

O.A.No.1196 of 2019

in

C.S.No.730 of 2019

P.T. ASHA, J.

This application has been filed seeking an order of ad-interim injunction restraining the respondents jointly or severally or by and through or their agents, servants, or any other person from claiming through them from selling or alienating or encumbering the schedule mentioned properties in any manner.

2.The suit C.S.No.730 of 2019 has been filed by the applicant for a partition in respect of her 1/3 share in the suit schedule properties and for an injunction and rendition of accounts. The plaintiff/applicant would contend that the properties subject matter of the suit belonged to M.A.V.Narayana Rao. The plaintiff would contend that the suit properties are the undivided family properties in which the plaintiff and the defendants have a right over the property. She would further submit that her request to partition has not been met with the desired result. She would further submit that she had issued a Legal Notice dated 18.04.2018 demanding Partition and for Cancellation of the Settlement Deeds dated 06.07.2016 and 20.07.2005.

Since there was no response to the said notice the suit has been filed for the abovesaid relief.

3.O.A.No.1196 of 2019 has been filed for the grant of ad-interim injunction. In the affidavit filed in support of the application, the plaintiff would simply contend that the defendants/respondents cannot alienate the properties till the final verdict and if it is sold it would be put irretrievable hardship and agony.

4.A counter has been filed by the 1st respondent *inter alia* contending that the applicant and the 4th respondent are the daughters of M.A.V.Narayana Rao and the 1st defendant's sister had requested their father either to distribute the property owned by him or to pay the Principal of the shares. Taking into consideration the above request, the parents agreed to pay Rs.15 lakhs each to the petitioner and the 4th respondent herein and also to settle the two properties Plot Nos.19 and 20 in M.A.V. BROUGH layout in favour of the two. The 1st respondent would contend that his father had paid a sum of Rs.15 lakhs each to both the applicant and the 4th respondent and had also settled the properties as agreed. In furtherance to

this, the petitioner had executed confirmation affidavit on 27.07.1998 agreeing that she would not make any claim in the other properties standing in the name of her father. A similar confirmation affidavit has also been executed by the 4th respondent. The 1st respondent further contended that in the year 2005, his two sisters demanded their father to settle some more properties in their names. Since the applicant and the 4th respondent were constantly pestering the parents the father decided to effect a partition among the family members and accordingly, on 14.09.2005, a partition was executed among the family members which is registered in Doc.No.6081/2005 on the file of the SRO, Tiruppur. The applicant and the 4th respondent were allotted properties under this document. The jewellery was entirely settled on the two daughters and the reference has been made in the Partition Deed. Thereafter, the parents had executed two registered Wills in respect to the Schedules 2 and 3 properties in favour of the 1st defendant's son, the 2nd and 3rd respondents. In fact, a portion of the property was acquired by the Highways Department and from the compensation of Rs.40 lakhs received, his father paid Rs.20 lakhs each to the grandson and granddaughter.

5.The lands described as Schedule 9 was settled in favour of the 1st defendant by his father. Likewise, the Schedule 10 property was also settled by the father in favour of the 1st defendant in respect of the Schedule 7 properties his mother Rukmani Bai had bequeathed the property in favour of his wife and his wife has filed probate/proceedings for grant of Letters of Administration and in this proceedings, the applicant has given her consent affidavit. In paragraph 12 of the counter affidavit, the 1st respondent would state as follows:

"12.I respectfully submit that insofar as Schedule I, IV, V, VI are concerned, I am always ready for amicable partition and it is the petitioner who did not come forward partition in spite of my request and insofar as the Schedule II is concerned, the property could not be traced. As far as schedule II, III, VII, IX and X are concerned it is already settled by my father."

6.The respective learned counsels also submitted arguments on the basis of affidavit and the counter affidavit. The suit is one for partition and

there is no relief for declaration. Admittedly, Schedules III, VII, IX and X has been allotted to the 1st defendant and his family members through their Settlement Deeds and Wills. The 1st respondent has also stated that Schedules I, IV,V and VI are available for Partition and that it is the applicant was has not come forward for the partition. It is the categorical case of the 1st respondent that its impossible to trace the Schedule VIII property. He would therefore contend that the suit has been filed with the malafide intention and therefore, this application has to be dismissed.

