

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

DATED, THE 25TH DAY OF JULY 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A. No.778 of 2019
in

C.S. No.78 of 2019

1.Dr.Rajesh Mithalal,
Son of Late Sree Mithalal Jain,
No.3099, Church Hill Lane,
Saginaw,
Michigan 48603
United States of America

2.Mrs.R.Vanitha,
Wife of Dr.Rajesh Mithalal,
No.3099, Church Hill Lane,
Saginaw,
Michigan 48603
United States of America

...Applicants/Plaintiffs

-vs-

M.Ashok Kumar,
Son of Late Sree Mithalal Jain,
No.27, Ritherdon Road,
Vepery, Chennai 600 007

...Respondent/Defendant

Application praying that this Honble Court be
pleased to order attachment before judgment of the
respondent/defendant's properties viz., his undivided 50%
share in property bearing No.27, Ritherdon Road, Vepery,
Chennai 600 007, property situate in Door No.1(Old No.49)
Nattu Pillayar Koil Street, Chennai 600 001 and also the
property situate at Old No.111, New No.115, Vellala Street,

This application coming on this day before this Court for hearing the court made the following order:

This application has been filed seeking attachment before judgment of the properties mentioned in the schedule to the petition.

2. The plaintiffs are the brother and brother's wife of the defendant. The defendant was appointed as a Power Agent of the first plaintiff on 28.06.2001. It is also the admitted case of the parties that the plaintiffs were residing in United States of America. The Power of Attorney came to be cancelled on 24.01.2017. After cancellation of the Power of Attorney, the plaintiff had sent various legal notices to the defendant and the same have been replied by the defendant. The plaintiffs have come forward with the above suit seeking accounts for the period from 28.06.2001 to the date on which the cancellation of the Power of Attorney i.e., 24.01.2017 and also recovery of sum of Rs.6,50,33,655/- which according to them is the amount that was unauthorizedly withdrawn from their accounts using the General Power of Attorney dated 28.06.2001.

3. According to the plaintiffs, since the defendant is attempting to dispose of the properties, in order to delay the execution of the decree that may be passed in the suit, there should be an attachment of the properties. This claim of the plaintiffs is denied by the defendant. The

defendant would submit that various properties were acquired in the name of the parties of various dates before and after the execution of the Power of Attorney. After the issuance of legal notice, there was a comprehensive settlement of the issues raised by the plaintiffs and pursuant to the same, various registered settlement deeds were executed both by the first plaintiff and the defendant in favour of each other. This was done in order to settle the disputes amicably and have the properties distributed. Since the first plaintiff happen to be younger brother of the defendant, the defendant did not choose to insist upon the documents evidencing comprehensive settlement. Therefore, according to the plaintiff, misusing the absence of a document evidencing comprehensive settlement, the plaintiffs have come forward with this suit claiming accounts from 28.06.2001 till 28.04.2017 and for recovery of money.

4. I have heard Mr.A.K.Raghavulu, learned counsel appearing for the plaintiffs/applicants and Mr.P.Ramesh Kumar, learned counsel appearing for the respondent.

5. The claim of the plaintiffs is that the defendant, who was the Power of Attorney agent is liable to account for the monies that were drawn by him over the period during which, he was admittedly their Power of Attorney agent. The contention of the defendant is that the plaintiffs issued a legal notice during August 2017 and there were exchange of notices till 01.03.2018.

Thereafter, at the instances of elders the entire dispute was settled and properties that stood in the name of either of the parties and the joint names of the parties were agreed to be distributed between them. Accordingly, settlement deeds were executed by the parties evidencing such resolution of the dispute. The defendant has produced at least five settlement deeds executed between 10.05.2018 and 17.05.2018. The execution of these documents is not disputed by the first plaintiff. These documents show that properties that stood in the name of the first plaintiff were settled in favour of the defendant and certain properties that stood in the name of the defendant were settled in favour of the plaintiff.

6. The above conduct of the parties after issuance of legal notice will only probablise the case of the defendant that there was an overall settlement of the issues raised by the parties in the suit. I find that the defence of the defendant is more probable and in such situation ordering attachment of the properties particularly, invoking the powers and Order 38 is not warranted. Hence, this application is dismissed.

Sd/.R.S.M.J
25.07.2019

//Certified to be a true copy//
Dated this the day of 2019.