

.IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.04.2019	Delivered on 26.04.2019
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application Nos.1698, 1699 and 1700 of 2019
in CS No.629 of 2018

in Appl. No.1698 of 2019

Rajendra Kumar Gupta

... Applicant in Appl. No.1698/19

Vs

1. Ashok Kumar Gupta
2. Sanjay Kumar Gupta
3. Mohit Gupta
4. Akash Gupta
5. N.Devendran Gupta

6. Tarun Gupta
7. Arun Gupta
8. Anupam Bansal
9. Latha Gupta

10. Sudha Gupta
11. Rajini Gupta
12. Hema Gupta
13. Beena Gupta

... Respondents in Appl. No.1698/19

Prayer: Applications are filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure, praying to direct defendants (*) **1-3 and 5** to pay a sum of Rs.1,00,000/- (Rupees One

lakh only) per month to the tenth defendant in the suit, pending disposal of the present suit to enable her to take care of her medical expenses.

(*) Amended as per order dated 04.04.2019 in Appl. No.2427 of 2019 in CS No.629 of 2018

in Appl. No.1699 of 2019

Ashok Kumar Gupta ... Applicant in Appl. No.1699/19

Vs

1. Sanjay Kumar Gupta
2. Mohit Gupta
3. Akash Gupta
4. Rajendra Kumar Gupta
5. N.Devendra Gupta

6. Tarun Gupta
7. Arun Gupta
8. Anupam Bansal
9. Latha Gupta

10. Sudha Gupta
11. Rajini Gupta
12. Hema Gupta
13. Beena Gupta

... Respondents in Appl. No.1699/19

Prayer: Applications are filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure, praying to direct the respondents/defendants 1 to 3 to deposit the rents and advances from the respective tenants occupied the 35 shops in "PICNIC PLAZA"

functioning in the Schedule-A property and also the rental income derived from Schedule-B property more fully described in the schedule hereunder, to the credit of the above suit CS No.629 of 2018, till the disposal of the suit.

in Appl. No.1700 of 2019

1. Beena Gupta

2. Hema Gupta

... Applicants in Appl. No.1700/19

Vs

1. Ashok Kumar Gupta

2. Sanjay Kumar Gupta

3. Mohit Gupta

4. Akash Gupta

5. Rajendra Kumar Gupta

6. Devendra Gupta

7. Tarun Gupta

8. Arun Gupta

9. Anupam Bansal

10. Latha Gupta

11. Sudha Gupta

12. Rajini Gupta

... Respondents in Appl. No.1700/19

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Prayer: Applications are filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure, praying to direct (*) **defendants 1, 2, 3 and 5** to pay a sum of Rs.40,000/- per month to the 12th and 13th defendants each, pending disposal of the suit to enable

them to take care of their medical and living expenses.

(*) Amended as per order dated 28.03.2019 in Appl. No.2424 of 2019 in CS No.629 of 2018.

For Applicant : Mr.R.Parthasarathy
in Appl No.1698/19
in Appl No.1699/19 : Mr. M.Kempuraj
in Appl No.1700/19 : Mr. T.Nirmaleswar

For Respondents : Mr.Ar.L.Sundaresan, SC
for M/s. AL.Ganthimathi for R2
Mr. N.Sanjay Ramaswami
for M/s. Uma Vijayan for R3 & R4
Mr.K.Ramu for R5
Mr.Aditya Suresh for R6, R7 to R9
Mr.Deepak Kumar for R10 & R11

COMMON ORDER

सत्यमेव जयते

Application Nos.1698 and 1700 of 2019 have been filed seeking directions to the defendants 1, 2, 3 and 5 to pay a sum of Rs.1,00,000/- to the 10th defendant and a sum of Rs.40,000/- each to the 12th and 13th defendants per month, pending disposal of the suit to enable them to take care of their medical and living expenses.

2. Application No.1699 of 2019 has been filed seeking a direction to the defendants 1 to 3 to deposit the rents and advances from the respective tenants occupying the shops in the commercial building called 'Hotel Picnic Plaza' to the credit of the suit.

3. The suit in CS No.629 of 2018 has been filed by the plaintiff seeking partition and separate possession of his 1/11th share in the suit 'A' and 'B' Schedule properties, for mesne profits, for accounts and for costs. The suit 'A' Schedule properties are commercial properties and the suit 'B' Schedule property is a residential apartment.

