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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 2795 of 2023
AND
CMP NO. 25795 OF 2023

1. Mary Patricia Shanthi
W/o.Joseph Eugene Leo, NO.12, KMN
Street, Raja Annamalaipuram, Chennai-
600 028

2. Joseph Eugene Leo
S/o. N.A. Arputhasamy, No.12, KMN
Stree, Raja Annamalaipuram, Chennai-
600 028

Appellant(s)

Vs

1. R.Logesh
S/o. Rameshbabu, A Block No.26,
Sivaraman Street, Mandaveli Chennai-
28

Respondent(s)

CMA No. 2795 of 2023

PRAYER

To set aside the order and decree dated 01-09-2023 made in I.A.No.2/2023 in O.S.No.3346/2021 by the XXII Additional city Civil Judge, Chennai by

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allowing the Civil Miscellaneous Appeal and pass such further or other orders as this Honourable Court may deem fit and proper in the facts and circumstances of the case and thus render justice

CMA No. 2795 of 2023

For Appellant(s): Ms.B.Rathika

For Respondent(s): Mr.A.Swaminathan

JUDGEMENT

Challenging the order and decree dated 01-09-2023 passed in I.A.No.2/2023 in O.S.No.3346/2021 by the XXII Additional city Civil Judge, Chennai, the appellants filed this Civil Miscellaneous appeal.

2. The learned counsel for the appellants submits that the respondents herein has filed I.A. No. 2/2023 in O.S. No. 3346/2021, on the file of the XXII Additional city Civil Judge, Chennai, under Section Order 39 Rule 1 and 2 of CPC, for interim injunction to restrain the respondents, their men or agents or representatives or anybody claiming through them from altering, modifying or putting up any construction in the suit schedule property pending disposal of the suit. The respondent/appellants herein contested the case by filing counter. After considering the oral and documentary evidence, the trial judge granted

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temporary injunction without any prime facie material. Hence, the appellants filed this appeal to the set aside the order passed by the tribunal.

3. The learned counsel for the respondent submits that appellants had borrowed a sum of Rs. 15,00,000/- by mortgaging the suit schedule property on 18.12.2018 and thereafter appellants have failed to pay neither interest nor principal. Therefore, the respondent has approached the court for recovery of money and at the time of filing the suit, the suit claim comes around Rs.23,36,383/-. While pending suit, the appellants demolished the portion of the mortgaged property and altered the same by merging the said property with the adjacent property. Hence, the respondent herein filed the petition for temporary injunction and the same was rightly allowed by the trial Court. Hence, he prays to dismiss this appeal.

4. Considering the both side submissions and also the facts reveal that the the plaintiff/respondent herein has filed the suit for recovery of money a sum of Rs.23,36,382/-, in the said suit, appellants herein/defendants had deposited a sum of Rs.15,00,000/- before the Trial Court now the dispute only with regard to interest for the said amount. The learned counsel for the appellants submit

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that they have not made any alteration in the super structure in the suit property without any prime facie material the respondent herein made false claim against the appellants but without considering the above facts the trial Court erroneously granted interim injunction.

5. Admittedly, the extent of the property comes around 526 square feet with super structure, the defendants/appellants have rented the said property to third party. Further, a sum of Rs.15,00,000/- was deposited before the Trial Court and from the year 2018 onwards there was a dispute between the parties. So, the mortgage is not disputed by the respondent. Now, the dispute is only with regard to interest for the principal amount. Therefore, the respondent/plaintiff is permitted to withdraw a sum of Rs.15,00,000/- from trial Court/XXII Additional City Civil Court, Allikulam, Chennai, by filing undertaking affidavit within a period of two weeks from the date of receipt of a copy of this judgement. Further, there is no evidence on the side of the respondent to prove that the appellants were making alteration in the super structure. Therefore, the findings rendered by the XXII Additional City Civil Court, Allikulam, Chennai, in I.A No.2 of 2023 in OS No. 3346 of 2021 is

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hereby set aside. However, the appellants are directed not to make encumbrance over the suit property till disposal of the suit.

6. In the result, this Civil Miscellaneous Appeal is partly allowed. No Costs. Pending petition(s), if any, is/are closed.

22-07-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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CMA No. 2795 of 2023

To

1.R.Logesh
S/o. Rameshbabu, A Block No.26,
Sivaraman Street, Mandaveli Chennai-
28.
2. The XXII Additional City Civil
Court, Allikulam, Chennai,
3. The Section Officer, V.R Section,
High Court, Madras.

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T.V.THAMILSELVI J.

pbl

CMA No. 2795 of 2023
AND CMP NO. 25795
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