

O.A.Nos.238 and 239 of 2016
& A.Nos.1831 of 2016 and 3684 of 2019
in C.S.No.198 of 2016

PUSHPA SATHYANARAYANA, J.

The plaintiff is the applicant in O.A.Nos.238 and 239 of 2016 and A.No.1831 of 2019 and the defendants 1 and 2 are applicants in A.No.3684 of 2019.

2. The applicant filed O.A.No.238 of 2016 seeking an order of interim injunction restraining the first and second respondents or their men, agent, representatives or any other person or persons from putting up any construction in the petition schedule mentioned property until disposal of the suit.

2.1. Similarly, O.A.No.239 of 2016 was filed with a prayer seeking an order of interim injunction restraining the first respondent from in any manner acting under the lease deed dated 29.10.2015 registered as document No.3203 of 2015 in the office of the Sub Registrar, Mylapore, till the disposal of the suit.

2.2. A.No.1831 of 2016 was filed by the plaintiff seeking an order of interim direction to the first respondent to deposit a sum of Rs.2 Crore per month into the credit of the aforesaid suit for the use

and occupation of the petition schedule mentioned property pending disposal of the suit.

3. This Court vide order dated 30.04.2019 restrained the first respondent therein from putting up any further permanent construction of buildings or structure apart from the construction already completed as on that date till 06.06.2019, which was extended subsequently.

4. The defendants 1 and 2 in C.S.No.198 of 2016/the respondents 1 and 2 in the above applications filed A.No.3684 of 2019 seeking to vacate the aforesaid order of injunction granted on 30.04.2019.

5. The brief facts of the case, which are necessary for the disposal of these applications, in a nutshell, run infra :

5.1. The plaintiff is a Public Charitable Trust, which was created on 14.03.1957. As per the Trust Deed, the decisions of the Trust would be taken by the majority of the Trustees and any such decision taken is final. It is stated that (i) Dr. M.A.M. Ramaswamy ; (ii) M.A.M.R. Muthiah ; (iii) RM. Palaniappan ; (iv) Muthukrishnan ; and (v)

Geetha Muthiah were all trustees as on 29.10.2015. The Managing Trustee Dr.M.A.M.Ramaswamy died on 02.12.2015. Thereafter, M.A.M.R.Muthiah has been elected as the Managing Trustee of the Trust vide resolution dated 10.12.2015.

5.2. The suit is filed for declaration that the lease deed dated 29.10.2015 executed by Dr.M.A.M.Ramaswamy in favour of the first defendant as null and void ; for mandatory injunction to demolish and remove the existing superstructure in the land comprised in the schedule mentioned property ; deliver vacant possession ; pay compensation for the use and occupation ; and also for a permanent injunction restraining the defendants 1 and 2 from putting up any additional construction in the suit property. The dispute revolves around the suit property, which is originally an extent of 127 grounds of land at Thandavarayan Street, M.R.C. Nagar, Chennai, which is described as A Schedule property.

5.3. The first defendant is a Public Charitable Society started with, *inter alia*, the object of providing education to the students. The first defendant is said to be given permission to start school in the name of "Chettinad Vidhyasharam" to carry on the objects of the plaintiff trust as well as the first defendant society. An extent of 86 grounds morefully described in the B Schedule to the plaint was

permitted to be occupied by the first defendant Society. There is a balance of 41.630 grounds, which is morefully described in C Schedule, and the same is in possession of the third defendant M/s.Chettinad Logistics Private Limited on a monthly rental of Rs.2,00,000/- (Rupees two lakhs only).

5.4. The plaintiff trust desired to develop the C schedule property given to the third defendant into a commercial complex, after the expiry of the lease period. Admittedly, B schedule property, which is in possession of the first defendant, and the C schedule property, which is in possession of the third defendant, are separated by a compound wall.

5.5. While so, it is alleged that Dr.M.A.M.Ramaswamy, who was one of the Trustees, had unilaterally executed the lease deed in favour of the first defendant society on 29.10.2015. The lease deed is said to be in respect of the entire 127 grounds for a period of 25 years at an annual rent of Rs.1,20,000/-. After the execution of the said lease deed, Dr.M.A.M.Ramaswamy died on 02.12.2015. Immediately after coming to know of the lease, the plaintiff trust issued a notice dated 11.12.2015 to the first defendant society stating that the lease deed is not binding on the trust.

5.6. The plaintiff alleges that the lease deed itself is fraudulently created by Late Dr.M.A.M.Ramaswamy in favour of the first and the second defendants and against the interest of the plaintiff trust. It is stated that the plaintiff trust has sought for cancellation of the lease deed dated 29.10.2015. It is also stated that the tenancy was terminated in February 2016 vide notice dated 11.02.2016. Even after the termination of the lease, the first defendant had deposited the agreed rent. However, the same was returned by the plaintiff.

