

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2018

DELIVERED ON : 03.01.2019

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.M.A. Nos.3395 and 3396 of 2017
and
CMP.Nos.21530 and 21531 of 2017

C.M.A.No.3395 of 2017:

1.R.Parthasarathy
2.P.Rangarajan ... Appellants/ Petitioner / Respondent
in both CMAs

vs

1.R.P.Udayasuriyan
...1st Respondent / Petitioner /Plaintiff in
CMA3395/17 and sole Respondent in CMA3396/17

2.The Indian Oil Corporation Limited,
rep. by its Deputy General Manager (Retail Sales),
Marketing Division,
Salem Divisional Office,
234, Salem-Bangalore Bypass Road,
Kondalampatty,
Salem-636 010.
2nd Respondent/Defendant in CMA3395/17 only

(2nd respondent impleaded vide order dated
27.11.2018 in C.M.P.No.8217 of 2018)
in CMA3395/17

Civil Miscellaneous Appeal Nos.3395 of 2017 and CMA3366/17
filed under Order 43, Rule 1 of the Code of Civil
Procedure, 1909 against the order dated 27.11.2017 passed
in I.A.No.514 of 2017 in O.S.No.272 of 2017 on the file of
the II Additional District Judge, Salem Respectively.

For Appellants : Mr.D.Shivakumaran
in both

For Respondents Mr.M.R.Jothimanian
: for 1st respondent in
C.M.A.No.3395 of 2017
and respondent in
C.M.A.No.3396 of 2017

Mr.Abdul Saleem
for M/s.AAV Partners
for 2nd respondent
in C.M.A.No.3395 of
2017

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellants against the order dated 27.11.2017 passed in I.A.Nos.514 and 515 of 2017 in O.S.No.272 of 2017 on the file the learned II Additional District Judge, Salem.

2. The respondent is the plaintiff and the appellants are defendants 1 and 2 in the suit. The plaintiff has filed the suit being O.S.No.262 of 2017 seeking the following relief:

(i) Declaring the plaintiff's right to get the reconstitution of the suit petrol bunk dealership by inducting only the plaintiff as per the family arrangement deed dated 30.04.2014.

(ii) Cancelling the alleged family arrangement deed dated 18.8.2017 executed by the 1st defendant and registered as Document No.77/2017 in Book No.IV on the file of the Salem West Jt.I District Registrar.

(iii) Directing the 1st defendant to reconstitute the suit petrol bunk dealership by inducting only the plaintiff as per the family arrangement deed dated 30.04.2014 by means of

mandatory injunction.

(iv) Restraining the defendants and their men, agents and servants etc., from reconstituting the suit petrol bunk as per the alleged family arrangement deed dated 18.08.2017 by means of permanent injunction.

(v) Restraining the 2nd defendant and his men, agents and servants from disturbing the plaintiff's peaceful possession and enjoyment of the suit petrol bunk by means of permanent injunction.

(vi) Granting such other relief or relief as this Court deems fit and proper in the above stated circumstances.

(vii) Awarding cost of the suit to the plaintiff by the defendants and thus render justice.

3. Along with the suit, the plaintiff has filed I.A.No.514 of 2017 under Order 39, Rule 1 and 2 of C.P.C. seeking to grant temporary injunction restraining the 2nd defendant and his men, agents and servants etc., from disturbing the plaintiff's peaceful possession and enjoyment of the petrol bunk till the disposal of the suit. The plaintiff has also filed I.A.No.515 of 2017 under Order 39, Rule 1 and 2 of C.P.C. seeking to grant temporary injunction restraining the respondents, their men, agents and servants etc., from in any way reconstituting the license of the petrol bunk as per the alleged family arrangement deed dated 18.8.2017 created by the 1st defendant till the disposal of the suit.

