

O.A.No.223 of 2020
in
C.S.No.374 of 2017

M.SUNDAR.J.,

Instant application has been taken out in a pending suit by 10 of the plaintiffs.

2. Mr.T.V.Ramanujun, learned senior counsel instructed by counsel on record Mr.S.Prem Auxilian Raj for applicants, Mr.B.A.Prakash, learned counsel for Respondents 1 to 4 and Mr.S.R.Raghunathan, learned counsel representing Mr.P.S.Amalraj, counsel on record for the 5th Respondent are before this Court in this web-hearing on a video-conferencing platform.

3.From hereon, parties in this application shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity. Ten applicants herein shall be referred to as '10 plaintiffs' for the sake of convenience and clarity. To be noted, Respondents 1 to 4 in the instant application are defendants 1 to 4 in the main suit and Respondent No.5 is Defendant No.5 in the main suit.

4.Learned counsel for defendants 1 to 4 submitted that he will adopt the arguments of learned counsel for fifth defendant and he does not have independent submissions to make. To be noted, learned counsel for 5th defendant, on instructions, submitted that instant application can be disposed of without a counter affidavit and on the basis of his submissions.

5.This application is being taken up, heard out and is being disposed of on this basis.

6.A very short backdrop and trajectory thus far qua facts/proceedings, which are imperative for appreciating this order, are as follows:

a) This Court is informed that there is another connected suit, namely C.S.No.640 of 2018 between plaintiffs and blood brother of one Ramesh Babu, viz., C.R.B.Suresh Babu and he is the sole defendant in this suit.

b) To be noted, this Court is informed that Defendants 1 to 4 in C.S.No.374 of 2017 are legal heirs of deceased Ramesh Babu.

c) For the sake of convenience, 'C.S.No.374 of 2017' shall be referred to as 'Senior Suit' and 'C.S.No.640 of 2018' shall be referred to as 'Junior Suit'.

d) This Court is informed that both senior and junior suits pertain to a covenant in an Agreement dated 06.05.1990 and that covenant is Clause 16.

e) Senior and junior suits have been filed on the basis that Clause 16 of 06.05.1990 agreement gives them a preemptive right of purchase qua suit properties. That is the subject matter of main suit and therefore, it may not be necessary to delve further on that.

f) This Court is informed that while both suits i.e., senior and junior suits arise out of this one agreement dated 06.05.1990 and clause 16 thereat, the two suit properties are adjacent properties.

g) Suit property in senior suit is situate in Survey No.735/47 in Chinthadripet Village, Mylapore Taluk,

Chennai. Suit property in junior suit is situated in Survey
No.735/55.

h) This Court is informed that suit property in the two
suits belong/belonged to two brothers, namely Ramesh Babu
and Suresh Babu referred to supra.

i) In instant suit, an application in O.A.No.513 of
2017 was taken out by plaintiffs with a prayer for an
injunction against 5th defendant restraining him from
interfering with their possession of suit property. (To be
noted, 5th defendant is alienee of suit property, defendants 1
to 4 being the vendors). This prayer was acceded to in and
by an order dated 06.06.2018 made by a Hon'ble single
Judge and this was confirmed in an intra-court appeal by an
order dated 13.06.2019 made by Hon'ble Division Bench in
O.S.A.No.197 of 2018. To be noted, the injunction part was
confirmed and it was clarified that further proceedings in suit
shall be on merits uninfluenced by any of the observations

made by learned single Judge. As far as junior suit is concerned, in A.No.866 of 2018 an undertaking was given by the sole defendant stating that the physical features of suit property will be not altered and it was extended from time to time.

7. Instant application has been taken out primarily with a prayer for an injunction restraining alteration of physical features of suit property. It is the case of 10 plaintiffs that the fifth defendant taking advantage of the 'Corono Virus pandemic and consequent lock down', which shall be collectively referred as 'Covid-19 situation' for the sake of convenience, is now attempting to alter the physical features of the suit property *inter alia* by doing civil construction activity therein as suit property which is a market is shut. It is also the case of the 10 plaintiffs that the 5th defendant is doing so by taking recourse to police action. In support of this, summons issued by the jurisdictional police authorities have also been placed before me.

8. In response to the above, learned counsel for 5th defendant submitted that as many as 10 plaintiffs have entered into lease agreements directly with

the 5th defendant, they had requested for demolition of certain raised platforms in the market, there is water logging owing to the nature of the business and it is on this basis that civil construction work/activity was commenced. In support of this contention, learned counsel for fifth defendant placed before this Court some photographs and one photograph which is of utmost relevance, is as follows:



9. It is submitted that this photograph depicts the obtaining position in the market and it was emphasised that the platforms are intact. It was submitted that at best a part of the floor may have been dug up and otherwise, the above photograph depicts the obtaining position of the market, is learned counsel say. Learned counsel for 5th defendant also submitted, on instructions, that the platforms are not going to be demolished in their entirety and only two feet of the platforms are going to be demolished.

10. It was pointed out that Survey Numbers of the suit properties in the senior and junior suits are different. It was submitted that the ten plaintiffs, who have taken out this application, will not be dispossessed *dehors* the due process of law.

11. In the light of the aforesaid rival submissions, this Court now embarks upon the exercise of considering the same and passing an order / disposing of instant application.

12. The first aspect of the matter is regarding the suit properties. Though survey numbers are different, namely S.No.735/47 and S.No.735/55, there is no

dispute that two suit properties in senior and junior suits are adjacent to each other.