5.7. Now the plaintiff apprehends that the first defendant has been trying to put up additional construction in B Schedule property. As the lease itself is challenged, the plaintiff prays for an order of injunction restraining the defendants 1 and 2 from putting up any further construction in the B Schedule property.

6. These applications were resisted by filing a common counter affidavit by the defendants 1 and 2. It is stated that the first respondent/first defendant society has been running the school from the year 1986 itself and the constructions were put up by the first respondent society with the full knowledge and permission of the plaintiff trust at the expenses of the first respondent in B Schedule property at a phased manner depending upon the strength of the

students admitted each year. It is also stated that Mr.M.A.M.R.Muthiah, who is the Managing Trustee of the plaintiff trust today, was one of the Trustees on the date of execution of the Lease Deed and member of the first respondent/first defendant Society. Even during his tenure as a Member of the Society, constructions were made and he was fully aware of the same. It is also pointed out that both Dr.M.A.M.Ramaswamy and Mr.Muthiah were living in a property adjacent to the A Schedule property with a common main entrance and were well-aware of the functions of the school and the constructions that were made by the school.

6.1. In so far as the C Schedule property is concerned, it is well-separated by a compound wall and the first defendant has got nothing to do with the same and it is in possession of the third respondent/defendant. The C Schedule is not the suit property. It is further stated that the grandchildren of the trustees were also students of the first defendant school. Everyone associated with the plaintiff trust was aware of the way in which, the school was run and the constructions, which were periodically made.

6.2. As the lease deed is validly executed by the Managing Trustee of the plaintiff trust Dr.M.A.M.Ramaswamy, the said lease deed is valid and binding on the plaintiff trust.

6.3. The allegation that the other trustees were kept in dark cannot be concern of the first defendant society as it pertains to the internal management of the trust.

6.4. The plea that the lease deed is null and void, as the same was executed by Dr.M.A.M.Ramaswamy unilaterally without the consent of the Board of Trustees cannot be raised by the plaintiff.

6.5. The allegation that the executant of the lease deed was not in a sound state of mind on the date of the execution of the lease deed is also denied by the first defendant.

6.6. In so far as the construction made in the B Schedule property is concerned, it was stated that right from the year 1986, the constructions were made periodically without any objections from the plaintiff. According to these respondents, the substantial constructions were made only during 2011-2012 and 2012-2013, during which period, Mr.M.A.M.R.Muthiah and Mrs.Geetha Muthiah were also members of the first defendant society.

6.7. It is stated by the defendants that the school, as on date, has a strength of 8138 students and as per the CBSE Regulations, there cannot be more than 40 students in a class. Hence, it requires 216 numbers of class room. As there are only 171 class room available, there is an immediate need to construct 45 numbers of

additional class rooms to comply with the CBSE Regulations. Accordingly, the defendants had applied for building plan approval and commenced construction in the vacant lands, after the obtaining building plan approval from the Corporation of Chennai. The building approval came on 07.01.2019 and the work for construction commenced thereafter. However, on 30.04.2019, the plaintiff had obtained interim injunction, which has brought the construction works to a grinding halt.

6.8. Thus, the defendants 1 and 2 prayed for vacating the injunction.

7. The main ground of attack of the plaintiff is the lease deed was executed by Dr.M.A.M.Ramaswamy on 29.10.2015 unilaterally in favour of the first defendant and only on the strength of the lease deed, the building plan approval was obtained from the Corporation of Chennai and the construction was commenced.

8. As stated in the counter, the school is run by the first respondent society from the year 1986 and the development of the same was gradual. The members of the plaintiff trust as well as the first defendant society are the birds of the same feather. It is obvious

from the fact that the present trustees were also the members of the society during the relevant point of time, when major constructions were done and the school was being extended. Admittedly, the first defendant society was given permission to occupy the B Schedule property for the purpose of running the school. Whether the school was running for economically backward children or as a profitable organization is well known to all. The third defendant is in possession of the C Schedule property. Whether the first defendant school has to be displaced or the constructions have to be stopped would depend upon the validity of the lease deed executed on 29.10.2015. Whether the said lease deed was obtained by coercion, undue influence or it is for the noble purpose of expanding the school to comply with the CBSE norms are all to be decided only in the suit, after trial. The school has been running in the B Schedule property without any hindrance for more than three decades and it is only the dispute among the trustees that has resulted in the litigation.

9. Though it is stated that the school was permitted to be in possession of the B Schedule property, till such time the lease deed was executed on 29.10.2015, the trust had not raised any objection for their occupation. Though the trust is in existence from 1957 and

the first defendant was permitted to be in occupation from 1986, the trust had also not taken any steps or challenged the authority to run the school in the premises till the filing of the suit, challenging the lease deed executed by the Managing Trustee. Therefore, the burden is on the plaintiff to establish a *prima facie* case in its favour.