4. The plaintiff seeking temporary injunction alleging that he and the 2nd defendant are sons of the 1st defendant. The half of the land in which the suit petrol bunk situate belongs to the plaintiff and the other half belongs to another brother P.Rajasekaran. The plaintiff and his brother Rajasekaran leased out their respective properties to the 3rd defendant under registered lease deed dated 18.8.1997 to run the suit petrol bunk in their properties. On 30.4.2014, the father of the plaintiff executed a family arrangement deed in favour of his legal heirs and as per the family arrangement deed, the plaintiff's father agreed to transfer the license of the suit petrol bunk in favour of the plaintiff on condition

that within one month from the date of the said family arrangement, the plaintiff has to pay the debt obtained by the father of the plaintiff from Karur Vysya Bank for installation of the petrol bunk by mortgaging the 2nd defendant's property and also the plaintiff has to pay a monthly maintenance of Rs.25,000/- each to the father and the mother till his life time.

5. According to the plaintiff, he had discharged the debt due to Karur Vysya Bank and released the property of the 2nd defendant on 15.5.2014. On 16.5.2014, the 1st defendant handover the suit petrol bunk to the plaintiff and from that the plaintiff was looking after the day-to-day affairs of the suit petrol bunk and also he was paying the monthly instalments of Rs.25,000/-.

6. It is alleged that the 1st defendant submitted application before the 3rd defendant for reconstitution of the suit Retail Outlet Dealership by inducting the plaintiff as Proprietor. But the 2nd defendant preventing the 1st defendant from transferring the license of the suit petrol bunk in name of the plaintiff. While so, the 1st defendant under the inducement of the 2nd defendant fraudulently and mala fide created another registered family arrangement deed dated 18.8.2017 to transfer the license of the suit petrol bunk in the name of the plaintiff and the 2nd defendant. On 23.8.2017, the 1st defendant submitted another letter to the 3rd defendant requesting for inducting the plaintiff and the 2nd defendant in the suit petrol bunk dealership. The case of the plaintiff is that the creation of family arrangement dated 18.8.2017 is illegal and will not bind as the plaintiff had acted upon as per the terms of family arrangement dated 30.04.2014.

7. According to the plaintiff, the defendants 1 and 2, in order to defeat the right of the plaintiff to reconstitute the dealership in his favour are trying to disturb his possession and enjoyment of the suit petrol bunk and further, they are trying to reconstitute the dealership of the suit petrol bunk in the name of the plaintiff and the 2nd defendant jointly. Hence, the plaintiff has filed the petition seeking temporary injunction pending disposal of the suit.

8. Resisting I.A.Nos.514 and 515 of 2017, the defendants 1 and 2 have filed counter stating that the 1st defendant obtained dealership to run petrol bunk in the name and style Sarathy Traders in the year 1964. The properties stand in the name of the plaintiff and his brother were purchased only by the 1st defendant and the

family arrangement dated 30.4.2014 was not acted upon. Based on the family arrangement dated 30.4.2014, the plaintiff cannot claim right over the petrol bunk and therefore, he was not entitled to get an order of injunction as prayed for.

9. According to the defendants 1 and 2, the 1st defendant executed the family arrangement deed dated 18.8.2017 in the name of the plaintiff and the 2nd defendant and submitted a letter to the 3rd defendant on 23.8.2017 for reconstitution of the petrol bunk and only after coming to know about the same, the plaintiff has forged the signature of the 1st defendant and submitted application to the 3rd defendant without intimating the same to the 1st defendant. According to the defendants 1 and 2, the family arrangement deed dated 30.4.2014 had been executed only as a temporary arrangement for the marriage purpose of the plaintiff's son, as he was unemployed and not doing any business and only to give social status it was executed.

10. It is stated by the defendants 1 and 2 that the plaintiff never looked after either the 1st defendant or his wife and the 1st defendant has got every right to modify the family arrangement during his life time and no one can compel him and no case has been made out by the plaintiff to get the order of temporary injunction.

11. Before the trial Court, on the side of the plaintiff, seven documents were marked and on the side of the defendants 1 and 2, five documents were marked in both the petitions separately. The documents marked by the plaintiff and the defendants 1 and 2 in both the petitions are one and the same.

12. Upon consideration of the documentary evidence, the trial Court allowed both the Interlocutory Applications. However, dismissed the petition against the 3rd defendant as the relief sought for against the 3rd defendant was given up. Challenging the grant of temporary injunction, the defendants 1 and 2 have preferred these appeals.