13. This Court also noticed that there is an undertaking in the junior suit given by the sole defendant therein that the physical features of the suit properties will not be altered.

14. The next aspect of the matter is regarding demolition of two feet of platforms. A submission was made that it is to ensure social distancing when the market reopens post Covid 19 situation. However, the fact that civil construction activity had been taken up and the fact that there is going to be demolition of part of platform is not disputed.

15. This takes us to the dispossession aspect.

16. The plaintiffs are already protected by way of an interim order of this Court with regard to possession which has been affirmed by a Hon'ble Division Bench. Instant application does not pertain to dispossession, but it pertains to an injunction against alteration of physical features of suit properties.

17 The main suit is one for enforcing, what according to plaintiffs and obviously 10 plaintiffs is preemptive right of purchase of suit property.

Preemptive right of purchase qua suit property is the subject matter of the lis in both suits, it includes land and superstructure and therefore, alteration of physical features if any, cannot be done excluding the 10 plaintiffs. More importantly both the senior and junior suits arise out of one common agreement dated 06.05.1990 and clause 16 thereat. As already mentioned supra, there is no dispute that the two suit properties are adjacent to each other. This Court also noticed that there is undertaking in the junior suit given by the sole defendant that the physical features of the suit property will not be altered. To be noted, lis in the two suits are similar and only suit properties are different, but adjacent.

18. In the light of the aforesaid facts, this Court is of the view that what is sauce for the goose is sauce for the gander too and therefore, if the physical features are not to be altered in the junior suit, it can be replicated in the senior suit also. However, it is made clear that this is not the only ground that is being considered by this Court. This Court has also considered the fact and obtaining position that the lis in the main suit is regarding preemptive right of purchase, that includes land and superstructure (not merely the respective shops in

occupation of each of the plaintiffs) and therefore, superstructure cannot be altered without the consent of plaintiffs and more particularly, the 10 plaintiffs.

19. As already alluded to supra, though the survey numbers are different, suit properties are adjacent.

20. One other aspect of the matter is, learned counsel for 5th defendant submitted that no civil construction activity is to be done inside the shutters. In the considered view of this Court, this is no argument as 06.05.1990 agreement out of which both suits arise pertains to the suit properties in its entirety, namely land and entire superstructure (not merely the respective shops in occupation of each of the plaintiffs). Therefore, this Court is convinced that ten plaintiffs are entitled to have the prayer for injunction against alteration of physical features of the suit property acceded to as suit property has to be preserved.

21. In the result, this application is disposed of granting an order of injunction in favour of applicants herein restraining the 5th defendant from altering the physical features of the suit property (as described in the judges summons) either by carrying on civil construction activity or in any other

manner or by attempting to demolish any portion of the platforms in the suit property morefully described in the schedule to judges summons or in any other manner whatsoever pending disposal of the suit.

22 Application is allowed. There shall be no order as to costs.

17.06.2020

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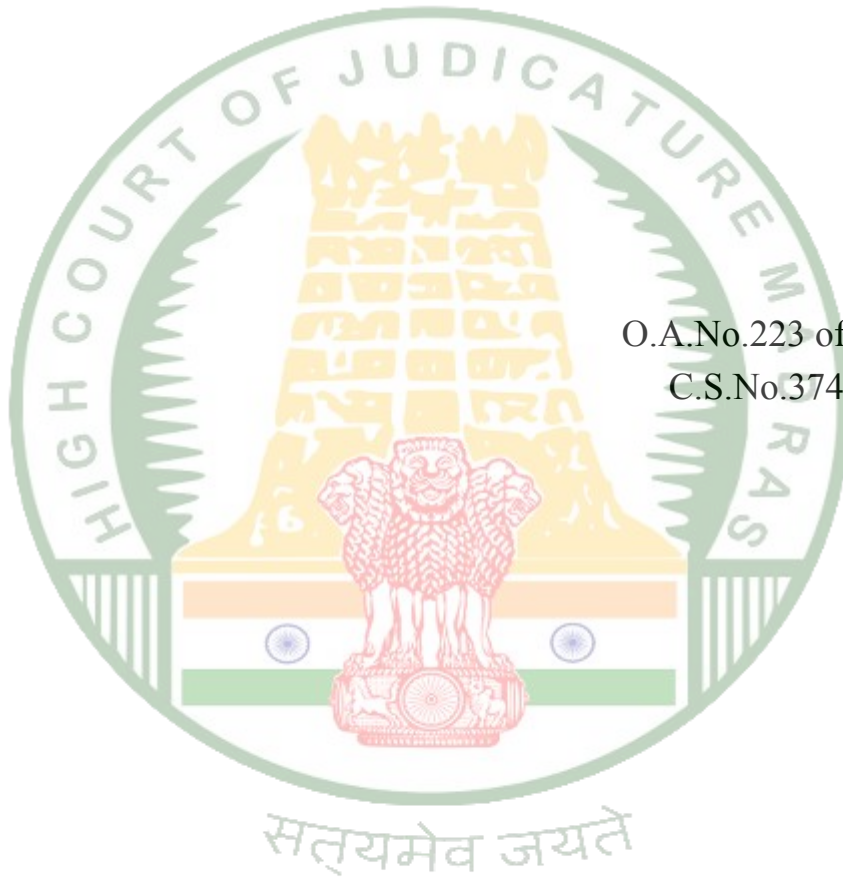


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