

O.A.No.928 of 2019
in
C.S.No.602 of 2019

SENTHILKUMAR RAMAMOORTHY, J

C.S.No.602 of 2019 is filed by two daughters of the late Govindasamy and Govindammal along with the legal heirs of two of their predeceased sisters, namely, the late Annakkili and Palaiyam. The Defendants in the suit are the son of Govindasamy and Govindammal, namely, Munusamy, the legal heirs of the predeceased daughter, Kousalya, and another daughter, namely, Sathya Rubi. The suit is filed for partition of the suit schedule properties and for a declaration that the Plaintiffs are collectively entitled to 5/8th share in the suit schedule properties. In the said suit, the present application is filed for an interim injunction to restrain the respondents from, in any manner, dealing with the suit 'A' and 'B' schedule properties, pending disposal of the suit.

2. I heard the learned senior counsel, Ms.Chitra Sampath, for the Applicants and the learned counsel, Mr.S.R.Raghunathan, for

Respondents 1 and 2 and the learned counsel, Ms.Tanya Kapoor, for Respondents 3 to 11 and the learned counsel, Mr.R.Selvakumar, for Respondents 12 and 13.

3. The learned senior counsel for the Applicants submitted that the admitted position is that the Plaintiffs and Defendants 1 to 11 are all descendants of the late Govindasamy and Govindammal. She further submitted that all the suit schedule properties belonged either to the late Govindasamy or Govindammal, who were the father and mother of Plaintiffs 1 and 2 and the grandfather of Plaintiffs 4 to 6 and 10 to 14. The properties owned by Govindasamy and his four brothers were partitioned under partition deed dated 26.11.1960 which was registered as document No.2590 of 1960 and 'A' schedule properties therein were allotted to the late Govindasamy. The first Defendant is the youngest of the children of Govindasamy and Govindammal and the only son. The first and second Plaintiffs, seventh Defendant and the other predeceased daughters of Govindasamy were not educated and do not know how to read and write. Govindasamy lived up to the age of 95 and died on 12.06.2000.

Govindammal died on 24.01.1995. After the death of Govindasamy, the first Defendant was managing the properties of the family and all the legal heirs of Govindammal and Govindasamy visited their late parents' house from time to time. In the facts and circumstances, the Applicants/Plaintiffs received a notice from the court in O.P No.716 of 2010. Upon consulting their lawyers, they realised that the first Defendant had tried to obtain a probate of an alleged Will by playing a fraud on the Court. Upon opposing the grant, the O.P. converted into T.O.S. No.27 of 2011, which is pending before this Court.

4. The first Applicant/Plaintiff issued a lawyer's notice dated 14.01.2011 to the first Defendant seeking partition and separate possession of the property that belonged to her parents. The first Defendant issued an evasive reply dated 14.02.2011, through a lawyer, contending that the properties were partitioned earlier. Upon making further inquiry, the Plaintiffs came to know that the first Defendant had fabricated various documents. Therefore, the first Applicant/Plaintiff filed a suit for partition before this Court, C.S. No.567 of 2012. The said suit was dismissed for non-

prosecution on 24.02.2017. However, in view of the fact that it is a suit for partition, the present suit is not barred by law. In support of this contention, the learned senior counsel relied on the judgment of this Court in **Subba Naicker v. Rangaswamy Naicker, 1993 (3) MLJ 494**, and that of the Division Bench in **Kannikandath Kizha Purakal Vella's son Thayyan v. Kannikandath Kizha Purakkal, AIR 1935 Mad 458**, and **Commissioner H.R. & C.E., Madras v. Krishnaswamy, AIR 1975 Mad 167**, and concluded that Order IX Rule 9 CPC does not apply to a partition suit. On the same issue, judgments of this Court in **V. Ponramu v. B. Usharani, C.R.P. (PD) (MD) No.284 of 2000** and that of the Andhra Pradesh High Court in **A. Venkateswara Rao v. K. Sivaiah, AIR 1978 A.P. 403**, were also relied upon.

5. The learned senior counsel contended that each daughter and the son of the late Govindasamy and Govindammal are entitled to 1/8th share in the suit schedule properties. The said properties were not partitioned earlier and, therefore, the present suit is maintainable.

Moreover, the suit schedule properties were unlawfully dealt with by the first defendant by creating various documents. Therefore, an order of interim injunction should be granted so as to prevent the creation of further third party interest. As regards properties which have already been transferred to third parties, the shares of the respective parties could be adjusted at the time of final disposal by taking into consideration such prior alienations.