10. The existence of a *prima facie* case is a condition for grant of temporary injunction. Of-course, the *prima facie* case should not be confused with the *prima facie* title, which has to be established only in trial. Even otherwise, *prima facie* case alone is not sufficient to grant injunction. Whether the interference by the Court is necessary or not has to be considered. The substantial injury that may be caused to the parties, while granting or refusing to grant injunction should be considered by the Court. Only on weighing the possibilities or the probabilities of the injury that may be caused to either party, the subject matter should be maintained in status quo.

11. As stated earlier, the first defendant school is being run in the suit "B" schedule and the alleged construction is only to comply with the norms of the CBSE Rules. As children are already admitted and studying there, they cannot be put to jeopardy in the battle

between the trustees.

12. The learned Senior Counsel for the plaintiff relied on the judgments of the Hon'ble Apex Court in **Dalpat Kumar and Others V. Prahlad Singh and Others, 1992 (1) SCC 719**. The principle enunciated therein is reiterated in **Gujarat Bottling Co. Ltd. V. Coca Cola Co. and Others, (1995) 5 SCC 545**, and it is useful to refer paragraph 47 of the latter judgment, which reads as hereunder :

"47. In this context, it would be relevant to mention that in the instant case GBCX had approached the High Court for the injunction order, granted earlier, to be vacated. Under order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings."

13. Analysing the conduct of the plaintiff, this Court is of the view that the plaintiff is attempting to disturb the smooth functioning of the school on technical grounds. The Senior Counsel for the first and second defendants also fairly submitted that the school would not claim any equity in the event of the suit being decreed.

14. From the above, it is clear that the balance of convenience is also in favour of the first defendant. As already written statements are filed and the pleadings are completed, post the suit before the learned Master for recording evidence.

15. In the result, interim order already granted by this Court on 30.04.2019 is vacated. Thus, A.No.3684 of 2019 is allowed. Consequently, O.A.Nos.238 and 239 of 2016 and A.No.1831 of 2016 are dismissed.

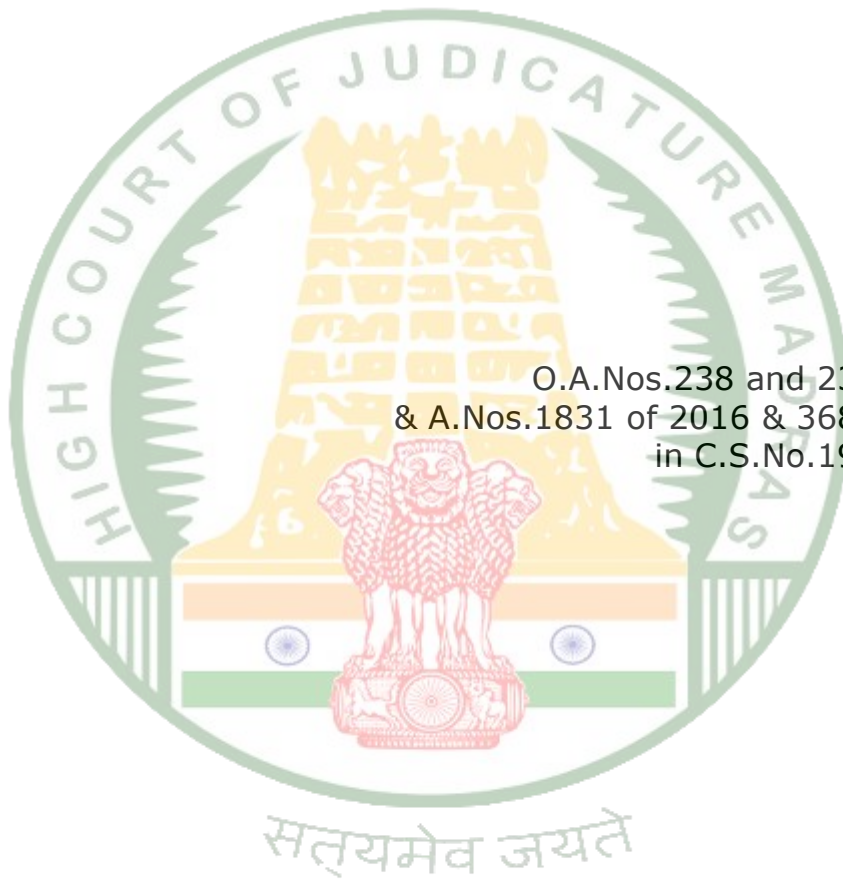
gg

WEB COPY

26.06.2019

PUSHPA SATHYANARAYANA, J.

99



O.A.Nos.238 and 239 of 2016
& A.Nos.1831 of 2016 & 3684 of 2019
in C.S.No.198 of 2016

WEB COPY

26.06.2019