

Petitioner Vs. Respondent

Petitioner Vs. Respondent

SooperKanoon Citation : sooperkanoon.com/1192056

Court : Chennai

Decided On : Mar-14-2016

Judge : D. Hariparanthaman

Appeal No. : C.M.P. No. 4593 of 2016 in C.M.A. No. 554 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

1. The petitioner herein is the plaintiff in O.S.No.7103 of 2014 on the file of XVIII Additional Judge, City Civil Court, Chennai. The respondents 1 and 2/ defendants 1 and 2 are his brothers and the third respondent / third defendant is his sister. The fourth respondent / fourth defendant is a builder.

2. The suit in O.S.No.7103 of 2014 is for partition and separate possession of the plaintiff's 1/4th share in the suit schedule property and to declare that the cancellation of settlement deed dated 15.09.2014 in Doc.No.4090 of 2014 as null and void and not binding on the plaintiff, who is the petitioner herein.

3. The first respondent / first defendant executed a settlement deed dated 18.10.2012 in favour of the plaintiff and defendants 2 and 3 settling 3/4th share of the suit schedule property. The suit schedule property is a house property. The settlement deed was sought to be cancelled by the first defendant in the cancellation deed dated 15.09.2014. In these circumstances, the aforesaid suit is

filed.

4. After entering into the aforesaid settlement, the plaintiff as well as the defendants 1 to 3 entered into an agreement with the fourth defendant for joint development of the property and the fourth defendant is a builder. Thereafter, the plaintiff and the third defendant cancelled the agreement entered into with the builder. Hence, the builder filed a suit for specific performance before this Court and the same is pending. In the said suit, there is no interim order against the plaintiff.

5. While so, the plaintiff filed an application in I.A.No.18 of 2016 in O.S.No.7103 of 2014 under Order 39 Rule 1 for injunction restraining the fourth respondent / fourth defendant from interfering with the peaceful possession of the house property mentioned in the suit schedule.

6. The fourth respondent / fourth defendant filed a counter affidavit in I.A.No.18 of 2016 in O.S.No.7103 of 2014 which is enclosed at page No.74 of the typed set of papers. In para 11 of the counter affidavit, the fourth respondent / fourth defendant has categorically averred that he never tried to evict the petitioner / plaintiff illegally from the suit schedule property. In spite of such averment, the Trial Court passed an order dated 02.03.2016 dismissing I.A.No.18 of 2016 in O.S.No.7103 of 2014 leading to the filing of this appeal.

7. In view of the aforesaid averment made by the fourth respondent / fourth defendant in I.A.No.18 of 2016 in O.S.No.7103 of 2014 that he would not illegally evict the petitioner from the suit schedule property, I am inclined to grant interim injunction as sought for in this Civil Miscellaneous Petition.

8. Further, as rightly contended by the learned Senior Counsel for the petitioner / appellant, the dismissal of the application of the petitioner / appellant for injunction not to alienate the property could not be cited as a reason to deny injunction not to evict the petitioner / appellant from the house property.

9. Accordingly, interim injunction as sought for in this miscellaneous petition is granted.

10. Notice.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com