

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 22ND DAY OF JANUARY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No. 6358 of 2017

and

O.A.No.965 of 2017

in

C.S.No.765 of 2017

C.S.No.765 of 2017

1.Dr.Sivamurugan,
S/o.Dr.Soundarapandian

2.UshaSivamurugan
W/o.Sivamurugan

Plaintiff No's 1 and 2, residing at
Old No.1762, New No.178,
6th Avenue, Anna Nagar,
Chennai- 600 040

3.KothaiSoundarapandian
W/o.Dr.Soundarapandian

4.Dr.Ravi Subramaniam
S/o.Dr.Soundarapandian

5.Usha Ravi Subramaniam
W/o.Ravi Subramaniam

Plaintiffs 3 to 5 residing at
No.30, Dr.Gurusamy Road,
Chetpet, Chennai- 600031

..Applicant/Plaintiff

Vs

1.Kunjumol Baby,
W/o.Late Lucas Baby
No.329/4, Poonga Apartments,
HIG Flats, 2nd Avenue, Anna Nagar,
Chennai- 600040

2.Peter
C/o.Madha Residency Hotels,
Anna Nagar,
Chennai- 600 040

...Respondents/Defendants

O.A.No.965 of 2017:

Original Application praying that this Hon'ble Court be pleased to grant an order of ad-interim injunction restraining the respondents their men, servant, agents or any person claiming through them from in any manner disturbing the peaceful possession and enjoyment of the Applicant's property more fully described in the schedule pending disposal of the above suit.

A.No.6358 of 2017:

1.Kunjumol Baby,
W/o.Late Lucas Baby
No.329/4, Poonga Apartments,
HIG Flats, 2nd Avenue, Anna Nagar,
Chennai- 600040

2.Peter
C/o.Madha Residency Hotels,
Anna Nagar,
Chennai- 600 040

...Applicants/Respondents /
Defendants

-Versus-

1.Dr.Sivamurugan,
S/o.Dr.Soundarapandian

2.UshaSivamurugan
W/o.Sivamurugan

Respondent's 1 and 2, residing at
Old No.1762, New No.178,
6th Avenue, Anna Nagar,
Chennai- 600 040

3.KothaiSoundarapandian
W/o.Dr.Soundarapandian

4.Dr.Ravi Subramaniam
S/o.Dr.Soundarapandian

5.Usha Ravi Subramaniam
W/o.Ravi Subramaniam

Respondents 3 to 5 residing at
No.30, Dr.Gurusamy Road,
Chetpet, Chennai- 600031. ..Respondents/Applicant/
Plaintiff

Application praying that this Hon'ble Court be pleased to vacate the order of ad-interim injunction dated 27.09.2017 in A.No. 965/2017 in C.S.No.765 of 2017 passed by this Hon'ble Court and dismiss the same.

These applications coming on this day before this court for hearing the court made the following order:-

OA.No.965 of 2017 has been filed by the Plaintiff in CS.No.765 of 2017, seeking interim injunction, restraining the Respondents / Defendants from in any manner, disturbing the peaceful possession and enjoyment of the suit property by the Plaintiffs.

2. This original application came up for consideration before the vacation Court on 27.9.2017, on which date, an order of interim injunction was granted until further orders. A.No.6358 of 2017 has been filed by the Defendants in the suit, seeking to vacate the said order dated 27.9.2017.

3. The Plaintiffs in CS.No.765 of 2017 are Dr.Sivamurugan and his wife, Usha Sivamurugan, Kothai Soundarapandian, Dr.Ravi Subramanian and Usha Ravi Subramanian, wife of Dr.Ravi Subramanian. They have

instituted the suit against two Defendants, namely, Kunjumol Baby, wife of late Lucas Baby and Peter, who was shown as C/o.Madha Residency Hotels, Annanagar.

4. The suit has been filed, seeking permanent injunction, restraining the Defendants or anybody acting under them from in any manner disturbing the peaceful possession and enjoyment of the suit property by the Plaintiffs. In the Schedule to the plaint, there were as many as 8 Schedules of property. All the properties were vacant land and were generally comprised in S.No.20/2A, Present S.No.20/8, 106, Koyambedu, Egmore-Nungambakkam Taluk, Madras District, with each plot measuring 2400 sq.ft. and having Plot No.1, Plot No.2, Plot No.6, Plot No.3, Plot No.4, Plot No.5, Plot No.7 and Plot No.8.