7.The suit is one for Partition and for an injunction and this Court has to find out if the applicant has made out a *prima facie* case for grant of ad-interim injunction. Although the applicant would refer to the Settlement Deeds and Wills in favour of the 1st respondent and his family the suit has not been filed for declaring these documents as null and void but is only filed for partition. Admittedly, Schedule II, III, IX and X properties had been settled and bequeathed to the plaintiff and his family members. The plaintiff has not questioned the Settlement Deeds and further, she has given her consent for the probate.

8.In these circumstances, since the respondents' title has been admitted to some extent there cannot be an injunction in respect of the same. However, in Paragraph 12, the 1st respondent had contended that Schedule I, IV, V and VI are available for partition and therefore, it is for the applicant to move forward from there.

9.That apart, the learned counsel for the 1st respondent would submit that he has no objection being an injunction granted in favour of Item Nos.I, IV, V and VI which are the common properties. Considering the fact that the 1st respondent has *prima facie* established that the plaintiff has no right to schedule II, III, VII, IX and X. There cannot be an injunction in respect of these properties. Since there is an admission of the respondents, the Schedule I, IV, V and VI are the joint family properties which is to be partitioned, there shall be an order of injunction restraining the respondents,

their men, agents or persons claiming under them from selling or alienating
or encumbering the suit schedule properties.

This Original Application is partly allowed.

18.08.2020

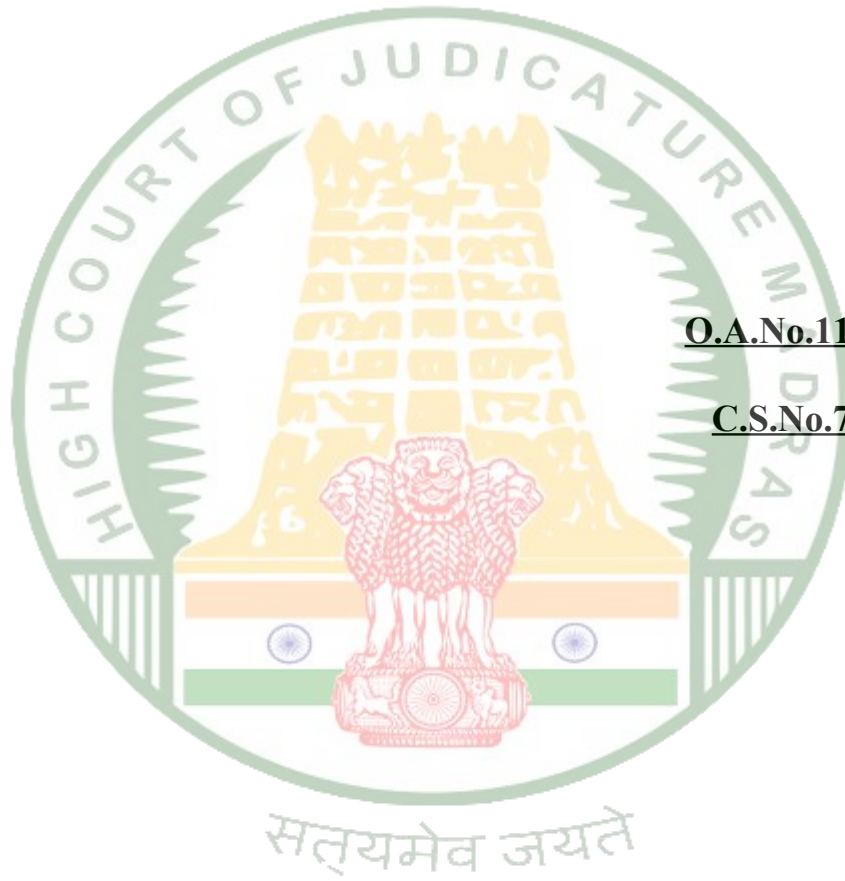
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