit property Item Nos.2 to 4 originally belonged to their



C.M.A.NO.1506 OF 2025

paternal grandfather Munusamy. The said Munusamy purchased Item Nos.2 to 4 of suit properties. The said Munusamy was in possession and enjoyment of the suit properties and died intestate on 13.04.1993.

4.2. Munusamy's wife is Jaya and they had one son namely, Shanmugam and two daughters Shantha, Savithri (plaintiff). The 1st defendant Vanathai's husband is Shanmugam. Shantha died on 10.10.2010 at the residence of 2nd respondent/defendant as a spinster. The petitioner has orally relinquished her share in favour of 1st respondent's husband Shanmugam. Thereafter, the plaintiff's brother Shanmugam had been in the possession and enjoyment of the properties and died intestate on 21.05.1999.

4.3 The defendants are the wife and children of deceased Shanmugam. After the death of Shamugam, the defendants have been in possession and enjoyment of the suit properties as his legal heirs. Item Nos.2 to 4 are the properties of Smt.Jaya, Wife of Munusamy. The said Jaya executed a Settlement Deed in favour of the 2nd respondent/2nd defendant Selvam on 15.04.2010 under Document No.856 of 2010. She executed a Settlement Deed in respect of 4th item only to an extent of 0.25 ½ ares of land. She died intestate on 28.10.2010.

4.4 As regards, the remaining extent of the 4th item, the respondents 1 and 3 have executed a Release Deed on 15.04.2013 in Document No.1420 of 2013. From then onwards, the 2nd respondent/2nd defendant has been in possession and enjoyment of the suit properties. On that basis, as regards



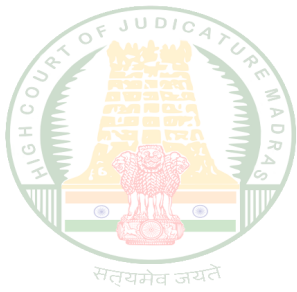
C.M.A.NO.1506 OF 2025

WEB COPY

item Nos.2 to 4, the 2nd respondent has registered a equitable Mortgage Deed in favour of Murthy, son of Muthayyan on 08.05.2024. But the properties are in possession of the 2nd respondent as on date.

4.5 Item Nos. 5 and 6 of the suit properties originally belonged to the mother in law of 1st defendant Smt. Jaya Munusamy. The said Jaya was in possession and enjoyment of item No.5 and 6 of the suit properties. In respect of 5th and 6th items of suit properties, the said Jaya executed a Settlement Deed on 28.10.2008 in favour of the 2nd respondent/2nd defendant Selvam under Document Nos.4955 and 4956 of 2008. The Settlement was accepted and acted upon and from that day onwards, the 2nd respondent/2nd defendant has been in possession and enjoyment of the suit properties without any hindrance and he sold out the 5th item of the suit property to one Murugan , son of Senthilkumar on 19.3.2024 in document No.1472/2024.

4.6 The said sale transaction was effected on 19.03.2024 a day before the Order passed in I.A.No.1/2021. The 2nd respondent sold the 5th item of the suit property for a valid consideration. The item Nos.2 to 4 of the suit properties were mortgaged by the 2nd respondent only for the emergency purpose. He did not disregard the order of the trial Court. There is no change in the ownership of the property and the item Nos.2 to 4 of suit properties are still in possession and enjoyment of the 2nd respondent.



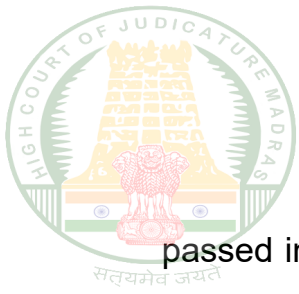
C.M.A.NO.1506 OF 2025

WEB COPY 5. Heard the submission of the learned Counsel appearing for the Appellants and learned counsel appearing for the respondent.

6. Originally one Savithiri, daughter of Munusamy and Jaya Munuswamy filed a suit against her deceased brother's legal heirs (Shanmugam) for the relief of partition of her $\frac{1}{2}$ share in respect of 6 items of suit properties. Meanwhile, during the pendency of the proceedings, the plaintiff took out an application in I.A.No.1 of 2021 under order XXXIX, Rule 1 and 2 of CPC not to alienate or encumber the suit properties by the defendants. The trial Court, on consideration of the entire records passed an order in favour of the petitioner/plaintiff granting interim injunction as against the respondents not to alienate or encumber the suit properties by an order dated 20.03.2024.