5. According to the Plaintiffs, they had purchased the suit properties through various sale deeds. The 4th Defendant, Dr.Ravi Subramanian had purchased Plot Nos.3 and 4. The 3rd Defendant, Kothai Soundarapandian had purchased Plot No.6, the 1st Plaintiff Dr.Sivamurugan had purchased Plot Nos.1 and 2 and the 2nd Plaintiff, Usha Sivamurugan had purchased Plot No.5 and the 5th Plaintiff Usha Ravi Subramanian had purchased plot Nos.7 and 8. They had purchased the plots by registered sale deeds dated 3.11.1993 (two sale deeds), 23.2.1994 (three sale deeds) and 25.2.1994 (3 sale deeds). According to the Plaintiffs, they have

become absolute owners of the properties from their respective date of purchase. They had also carried out mutation of their names in the revenue records.

6. The Plaintiffs have further stated that originally the suit property belonged to A.K.Sundarajamudaliar, who was issued with patta in his name under Section 5 of the Tamil Nadu Minor Inams Abolition and Conversion into Ryotwari Act, by the Settlement Officer. He sold the property to M/s.Tarapore and Company, by a registered sale deed in 1955. A small portion of the property was acquired by the Government of Tamil Nadu for formation of 100 ft. road. The Tamil Nadu Government ordered compensation to Tarapore and Company. The said Company had sold the remaining portion of the land to various persons.

7. It has been stated by the Plaintiffs that from the year 2000 onwards, the 1st Defendant's husband and his family members have been attempting to interfere with the peaceful possession and enjoyment of the Plaintiffs. The Tahsildar cum Executive Magistrate, Egmore-Nungambakkam Taluk initiated proceedings under Section 145 of Cr.PC. It has been further stated that the 1st Defendant along with her family members created forged and fabricated documents and claimed that they have right over the property. Since the Plaintiffs found that the documents were forged and fabricated, they lodged a criminal complaint before the

Commissioner of Police, Chennai and a case was registered in Cr.No.322 of 2014 on the file of the Central Crime Branch, Chennai for the offences under Sections 420, 465, 467, 468, 471, 448 read with 120B of IPC. Subsequently, a charge sheet has been filed and it was taken cognizance in CC.No.5108 of 2016 by the Special Metropolitan Magistrate (Land Grabbing), Chennai. It has been stated that the 1st Defendant and her family members approached the High Court, seeking anticipatory bail. This Court had also an occasion in the anticipatory bail proceedings to comment upon the documents relied upon the Defendants.

8. Thereafter, the 1st Defendant filed OS.No.3496 of 2013 before the 18th Assistant, City Civil Court, Chennai and obtained an order of exparte injunction. It has been stated that on the strength of the interim injunction, the Defendants attempted to gain entry into the property of the Plaintiffs. But, the same was prevented by the Plaintiffs. The Plaintiffs thereafter had filed OS.No.4592 of 2013 and also obtained an order of interim injunction. Both the suits had been clubbed together and are being heard by the 7th Assistant City Civil Court, Chennai.

9. It has been stated that the 1st Defendant carried out mutation in the revenue records and the Plaintiffs had challenged the same in a Writ Petition. This Court in the writ proceedings had directed the Collector to conduct a

detailed enquiry with regard to the title and possession. It has been stated that the Collector found that the Plaintiffs are the absolute owners of the suit properties and further found that the Defendants have no right over the property. The Collector also directed the Tahsildar to issue patta in favour of the Plaintiffs. The Tahsildar, Aminjekarai had also issued patta. It has been stated that the tenant in the property had vacated owing to the threat by the Defendants. It has been, therefore, stated that the Defendants had attempted to gain entry into the suit property. It has been further stated that the 1st Defendant had colluded with the 2nd Defendant and created a sale deed in favour of the 2nd Defendant. It is under these circumstances that the suit had been filed, seeking an order of injunction.

10. As stated above, in OA.No.965 of 2017, by order dated 27.9.2017, interim injunction had been granted until further orders. A.No.6358 of 2017 has been filed, seeking to vacate the said order of interim injunction.

