

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 8TH DAY OF APRIL 2019

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

O.A.No.250 of 2019

in

C.S.No.189 OF 2019

1.M.Subhathra,
W/o Late R.Mohan,

2.R.M.Nivetha,
D/o Late R.Mohan,

3.R.M.Pooja,
D/o Late R.Mohan,

4.M.Hariharan,
D/o Late R.Mohan

All are having address at
Old No.45; New No.11, North Usman Road,
T.Nagar, Chennai - 600 017. :Applicants/Plaintiffs

Vs

1.Smt.Angammal,
W/o.late Rajabather,

2.Smt.Gandhimathy,
W/o Mr.Manoharan,

3.Smt.M.Jayanthi,
W/o Mr.Mari,

4.Mr.R.Kesavan,
S/o Late Rajabathar,
All are having address at
Old No.45; New No.11, North Usman Road,
T.Nagar, Chennai - 600 017. :Respondents/Defendants

O.A.No.250 of 2019:

The Original Application praying that this Hon'ble Court may be pleased to grant the ad-interim injunction restraining the Respondents or their men or the person claiming from them or interfering in the peaceful and smooth conduct of the business in respect of the Schedule D set out in the petition pending disposal of the suit.

The Original application coming on this day before this Court for hearing the Court made the following order:-

This application has been filed seeking order of injunction restraining the respondents from interfering with the possession and smooth conduct of the business in respect of the Schedule D property set out in the petition. The businesses which are set out in Schedule D are as follows:

"1. The business established in the name and style of *PRIX STUDIO* with the proprietorship participation by late Mr.R.Mohan conducted along with 2nd plaintiff at No.45, North Usman Road, T.Nagar, Chennai - 600 017.

2. The business established in the name and style of *IMAGE TRENDS* with the proprietorship participation by late Mr.R.Mohan at No.45, North Usman Road, T.Nagar, Chennai - 600 017.

3. The Business establishment in the name and style of *NIVETHA IMPEX* with proprietorship participation of late Mr.R.Mohan at No.45, North Usman Road, T.Nagar, Chennai - 600 017.

4. The business establishment in the name and style of *LASSER GRAPH* with proprietorship participation of Late Mr.R.Mohan at No.45, North Usman Road, T.Nagar, Chennai - 600 017."

2. The suit is one for partition filed by the

<https://hcservices.ecourts.gov.in/hcservices/>

plaintiffs seeking partition and separate possession of their 1/5th share in suit Schedule A property, 1/10th share

in suit Schedule B property, 4/5th share in the suit Schedule C property and for a declaration that the plaintiffs are entitled to take over and run businesses established by Late R.Mohan, on their own expertise and participation with the obligation of sharing income in proportion with the 1st defendant and for other reliefs.

3. The case of the plaintiffs is that the schedule A properties are the family properties belonging to the family of the husband of the first plaintiff, Mr.R.Mohan, who died on 30.10.2018 leaving behind the plaintiffs namely, wife, children and the first defendant/mother to succeed his estate. The plaintiffs would further aver that the businesses set out in schedule D, were established by the said R.Mohan as a proprietor and that the businesses thus had devolved on the plaintiffs and the first defendant. Contending that the defendants are the mother, brother and sisters of the deceased R.Mohan, who started adopting a hostile attitude towards the plaintiffs, after the death of the said R.Mohan and are now attempting to exclude the plaintiffs from the businesses. It is also contended that the second plaintiff, daughter of R.Mohan is well versed with the techniques of the business and she was assisting her father in doing the businesses and therefore she should be allowed to continue the businesses.

4. On the above contention, the plaintiffs seek an order of injunction restraining the defendants from

interfering with the conduct of the businesses, mentioned in the schedule D by the second plaintiff. The application is resisted by the defendants contending that the plaintiffs have come forward with a false case with reference to the businesses. It is the claim of the defendants that the first plaintiff parted with her husband and she started living separately from the year 2007. According to the defendants, the first plaintiff had left the family and was residing at a different address namely, No.24-15, Varadharajpet Main Road, Kodambakkam, Chennai - 600 024 even in the year 2008.

5. She had also filed O.P.No. 666 of 2008 in this Court seeking custody of the minor child namely, the 4th plaintiff, who was living with his father. In the said original petition, the first plaintiff had averred that she was constrained to sever her relationship with her husband and shifted permanently to her mother's residence. The said original petition came to be dismissed by an order dated 08.11.2012. Therefore defendant's would deny the claim that second plaintiff was infact looking after the businesses of her father solely. The defendants have also produced the documents to show that neither the first plaintiff nor the plaintiffs 2 to 3 were residing at Old No.45, New No.11, North Usman Road, T.Nagar, Chennai - 600 017, where the businesses are being carried on. It is also pointed out that the first plaintiff had falsely claimed

that she was residing at Old No.45, New No.11, North Usman Road, T.Nagar, Chennai - 600 017, in the affidavit filed in support of the O.A.250 of 2019.

