

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Original Side Appeal Nos.138 and 151 of 2018 and
Civil Miscellaneous Petition Nos.8353 and 8561 of 2018

1.Mrs.S.Vaijyanthi
2.Mr.S.Dilli Raji
3.Mrs.S.Meena ... Appellants in both the Appeals

-vs-

1.Mr.S.R.Dilli Naicker,
2.Mr.D.Selvam
3.Mr.D.Hari
4.Mr.S.Sundhar
5.Mr.D.Kotteswaran
6.Mr.D.Kumar
7.Mr.V.Loganathan
8.Mrs.D.Sangupathi
9.Mr.M.R.Dharmalingam
10.Mr.S.Ram Kumar
11.Mr.G.S.Balaji ... Respondents in both the Appeals

APPEALS under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent to set aside the fair and decretal order made in O.A.Nos.181 and 182 of 2016 in C.S.No.147 of 2016, dated 24.11.2016, on the file of this Court.

OA.NO.181 OF 2016:

Original Application Praying that this court be pleased to pass an order of ad interim injunction restraining the respondents 24th 26th 27th 30th 36th 37th 50th 58th 59th 60th and 61st defendants from an any manner alienating or encumbering properties which are morefully described in the schedule B4 hereunder pending disposal of the suit.

OA.NO.181 OF 2016:

Original Application Praying that this court be pleased to pass an order of ad interim injunction restraining the respondents 24th 26th 27th 30th 36th 37th 50th 58th 59th 60th and 61st defendants from an any manner disturbing the peaceful possession and enjoyment of the

properties by the applicants / plaintiffs or making material alteration of the properties which are morefully described in the schedule B4 hereunder.

For Appellants : Mr.N.Umapathi(In both the Appeals)

For Respondents

1 to 3,5&6: Mr.M.Stalin

For Respondents

4,10&11 :Mr.C.R.Dhasarathan

For Respondents

8&9 :Mr.Om Prakash, S.C. For
Mr.M.Vivekanandan

COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

Heard Mr.N.Umapathy, learned counsel for the appellants.

2.These appeals by the plaintiffs are directed against the common order passed by the learned Single Bench dismissing the applications praying for an order of ad interim injunction restraining the defendants from alienating certain properties, which formed part of the plaint schedule property. The plaintiffs have laid the suit for various reliefs.

3.As could be seen from paragraph 36 of the plaint, one among the prayers sought for is to declare the preliminary decree obtained in O.S.No.3261 of 1987, dated 21.09.1989, on the file of the I Assistant City Civil Court, Chennai as null and void and not binding on the appellants/plaintiffs. Incidentally, the plaintiffs in the said suit, viz., O.S.No.3261 of 1987, are one Tmt.Kasturi Ammal and her sister Tmt.Jamuna, who is none other than the mother of the plaintiffs in the present suit. The preliminary decree was passed on 21.09.1989 and final decree proceedings were initiated and an Advocate Commissioner was appointed, who submitted a report dated 22.04.1998.

4.The learned counsel for the appellants has drawn the attention of this Court to the schedule of properties as mentioned in the preliminary decree dated 21.09.1989, and pointed out that the total extent mentioned therein is 25.36 acres. Next, referring to the report of the Advocate Commissioner dated 22.04.1998, it is pointed out that the land available for division is 12.47 acres.

5.It is the contention of the learned counsel for the appellants/plaintiffs that while final decree proceedings were initiated, the total extent was mentioned as 34.13 acres, survey numbers were substituted, extents varied etc.

6.To be noted that the appellants' mother is the second plaintiff in O.S.No.3261 of 1987 and she is a party to the final decree proceedings. The appellants also claim right through her mother. In such circumstances, the question would be as to whether at the instance of the appellants, an order of interim injunction can be granted.

7.The learned counsel for the appellants seriously faulted the memorandum of compromise dated 21.07.2000, stating that parties, who were not in the final decree proceedings were parties to the memorandum of compromise. Further, it was pointed out that one of the persons, viz., M.Balaraman was shown to have died whereas, he had died only on 09.06.2001 and reference has been made to the death certificate issued by the City Health Officer (i/c), Greater Chennai Corporation.

8.We may point out that these aspects are all subject matter of trial and cannot be put forth, at this juncture, that too, in an appeal arising out of an order rejecting an application for interim injunction. The three cardinal principles, which are required to be satisfied for grant of injunction are no longer res integra. The learned Single Bench found that the appellants have not made out a prima facie case and has given reasons for the said conclusion. The learned counsel for the appellants would submit that the learned Single Bench had proceeded based on certain photographs. However, we do not propose to go into the photographs, but we are of the considered view that if the appellants seek for grant of an interim order, they should establish a prima facie case in the sense that there is an individual and separate right accruing in favour of the appellants. The prayer sought for in the suit itself is to declare the preliminary decree passed in O.S.No.3261 of 1987, dated 21.09.1989 as null and void and not binding on the appellants/plaintiffs and in the said suit, the appellants' mother was one of the plaintiffs. It appears that in the interregnum, sale has taken place and it is not clear at this juncture as to who are the executants of those documents and in any event, now the appellants cannot restrict their claim in respect of certain properties without making out a prima facie case for grant of interim order. At this juncture, we make it clear that the observations, which we have made in the earlier paragraphs will not touch upon the appellants claim, nor it will

prejudice their rights in the suit, and it will not have effect on the defence that may be raised by the defendants.

9. For the reasons assigned by us in this judgment, we hold that there are no grounds made out for interfering with the order passed by the learned Single Bench.

10. Accordingly, these original side appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

abr

To,

The Sub Assistant Registrar,
Original Side,
High Court, Madras

+1cc to Mr. N.Umapathi, Advocate SR.No. 15433

+1cc to Mr.M.Vivekanandan, Advocate SR.No. 14856

+1cc to Mr.M.Stalin, Advocate SR.No. 22995 (12/03/2019)

O.S.A.Nos.138 and 151 of 2018

A.SK(26/02/2019)

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