11. In the affidavit filed in support of the said application, the Defendants have stated that originally 35 cents of land comprised in old S.No.20 in Koyambedu Village were owned and enjoyed by one Perumal for several decades by way of possessory title. This was inherited by his only son Parthasarathi and after him, by his wife Padmavathy and son Pradhaban. The entire 35 cents were subsequently purchased

by one Lucas Baby, K.Thomas and Gracy by sale deed dated 22.5.1985, registered as Document No.1891 of 1985 in the Office of the Sub Registrar, Annanagar, Chennai. Thereafter, the purchasers had entered into a partition deed dated 12.6.1985, registered as Document No.2152 of 1985 in the Office of the Sub Registrar, Annanagar. Out of the total extent of 35 cents, an extent of 20.50 cents was allotted to Lucas Baby, who was the husband of the 1st Defendant. An extent of 07.75 cents was allotted to K.Thomas and the remaining 6.75 cents were allotted to Gracy. Lucas Baby died intestate on 17.9.2008 leaving behind him his wife, the 1st Defendant and his three daughters to succeed to his estate. His three daughters subsequently executed a release deed dated 10.4.2013 registered as Document No.1585 of 2013, releasing their 3/4th undivided share in favour of the 1st Defendant. Consequently, the 1st Defendant became entitled to the entire 20.50 cents. Patta was also issued in the year 1998. The superstructure was also assessed to property tax and electricity connection was also obtained.

12. It has been further stated that one R.Kamarajar was appointed as the Agent to sell the property. It has been further stated by the Defendants that in view of the difference of opinion, an endorsement was made in the agreement that permission granted to him had expired. He had filed OS.No.3584 of 2012 and the said suit was rejected on

application under Order 7 Rule 11 of CPC. Subsequently, the said Kamarajar and Soundarapandian, the father of the 1st Plaintiff demanded the 1st Defendant to give away her property. This demand was made on 28.6.2013. They attempted to occupy the property. The 1st Defendant had filed OS.No.3496 of 2013 before the 18th Assistant City Civil Court, Chennai, seeking permanent injunction. Injunction was granted in IA.No.8970 of 2013 and is still in force. According to the Defendants, the contention of the Plaintiffs that originally larger extent of land belonged to A.K.Sundarajamudaliar, who had subsequently sold to Tarapore and Company Brick Works and that the land was acquired by the Government and thereafter, the Plaintiffs had purchased the plots, are all false allegations. The 1st Defendant claimed that she had valid title over the property. It has been stated that the entire 56 cents in S.No.20/2, was acquired by the Housing Board and consequently, there was no occasion or possibility for Tarapore and Company to sell the property to the previous vendors of the Plaintiffs. It has been stated that 2nd Defendant had purchased the property from the 1st Defendant and after purchase, he had leased out the same to Tirumal Alagu Travels.

13. It has been stated that the 2nd Defendant was in actual physical possession of the suit property. The Defendants have also alleged that the Plaintiffs had

fabricated documents regarding title. It has been stated that a criminal complaint had been lodged by the Plaintiffs with an attempt to grab the property.

14. It has been stated that on the same issue, there were two suits pending before the City Civil Court. The Plaintiffs had filed OS.No.4592 of 2013 against the 1st Defendant herein seeking permanent injunction. An order of interim injunction was granted in IA.No.12158 of 2013, which is still in force against the 1st Defendant. Much earlier, the 1st Defendant had filed OS.No.3496 of 2013 and the same is also pending and in the same, injunction has also been granted and it is also still in force. Both the suits are being tried together.

15. It has been stated that there is no cause of action for the present suit. It has been specifically denied that the Defendants are basing their claim on false documents. It was under these circumstances that this application has been filed, seeking to vacate the order of interim injunction granted in OA.No.965 of 2017.

16. This Court heard the arguments of Mr.V.Raghavachari, the learned counsel for the Plaintiffs and Mr.P.Wilson, the learned senior counsel for the Defendants.

17. This Court, on coming to know about the fact that there were two earlier suits instituted by both sides against each other in the City Civil Court, wherein the City Civil

Court had granted injunction in favour of the Plaintiff in both the suits, had in exercise of the responsibility vested in Clause 13 of the Letters Patent, withdrawn both the suits in the City Civil Court and directed them to be transferred to this Court. The Registry was directed to renumber the suits and also renumber the interlocutory application. It was also held that both the hearings in the suits shall be proceeded from the stage in which they had been transferred.