6. The respondents rely upon the documents namely, Aadhar Card and Voter ID cards of the plaintiffs, which would show their address is given only as No.24-15, Varadharajpet Main Road, Kodambakkam, Chennai - 600 024 even in the year 2019, after the death of R.Mohan. Pointing out that the daughters namely, second and third plaintiffs have registered themselves as voters on 21.03.2019 by giving address as No.24-15, Varadharajpet Main Road, Kodambakkam, Chennai - 600 024, on 21.03.2019, after the death of said R.Mohan, the respondents would contend that the claim of the plaintiffs that they were infact associated with the businesses of the family and they were residing at Old No.45, New No.11, North Usman Road, T.Nagar, Chennai - 600 017 is false. A reply affidavit has been filed by the 1st plaintiff wherein, she has stated that they were residing at No.24-15, Varadharajpet Main Road, Kodambakkam, Chennai - 600 024 and they were taking care of the businesses. The reply affidavit also claims that the said R.Mohan was addicted to alcohol and had a habit of consuming alcohol for 24 hours. It is also claimed that it is the respondents, who have spoiled her matrimonial life with her husband. In the reply affidavit, it is further pleaded that the 4th

respondent R.Kesavan does not know anything about the businesses and he cannot run the businesses successfully. It is also claimed that the respondents have admitted with the first plaintiff was running a restaurant business on her own and the deceased Mohan forced to pay all taxes. This according to the first plaintiff would also show that she was in fact taking care of the businesses.

7. I have heard Mr.V.Monohar, learned counsel for the plaintiffs and T.Mohan learned counsel appearing for the defendants/respondents.

8. I have considered the documents that have been produced. The basis of the claim of the plaintiffs' is that the businesses were started by Mohan and they were running businesses. After death of the Mohan, the second plaintiff who has the business skill continued businesses. However, the documentary evidence that has been placed before the Court dispels the said contention of the plaintiffs. In the affidavit filed in support of the O.A.No. 250 of 2019, the plaintiff has specifically claimed that she was residing at Old No.45, New No.11, North Usman Road, T.Nagar, Chennai - 600 017. That turns out to be a false statement from the documents produced by the respondents. In fact it is seen from the documents produced by the respondents that the first respondent herself has got her name registered as No.24-15, Varadharajpet Main

Road, Kodambakkam, Chennai - 600 024 on 21.03.2019 giving her address as No.24-15, Varadharajpet Main Road, Kodambakkam, Chennai - 600 024. In order to get out of the situation, which she has landed herself in by swearing to an affidavit stating that she is residing at Old No.45, New No.11, North Usman Road, T.Nagar, Chennai - 600 017, the first plaintiff has come out with the reply saying that though she was residing at No.24-15, Varadharajpet Main Road, Kodambakkam, Chennai - 600 024, she and her daughter were looking after the business at Old No.45, New No.11, North Usman Road, T.Nagar, Chennai - 600 017. This statement is entirely unbelievable.

9. The learned counsel for the applicants has also drawn my attention to certain documents to show that the father has paid the bills for purchase of mobiles in the name of the daughters. Even in those documents, the plaintiff's father has been given his address as Old No.45, New No.11, North Usman Road, T.Nagar, Chennai - 600 017 and not as No.24-15, Varadharajpet Main Road, Kodambakkam, Chennai - 600 024. However, the address of the plaintiffs has been shown as No.24-15, Varadharajpet Main Road, Kodambakkam, Chennai - 600 024.

10. The photographs that have been filed to show that the family was united, appear to have been taken on some occasion and on a trip when the first plaintiff's husband

had accompanied them. These photographs alone would not lead to an inference that the first plaintiff and the second plaintiff are carrying on the business that was being carried on by Late R.Mohan. The facts that have been brought out in the counter affidavit along with the documents that have been placed before me, lead me to firmly believe that the plaintiffs have not come with the true case before this Court. Hence, they are not entitled to grant of interim injunction. Therefore, the order of interim injunction already granted is vacated and O.A.250 of 2019 is dismissed.

Sd/.R.S.M.J

08.04.2019

//Certified to be a true copy//

Dated this the day of 2019.

TE/29/05/2019

COURT OFFICER

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

WEB COPY