6. The learned counsel for the first and second Respondents made submissions to the contrary. The first contention was that partition was effected earlier under two Memoranda of Oral Partition termed as koor chits dated 03.02.1973 and on 10.02.1973. The manner in which the properties were partitioned under koor chit dated 03.02.1973 is set out at paragraph-4 (iii) of the counter affidavit. Similarly, the manner in which the properties were partitioned under koor chit dated 10.04.1978 is set out at paragraph-4 (v) thereof. Upon such partition, he pointed out that each of the parties independently dealt with the respective properties that were allotted to them by treating the same as individual properties. In support of

this contention, he pointed out that the first Applicant along with the seventh Respondent sold a portion of the property allotted to them under sale deed dated 18.06.1985. In the said sale deed, title is traced to the koor chit dated 03.02.1973. As regards the property described in schedule 'B', item No.I was purchased by the late mother of the first and second Applicants and the first Respondent, namely, Govindammal. The said property was bequeathed by her to the first Respondent/Defendant under a Will dated 28.12.1993, which was registered as document No.22 of 1994 and is the subject matter of T.O.S. No.27 of 2011. Item No.2 of the Schedule 'A' properties is a self-acquired property of the first Defendant's wife, namely, the second Defendant. Item-3 of the schedule 'A' properties was allotted to the share of the father of the first and second Plaintiffs and the first Defendant under a partition deed dated 26.11.1960, which was registered as document No.2950 of 1960 on the file of the Sub Registrar of Assurances, Saidapet. The said property was settled in favour of the first Defendant under settlement deed dated 05.02.1999, which was registered as document No.428 of 1999 on the file of the Sub Registrar Office, Virugambakkam. Item No.5 of the Schedule 'A' property was allotted to the

first Defendant under the oral partition recorded in the koor chit dated 10.04.1978. Out of the said property, an extent of about 6000 sq.ft. was sold by the first Defendant in the year 1998. At the time of such sale, the sisters of the first Defendant gave no objection and consent under document dated 25.11.1998. Item No.4 of the Schedule 'A' properties was settled in favour of the first Defendant in the year 1999. The said property was sold in the year 2002 to Mr. Shanmugavel, who is the father of the 13th Respondent. In this manner, the learned counsel submitted that item Nos.1 to 3 of the schedule 'A' properties were settled in favour of the first Defendant under settlement deeds. item No.4 was sold to the father of the 13th Respondent. Item No.5 was developed by building an apartment complex thereon. Item No.6 was sold. As regards the Schedule 'B' properties, as stated earlier, item No.1 is the subject matter of T.O.S. No.27 of 2011. Therefore, he submitted that there is no *prima facie* case for the grant of interim injunction and that the application is liable to be rejected.

7. I considered the submissions of the learned senior counsel and the learned counsel for the respective parties and examined the records.

8. The first question to be considered is whether the suit is *prima facie* barred under Order IX Rule 8 and 9 of C.P.C. The earlier suit was not decided on merit and was dismissed for non-prosecution. In this regard, the Division Bench of this Court held in the judgment reported in **AIR 1935 Mad 458** that the later suit is not barred under Order IX Rule 9 CPC if the earlier suit was dismissed for default because there is a continuing cause of action. Therefore, the preliminary objection is overruled for purposes of considering the application for interim injunction. This leads to the question as to whether an interim injunction is liable to be granted.

9. The case of the Applicants is that the first Respondent took advantage of the fact that his sisters were illiterate and fabricated documents with a view to usurp the legitimate share of the sisters in the properties of their parents. On the contrary, the case of the first Respondent is that the suit schedule 'A' properties were partitioned under two oral partitions, which were recorded under koor chits dated 03.02.1973 and 10.04.1978, in terms of which the 'A' schedule properties were allotted to the members of the family in the manner set out in paragraph-4(iii) and 4(v), respectively, of the counter affidavit. Settlement deeds were executed with

regard to item Nos.1 and 4 of the suit schedule properties in favour of the first Respondent. As regards item No.4, the property was, subsequently, sold by the first respondent in favour of the 12th respondent, i.e. the father of the 13th Respondent. Item No.5 was promoted and developed into an apartment complex, which consists of 16 flats, under the name 'Govind Apartments'. As regards Item Nos.3,6 and 7, the second Respondent states, in her counter affidavit, that these are self-acquired properties that were not owned by the late Govindaswamy and Govindammal at any point of time. As regards the 'B' schedule properties, the same are the subject matter of the pending testamentary proceedings. The contention that such oral partitions were effected is refuted by the learned senior counsel for the Applicants on the ground that the koor chits are, in any event, invalid because they are unstamped and unregistered documents, which purport to convey title. However, the learned counsel for the first and second Respondents pointed out that the first Applicant and 7th Respondent conveyed a portion of the property that was allotted to them under sale deed dated 18.06.1985 and that title is traced by them in the said sale deed to the koor chit dated 03.02.1973.