18. In the present suit, there was yet another order of interim injunction granted in favour of the Plaintiff as against the Defendants.

19. During the arguments by the learned counsel on either side, strenuous efforts had been made to justify the title of both the parties. But, unfortunately, the Plaintiffs had not sought any relief, seeking declaration of title. The suit, as has been mentioned earlier, had been filed, seeking permanent injunction. It is a fact that the Defendants are challenging the title of the Plaintiffs. However, the Plaintiffs have not thought it fit to seek declaration of title. When the Plaintiffs themselves have not come forward seeking declaration of title, it would be too presumptuous on the part of the Court to examine in detail the title of either parties. At any rate, even if the parties deem it necessary to establish title, that is an issue to be decided at the time of trial. But, what is

staring in the face of both the parties are the orders of contradictory injunctions granted by the City Civil Court.

20. The first order of injunction was granted in OS.No.3496 of 2013, which was filed by the 1st Defendant herein. The second order of injunction was granted in OS.No.4592 of 2013, which had been filed by the Plaintiffs herein. Another order of interim injunction until further order had been granted in the present suit by this Court.

21. In **AIR 2007 SC 1376 (Indian Household and Healthcare Limited. Vs LG Household and Healthcare Limited)** the Honourable Supreme Court had an occasion to examine conflicting injunction orders of the courts as against the same parties in two separate litigations. It was observed that "an order of injunction having been passed by a learned Judge of the Madras High Court, on 6.10.2005, this Court should not exercise its discretionary jurisdiction."

22. Mr.V.Raghavachari, the learned senior counsel for the Plaintiffs and Mr.P.Wilson, the learned senior counsel for the Defendants invited this Court to give a finding on the title of the property by alleging that the other party to the litigation had created fraudulent and forged documents. However, judicial decorum prohibits this Court from examining the title, particularly when there is no relief sought for declaration of title and when there are two suits, which had already been filed and orders of interim injunction had been granted by courts of competent jurisdiction. The present suit is the third suit, which had

been initiated. Multiplicity of suits cannot be countenanced or encouraged. Merely because injunction orders are granted, in suits after suits, it does not strengthen the case of either the Plaintiffs or the Defendants. Doctrine of comity requires this Court not to pass an order which would be in direct conflict with the orders already passed by the City Civil Court.

23. In the present suit, in the plaint, in the cause of action for instituting the third suit, it is claimed that the Defendants are attempting to gain entry into the suit property. But, the Plaintiffs have not explained as to why they did not take any further proceedings in the suits which are already pending in the City Civil Court. In the cause of action paragraph, they have not mentioned about the institution of the earlier suit either by them or by the 1st Defendant. As stated, extensive arguments were advanced with respect to documents relied on by both the parties. Prudence requires that this Court should refrain itself from expressing opinion regarding the documents or the correctness of title.

24. The Plaintiffs, as repeatedly pointed out, have not filed the suit, seeking declaration of title. The Plaintiffs have also not valued the suit, seeking declaration of title. They only seek an order of interim injunction. There is already an existing order of interim injunction granted by the City Civil Court, which is still in force. The present suit is only an attempt to create multiplicity of

proceedings and this cannot be encouraged.

25. Since the suits in the City Civil Court had already been transferred to the file of this Court, it would only be in the interest of both the parties that the trial in the said two suits is conducted on a day to-day basis and that the trial is completed within a time frame. Granting of multiple orders of injunction would not be of any assistance to either one of the parties.

26. On these grounds, I am unable to convince myself to grant any order in favour of the Plaintiffs. It would only be an addition to the order already granted by the City Civil Court in the suits, which had been transferred to the file of this Court. Consequently, the order of interim injunction, dated 27.9.2017 granted in OA.No.965 of 2017 has to be necessarily vacated.

27. In the result, A.No.6348 of 2017 is allowed, as prayed for and OA.No.965 of 2017 is dismissed. No costs.

Sd/-C.V.K.J
22.01.2018

//Certified to be a true copy//
Dated this the day of 2018.

jj 25.01.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.