4. According to the plaintiff, the plaintiff, defendants 1, 4, 5, and 9 to 13 are the sons and daughters of late N.D.Gupta and Mrs.Shanthi Devi Gupta. The defendants 2 and 3 are the sons of the 1st defendant and the grandsons of late N.D.Gupta. Defendants 6 to 8 are the sons and daughters of Late Asha Gupta, a predeceased daughter of late N.D.Gupta.

5. The plaintiff would further plead that the deceased N.D.Gupta had purchased an extent of 1 ground and 760 sq.ft. bearing No.2, R.K.Mutt Road, Mylapore, Chennai from one T.M.Swaminathan, under a registered

Sale Deed dated 15.05.1987. It is his further case that his father late N.D.Gupta along with himself and the 4th defendant had purchased another extent of 1570 sq.ft. under a registered Sale Deed dated 31.05.1989. Apart from the above properties, the plaintiff and the defendants 1, 4 and 5 had also purchased different extents of properties under Sale Deeds dated 13.04.1987, 23.06.1987 and 21.08.1987. The plaintiff would further aver that all these properties were aggregated together and a commercial complex called Hotel Picnic Plaza, was constructed with 35 shops in the basement and ground floor. One part of the ground floor is a restaurant, there are two bars and Banquet Hall in the first floor and 20 lodging rooms in the second floor. The plaintiff would seek partition of the estate of late N.D.Gupta alone.

6. The suit is being resisted by the defendants 1 and 5 contending that the property though purchased in the name of the individuals was treated as a partnership property and on the death of the N.D.Gupta, his share in the partnership devolved on the other partners namely, defendants 1 and 5. It is also the further contention of the defendants that the plaintiff has relinquished his rights in the Mylapore property and he has taken property in Poonamalle High Road. It is also the further contention of the defendants that the suit itself is an abuse of process of Court engineered

by the plaintiff.

7. It is further contended by the defendants that as per the Memorandum of Understanding dated 24.05.1998, the properties and the business that were purchased and run by the deceased N.D.Gupta and his sons were divided. Under the said Memorandum, the sisters were given an apartment in Radhakrishnan Salai, which they sold for a sum of Rs.5crores and shared the proceeds. It is also claimed that the 1st defendant namely, Sanjay Kumar Gupta and the 5th defendant Devendra Gupta and the deceased N.D.Gupta were carrying on business in suit 'A' Schedule property.

8. According to the 1st defendant, the suit 'A' Schedule property, as per the Memorandum of understanding, belonged to the reconstituted partnership entered into between N.D.Gupta, the 1st defendant and the 5th defendant. After the death of Sri.N.D.Gupta in 2004, dispute arose between the 1st defendant and the 5th defendant with respect to enjoyment of the properties which led to another Memorandum of Understanding being entered into 08.01.2005 and 10.10.2005. As per the said Memorandum of Understanding, it was agreed that the father's share of the

'A' schedule property will be taken by the 5th defendant. It is also claimed that the said two Memorandums of Understanding, were made part of the record in CS No.912 of 2006, which is said to be pending. The 1st defendant would also claim that he owns only 1/3rd share in the shopping complex, while the 5th defendant owns 2/3 share.

9. The Application No.1698 of 2019 has been filed by the 4th defendant seeking payment of a sum of Rs.1,00,000/- per month to the 10th defendant by defendants 1 to 3 and 5.

10. This application has been resisted by the defendants 1 and 5 contending that neither the plaintiff nor the sisters have any right over the suit 'A' schedule property, inasmuch as, it belonged to the partnership and on the death of the father, the properties were taken by the remaining partners of the firm. Hence, the other heirs cannot claim any right over the partnership property. The question as to *Whether the properties belonged to the individuals or whether the properties belonged to the partnership firm and the question as to whether the Memorandum of Understandings dated 08.01.2005 and 10.10.2005 would be valid and binding on the other parties* are questions which will have to be decided at the trial of the suit.

11. A perusal of the documents that have been produced would show that the property in question was shown as one belonging to N.D.Gupta and Sons, a partnership firm. The Builders agreement dated 08.08.1996 has been entered into between N.D.Gupta and Sons, a partnership firm with the builder.

