

O.A.No.897 of 2019
in
C.S.No.540 of 2017

SENTHILKUMAR RAMAMOORTHY, J.

This application is filed for interim injunction to restrain the respondents from directly or indirectly encumbering, alienating or otherwise dealing with the property described in the judge's summons, pending the disposal of the suit.

2. I heard the learned counsel for the applicant and the learned counsel for the respondents.

3. The learned counsel for the applicant submitted that this is a suit for partition and that O.A.No.745 of 2017 was filed earlier for an interim injunction to restrain respondents from encumbering or alienating the suit schedule property and that the said application was disposed of by an order dated 19.04.2018 on the basis of an undertaking by the respondents not to alienate the suit schedule property. Contrary to such undertaking, the learned counsel for the applicant further submitted that many of the suit schedule properties were alienated as per the details set out in the table at para 7 of the affidavit filed in support of the application. Consequently, he

submitted that an order of interim injunction as prayed for should be granted so as to ensure that third party right is not created, pending the disposal of the suit.

4. In response and to the contrary, the learned counsel for the respondents submitted that in O.A.No.745 of 2017, the order of interim injunction was restricted to the first item of the suit schedule property and did not extend to other items. More importantly, he submitted that the said order was issued on 19.04.2018 and that the first item of the suit schedule property was released in favour of the daughter on 09.04.2018, which is prior to the date of the order in question. Further, he submitted that this transfer was made in favour of the daughter and son and that no third party interest was created as a consequence.

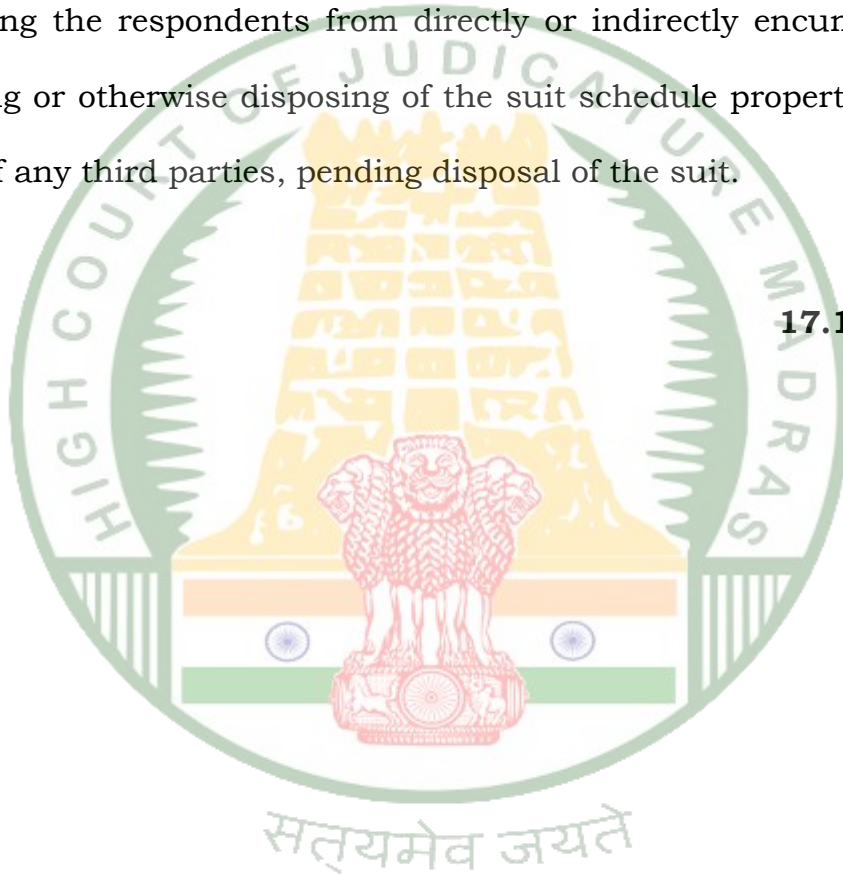
5. The submissions of the learned counsel were considered and the records were examined.

6. From para 7 of the affidavit, it appears that some of the suit schedule properties have been transferred between 20.07.2018 and 16.04.2018 in favour of members of the family. As such, no third party interest is created as on date. Nevertheless, if third party

interests are created, it becomes difficult to reverse the position notwithstanding the doctrine of lis pendens. Accordingly, it is just and necessary that creation of third party interest is restrained, pending disposal of the suit. Therefore, this application is allowed by restraining the respondents from directly or indirectly encumbering, alienating or otherwise disposing of the suit schedule property in the favour of any third parties, pending disposal of the suit.

17.12.2019

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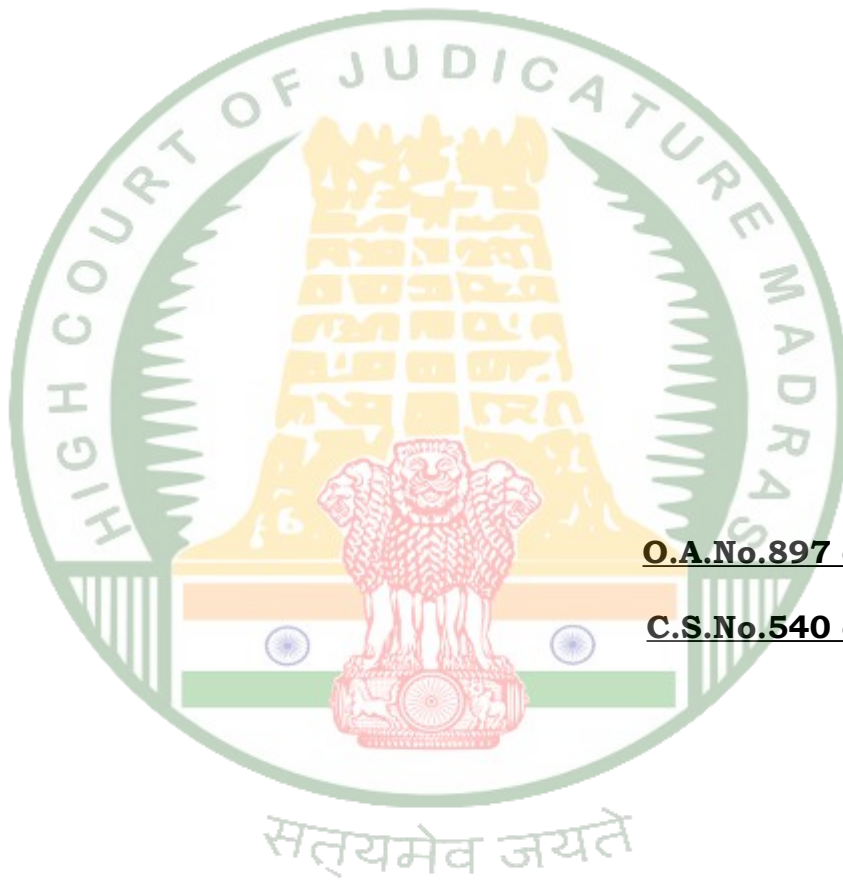


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