10. Upon examining the rival contentions and the documents on record, I find that there is *prima facie* evidence that some of the suit schedule properties were allotted to the late Govindasamy under Partition Deed dated 26.11.1960, which was registered as Document No.2950 of 1960. It also appears *prima facie* that item 1 and 4 of the Schedule 'A' properties are the subject matter of settlement deeds dated 05.02.1999, which were executed by the late Govindasamy in favour of the first respondent. Item 4 was, thereafter, conveyed to the 12th respondent, who, in turn, settled it in favour of the 13th respondent. As contended by the learned counsel for the first and second Respondents, it appears that the first Applicant and 7th Respondent conveyed a portion of the property that was allotted to them under sale deed dated 18.06.1985 and that title is traced by them in the said sale deed to the koor chit dated 03.02.1973. I also find other conveyances wherein reference is made to the one or the other koor chit. The validity of these koor chits cannot, however, be decided at this juncture. I also find *prima facie* that items 6 and 7 of the Schedule 'A' properties were purchased by the second Respondent from third parties and these properties do not appear to be *prima facie* traceable to Govindasamy

and Govindammal. Out of these two properties, item 6 was transferred to a third party prior to the institution of the suit. Indeed, the admitted position is that there are several prior transfers-both by way of settlements in favour of members of the family and, more importantly, by sale deeds to third parties-including by developing flats as regards item No.5 of the A Schedule properties. It also appears *prima facie* that the first and second Applicants and some of their sisters executed a “no objection cum consent deed” on 25.11.1998 in respect of the sale of some properties to third parties. For all these reasons, I find that the balance of convenience is not in favour of granting an order of interim injunction as it would cause great hardship not only to the parties to the suit but also to third parties. In the facts and circumstances, the Applicants should await final disposal for relief, if any. Therefore, the application is liable to be dismissed.

11. In the result, the application for the grant of an interim injunction is dismissed.

WEB COPY

26.05.2020

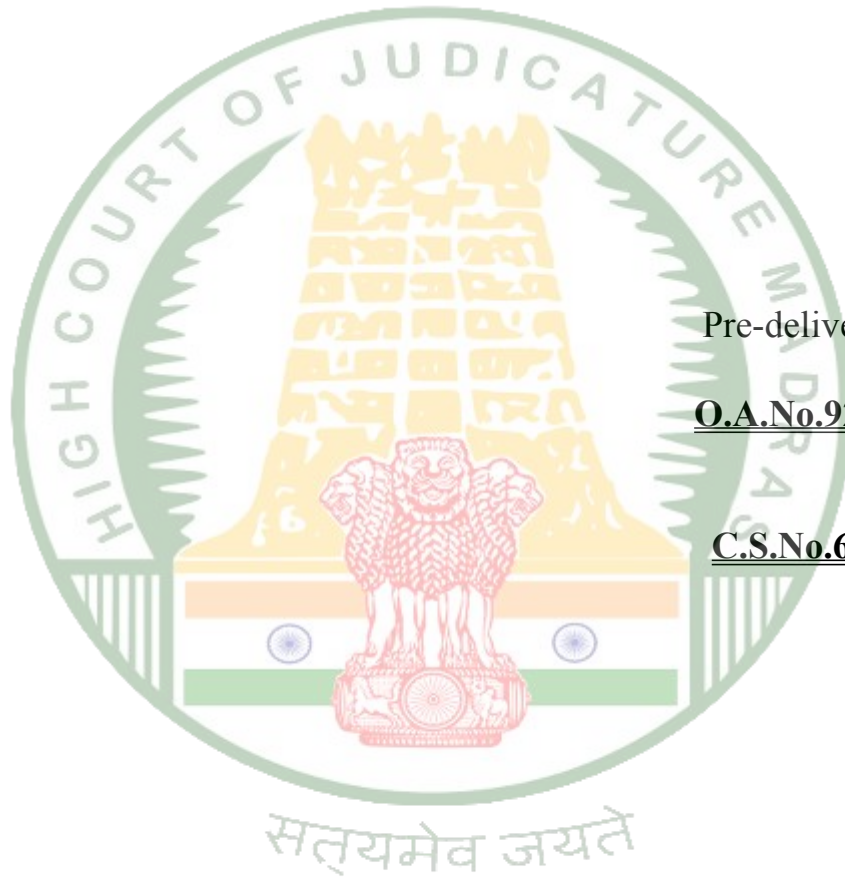
Speaking/Non Speaking order

Index : Yes/No

Internet: Yes/No

SENTHILKUMAR RAMAMOORTHY,J

kal/rrg



Pre-delivery order in

O.A.No.928 of 2019

in

C.S.No.602 of 2019

WEB COPY

26.05.2020