13. Though the trial Court passed impugned order separately, since issues involved in both the appeals are one and the same, this Court is inclined to pass a common judgment.

14. It appears that on 11.2.2017 when C.M.A.No.3395 of 2017 was taken up for hearing, the learned Single Judge of this Court, after hearing the learned counsel for the appellants and the learned counsel for the

respondent/cavetor passed an interim order suspending the order of the learned Single Judge dated 27.11.2017 passed in I.A.No.514 of 2017 in O.S.No.272 of 2017 on the file of the learned II Additional District Judge, Salem insofar as against the 1st appellant/1st defendant. Recording the submissions of the learned counsel on either side, the matter was adjourned to 05.1.2018 enabling the parties to settle the dispute between themselves. Thereafter, the matter was periodically adjourned and on 01.8.2018, this Court, by consent of parties, referred the matter to the Tamil Nadu Mediation and Conciliation Centre attached to this Court and directed the parties to appear before the Centre on 10.8.2018. Accordingly, the parties appeared before the Mediation Centre. However, the matter was not settled between the parties since no agreement was reached as per the report of the Mediator dated 24.09.2018. It also appears from the earlier order of this Court dated 01.8.2018 that the 1st defendant had handed over the operation of the petrol bunk to the Indian Oil Corporation itself under Holiday Scheme. Since the matter was not settled, the appeals were taken up for hearing to dispose of the same on merits.

15. I heard Mr.D.Shivakumaran, learned counsel for the appellants, Mr.M.R.Jothimanian, learned counsel for the 1st respondent in both the CMAs and Mr.Abdul Saleem for M/s.AAV Partners, learned counsel for the 2nd respondent in CMA.No.3395 of 2017 and perused the entire materials available on record.

16. Challenging the order of the trial Court, the learned counsel for the appellants submitted that the trial Court failed to consider that the 1st defendant has categorically pleaded about the specific circumstances under which Ex.P3-family arrangement came into existence and in fact, the same was not acted upon. He would submit that the plaintiff has not produced any material to show that the family arrangement deed dated 30.4.2014 was acted upon and in the absence of any such material, the trial Court erred in granting temporary injunction.

17. The learned counsel further submitted that the plaint prayers (a) and (c) would clearly show that the family arrangement deed dated 30.4.2014 never came into force, as it was not the intention to act upon the same. Further, imposing a condition that the plaintiff shall pay Rs.25,000/- every month towards the share of the 1st defendant is illegal and without any application of mind. Similarly, granting of temporary injunction in I.A.No.515 of 2017 restraining the defendants 1 and 2 from reconstituting the dealership of the suit petrol bunk as

per the family arrangement dated 18.8.2017 is erroneous and unsustainable in law.

18. The learned counsel further submitted that the trial Court failed to consider that the family arrangement deeds dated 30.4.2014 and 18.8.2017 are in essence the expression of the intention of the 1st defendant regarding his business affairs of Sarathy Traders, the petrol bunk dealership and as such, the very suit itself seeking a declaration to give effect to the family arrangement deed dated 30.4.2014 and consequential reliefs are absolutely unsustainable in law and therefore, prayed for setting aside the order of the trial Court impugned in these Civil Miscellaneous Appeals.

19. Per contra, the learned counsel for the respondent/plaintiff submitted that the 1st defendant had already indicated his intention to make the plaintiff as Proprietor of the dealership by suitably obtaining orders from the 3rd defendant. The 1st defendant who was under the custody of the 2nd defendant was brainwashed and threatened by the 2nd defendant not to transfer the license of the petrol bunk in favour of the plaintiff and the 1st defendant was forced under the ill advice of the 2nd defendant to create another deed of family arrangement dated 18.8.2017 with a malafide and ulterior motive to transfer the license of the petrol bunk in favour of the plaintiff and the 2nd defendant. He would further submit that after analysing the documents produced by both sides, the trial Court granted injunction and the same warrants no interference.

20. I have considered the submissions of the learned counsel appearing on either side and also perused the materials available on record.