7. When the case was pending before the trial Court, the plaintiff took out an application on 10.06.2024 under Order XXXIX, Rule 2(A) r/w. Section 151 of CPC on the ground that the defendants violated the orders passed in I.A.No.1 of 2021 and prayed the Court to send the 2nd respondent/2nd defendant to Civil Prison.

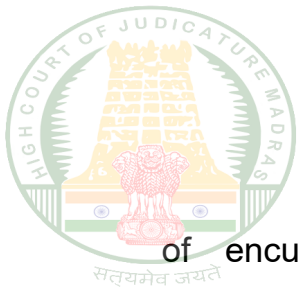
8. On the side of the petitioner/plaintiff, it is stated that on the next day of the above said date, the 2nd respondent/2nd defendant has violated the order



passed in I.A.No.1 of 2021 by selling the 5th item of property in favour of one Murugan, Son of Senthil Kumar. Likewise, the 2nd respondent/2nd defendant has executed a mortgage deed in favour of one Murthy on 08.05.2024 in respect of Item Nos.2, 3 and 4 of the suit properties. The said copy of the Sale Deed is Ex.P.2. The certified copy of the Mortgage Deed is Ex.P.3.

9. It is pertinent to note that when an order of interim injunction not to alienate or encumber the suit properties was passed by the trial Court on 20.03.2024, a day before passing of order, i.e., on 19.03.2024, the 2nd respondent/2nd defendant has sold the 5th item of suit properties to one Murugan under Ex.P.2. As regards the other Mortgage Deed, it was executed by the 2nd respondent/2nd defendant in favour of Murugan, Son of Muthaiya on 08.05.2024. In respect of item Nos.2,3 and 4 of the suit properties, thereby he has created encumbrance over the suit properties. The suit is still pending before the trial Court. Pending litigation, the 2nd respondent/2nd defendant, by executing a Mortgage Deed in respect of item Nos.2,3 and 4 of the suit properties, after 20.03.2024, is a clear violation of the Order passed by the trial court.

10. Even from a careful perusal of Ex.P.2, Sale Deed, it appears that a day before the date of the order, i.e., on 19.03.2023, the 2nd Respondent has sold the 5th item of suit properties to one Murugan. Further more, by creation



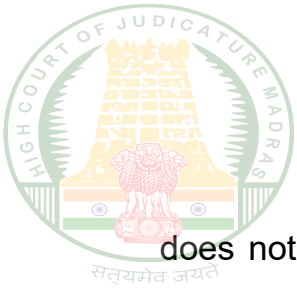
C.M.A.NO.1506 OF 2025

of encumbrance in respect of item Nos.2, 3 and 4 of the suit properties,

clearly reflects the fact that the 2nd respondent/2nd defendant herein has seriously in defiance to the order passed by the trial Court, thereby, he has violated the order of injunction granted by the trial court, while it is in force. Therefore, the 2nd respondent has deliberately and malafidely executed the Mortgage Deed and the action of the 2nd respondent/2nd defendant is a clear case of defiance of the order of injunction granted by the trial Court. Therefore, the trial Court has rightly concluded that by executing Ex.P.3 - Mortgage Deed, the 2nd respondent/2nd defendant has violated the order passed by the trial Court and thereby, ordered to send him to the Civil Prison for 45 days.

11. It is relevant to note that as the suit was filed by the deceased against her mother (D1) and brother (D2) and brother's wife (D3) for the relief of partition. Even at this stage, before this Court, when the appeal came up for hearing, by consent of both parties, the matter was referred before the Tamil Nadu Mediation and Conciliation Center attached to this Court for mediation expecting that the suit would come to an end by way of settlement, however, the matter was referred back to this Court as 'not settled'.

12. In view of the above said narrative, this Court does not find any good reason to upset the finding of the learned trial Court. This Court also



C.M.A.NO.1506 OF 2025

does not find any infirmity or perversity in the Order of the trial Court. The Civil Miscellaneous Appeal is devoid of merits and the same is hereby dismissed. The Order passed by the trial court in I.A.No.7 of 2024 in O.S.No.47 of 2021 stands confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

27.11.2025

msr

Index:yes/no

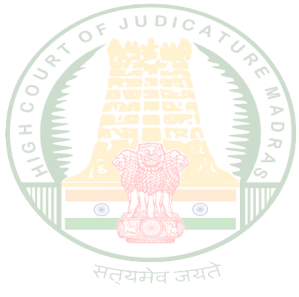
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To

The Addl. District and Sessions Court,
Villupuram

R. KALAIMATHI, J.

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C.M.A.NO.1506 OF 2025

**C.M.A.NO.1506 OF 2025 &
CMP.No.13200 of 2025**

27.11.2025