12. No doubt true subsequent Sale Deeds have been executed by the individual partners in their individual capacity conveying their undivided share, but the same cannot be a determining factor to decide as to whether the property belonged to the firm or the individuals. The settlement deeds and other documents executed in the year 2008 and 2013 would also show that the parties have been at loggerheads for several years and an interim compromise decree has also been entered into in CS No.912 of 2006 on 11.08.2011. The said interim compromise decree also provides that the Memorandum of understandings dated 08.01.2005 and 10.10.2005 shall be binding on the plaintiff and defendants 1, 4 and 5. The plaintiff in the present suit is the 1st plaintiff in CS No.912 of 2006. Having entered in to a compromise agreeing to abide by the terms of the Memorandum of Understandings dated 08.01.2005 and 10.10.2005, the very capacity of the plaintiff to come forward with the present suit seeking partition of the

father's share in the properties, is in doubt at least *prima facie*.

13. I am therefore, of the considered opinion that the directions sought for namely, for payment of monthly maintenance to the daughters as well as to deposit the rents and advances received from the business, cannot be granted as interim measure, as there are complex questions of fact and law that arise in the suit which will have to be decided only after evidence is let in. I am therefore, *prima facie*, of the view that the plaintiff or the daughters namely, the defendants 9 to 13, do not have a right to seek interim directions regarding payment of their share of the rental income and the deposit of the rental income into Court.

14. Hence, all the applications are dismissed with a direction to the defendants 1 and 5 to file accounts of the income from the suit properties once in six months into Court. No Costs.

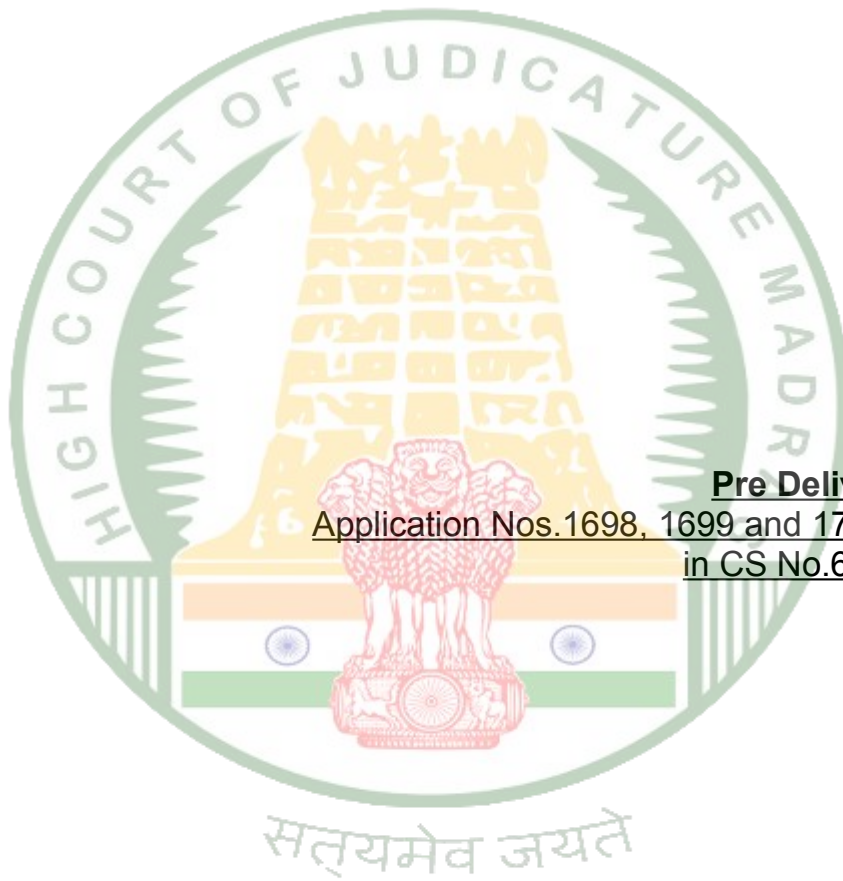
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Index : No
Internet: Yes
Speaking order

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26.04.2019

R.SUBRAMANIAN,J.

jv



Pre Delivery Order
Application Nos.1698, 1699 and 1700 of 2019
in CS No.629 of 2018

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