21. The suit petrol bunk is being run in the name and style "Sarathy Traders" situate in 3/637A, Cuddalore Main Road, Kamarajar Nagar Colony, Salem-14. The 1st defendant is the father of the plaintiff and the 2nd defendant. The real dispute between the parties is reconstitution of the suit petrol bunk dealership.

22. The plaintiff claims that as per Ex.P3-family arrangement deed dated 30.4.2014, the dealership has to be reconstituted in favour of him alone. On the other hand, it is the say of the defendants 1 and 2 that the family arrangement deed dated 30.4.2014 has been obtained by playing fraud by the plaintiff and it was never acted upon. Further, it was contended that the 1st defendant had executed family arrangement deed dated 18.8.2017 in the name of the plaintiff and the 2nd defendant and also

submitted application to the 3rd defendant for reconstitution of the petrol bunk in the name of the plaintiff and the 2nd defendant.

23. The defendants 1 and 2 contended that the family arrangement deed dated 30.4.2014 has been obtained by the plaintiff by playing fraud. To prove the same, admittedly, no document has been produced by them. On the other hand, the defendants 1 and 2 admitted that Ex.P3-family arrangement deed dated 30.04.2014 had been executed only as a temporary arrangement. Moreover, there was no denial that the plaintiff had not discharged his duty and complied with the conditions stipulated in the family arrangement deed dated 30.04.2014.

24. The specific case of the plaintiff is that as per Ex.P3, he had discharged the entire debt of the 1st defendant to Karur Vysa Bank and released the property of the 2nd defendant from the Bank's charge. It is also seen from the records that after execution of Ex.P3, the 1st defendant submitted an application to the 3rd defendant for reconstitution of the Retail Outlet dealership by inducting the plaintiff as its Proprietor. Thus, it is prima facie clear that the plaintiff established that Ex.P3-family arrangement deed dated 30.04.2014 was acted upon and also the conditions stipulated therein were fulfilled by the plaintiff. However, subsequently, there was another family arrangement deed dated 18.8.2017 (Ex.P6) said to have been executed by the 1st defendant in the name of the plaintiff and the 2nd defendant and on the strength of the same, the 1st defendant said to have submitted Ex.R1-letter dated 23.8.2017 to the 3rd defendant for reconstitution of dealership of the petrol bunk in question in the name of the plaintiff and the 2nd defendant.

25. When there was a family arrangement deed dated 30.4.2014 executed by the 1st defendant in the name of the plaintiff with a condition to pay the debt due to the Bank, which was borrowed for petrol bunk business and the said debt was cleared by the plaintiff, the defendants 1 and 2 cannot contend that the plaintiff had fraudulently obtained Ex.P3 and also by forging the signature of the 1st defendant, the plaintiff had given Ex.R3-letter to the 3rd defendant for the reconstitution of the dealership in his name.

26. As rightly held by the trial Court and also as stated supra, the defendants 1 and 2 have admitted the execution of Ex.P3 by the 1st defendant. The contention of the defendants 1 and 2 that Ex.P3 had been executed only to give social status to the son of the plaintiff at the time

of his marriage are all matter of evidence and the same can be proved only during trial.

27. As rightly observed by the trial Court when Ex.P3-family arrangement deed dated 30.04.2014 had been acted upon and on the basis of Ex.P3, the plaintiff had also complied with the conditions imposed thereon, if any alternative is effected, certainly, the plaintiff would be put to irreparable loss and hardship.

28. The trial Court, upon appreciating the documentary evidence produced by both sides held as under:

"13. It is settled that the court must see before granting an order of injunction that the contention of the petitioner should be bonafide and the question sought to be tried must be a serious question and not a mere triable issue. While this court finds that the petitioner has established a prima facie case, balance of convenience also lies in his favour and when the conditions are fulfilled and satisfied by the petitioner as per Ex.P3 arrangement, if he is dispossessed or the dealership is reconstituted the petitioner alone will be put to irreparable loss and hardship and hence, this court holds that the petitioner is entitled to get an order of temporary injunction as prayed for."

29. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

30. It is well settled that for grant of temporary injunction the factors to be satisfied are prima facie case, balance of convenience and irreparable loss.

31. Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily.

32. To see balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be grater than which is likely to arrive from granting it.

33. There are many injuries incapable of being repaired but a Court of equity does not regard them as 'irreparable'. Ordinarily injury is irreparable when without fair and reasonable address of Court, it would be denial of justice. Very often an injury is irreparable where it is continuous and repeated or where it is remediable at law only by a multiplicity of suits. Sometime the term irreparable damage refers to the difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury.

34. A temporary injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction. Temporary injunction is an equitable remedy as well as it is governed by law. Therefore, equitable principles are of very much importance in granting or rejecting injunction. Equitable principle is that, he who seeks equity must come with clean hands. The Hon'ble Apex Court as well as this Court, time and again held that, one must come with clean hands to claim the discretionary relief of temporary injunction. In the case on hand, prima facie, the defendants 1 and 2 have failed to prove that the plaintiff has approached the Court with unclean hands.

35. It is the admitted case of the defendants 1 and 2 that at the time of filing of the suit, the plaintiff was looking after the day-to-day affairs of the petrol bunk. Once a deed of family arrangement dated 30.04.2014 was made and acted upon, in the absence of any valid cancellation, the 1st defendant has no right to execute another deed of family arrangement dated 18.08.2017 so as to futile the plaintiff's efforts and investment, if any, done by him based upon the family arrangement deed dated 30.04.2014. If fact, in the later family arrangement deed dated 18.8.2017 executed by the 1st defendant, the earlier family arrangement dated 30.04.2014 executed by the 1st defendant in the name of the plaintiff has not been referred to and/or cancelled, which would indicate that there is some force in the submission of the plaintiff.

36. Now the petrol bunk in question has been put on Holiday Scheme for two years, by which the licensor Indian Oil Corporation would be operating the petrol bunk are all after the order impugned in these appeals. However, the plaintiff contended that he is facing lot of financial problems as two properties owned by him have been given as collateral security for the loans of the petrol bunk in question. The plaintiff further contended that the petrol

bunk is situated at his land of 8000 sq. ft. and his properties are in the bank and his livelihood has been totally deprived by the 2nd defendant and even the plaintiff was prevented by the 2nd defendant to meet his father/1st defendant.

37. Though the subsequent development reveals that suit petrol bunk was in Holiday Scheme, the short point in these appeals is whether the trial Court was right in granting temporary injunction as prayed in the Interlocutory Applications.

38. Finding that at the time of filing of the suit, the plaintiff was looking after the affairs of the petrol bunk in question and also the family arrangement deed dated 30.04.2014 was acted upon, the trial Court granted injunction in favour of the plaintiff. Since the finding of the trial Court is based upon the documentary evidence, this Court does not want to interfere with the same though the petrol bunk in question is now under Holiday Scheme.

39. Ex.P3-family arrangement deed dated 30.04.2014 contains recital that the plaintiff, who was in possession of the suit petrol bunk is to pay Rs.25,000/- each to the father and mother of the plaintiff. Since the mother of the plaintiff was no more on the date of passing order of the trial Court, the trial Court directed the plaintiff to pay Rs.25,000/- per month to the 1st defendant till the disposal of the suit. No valid grounds have been made out to interfere with the order of the trial Court and the Civil Miscellaneous Appeals are liable to be dismissed.

40. In the result:

(a) these Civil Miscellaneous Appeals are dismissed by confirming the order passed in I.A.Nos.514 and 515 of 2017 in O.S.No.272 of 2017, dated 27.11.2017, on the file of the learned II Additional District Judge, Salem;

(b) the trial Court is directed to dispose the suit on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order and both parties are directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, connected miscellaneous petitions are closed by vacating the interim order granted.

Sd/--

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

vs

To

The II Additional District Judge, Salem.

+1cc to Mr.M.R.Jothimanian , Advocate SR.No. 250
(07.01.2019)

+1cc to Mr.D.Shivakumaran , Advocate SR.No. 469
(28/01/2019)

C.M.A.Nos.3395 and 3396 of 2017 and
CMP.Nos.21530 and 21531 of 2017

ASK(04/01/2019)



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