

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11th DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

O.A. No.479 of 2020

and

A.No.2132 of 2020

in

C.S. No.259 of 2020

1.Sunil Kumar aged about 52

S/o Rishab Chand Jain.

2.Anil Kumar aged about 52

S/o Rishab Chand Jain.

3.Dinesh Kumar aged about 46

S/o Rishab Chand Jain.

Residing at No.203, East Coast Road,
Injambakkam, Chennai - 600115.

... Applicants/Plaintiffs
(in O.A. No.479 of 2020)

-Versus-

1.Gyanlata aged about 80 years,

W/o Parasmal Jain,

AH Block, 3rd Street,

208, 1st Floor, F1,

Anna Nagar, Chennai – 600 040.

2.Sindhu Building Equipments Ltd,

No.2, 1st Lane, Race Course Road,

Guindy, Chennai – 600 032.

3.S.Ganesh aged about 55 years,

S/o Sokalingam,

No.28, Sucons Apartments,

2nd Floor, Crescent Park Street,

T.Nagar, Chennai – 600 017.

... Respondents/Defendants
(in O.A. No.479 of 2020)

O.A. No.479 of 2020:-

Original Application praying that this Hon'ble Court be pleased to pass an order of ad interim injunction restraining Respondents, any one claiming through them from disturb in the plaintiff's share of the property pending disposal of the suit.

A.No.2132 of 2020

1.Sindhu Building Equipments Ltd,
No.2, 1st Lane, Race Course Road,
Guindy, Chennai – 600 032.

2. S.Ganesh
S/o Sokalingam,
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2nd Floor, Cresent Park Street,
T.Nagar, Chennai – 600 017.

...Applicants

vs

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S/o Rishab Chand Jain.

2.Anil Kumar aged about 52
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3.Dinesh Kumar aged about 46
S/o Rishab Chand Jain.

Residing at No.203, East Coast Road,
Injambakkam, Chennai - 600115.

4. Gyanlata aged about 80 years,
W/o Parasmal Jain,
AH Block, 3rd Street,
208, 1st Floor, F1,
Anna Nagar, Chennai – 600 040.

...Respondents

Application praying that this Hon'ble Court be pleased to vacate the interim order of injunction dated 07.10.2020 granted in O.A.No.479 of 2020.

These applications having been heard on 16.07.2021 in the presence of Mr.V.Lakshmi Narayanan, Advocate for the applicant in O.A.No.479 of 2020 and for the respondents 1 to 3 in A.No.2132 of 2021 and Mr.T.Mohan for Mr.M.S.Murugesan, Advocates for the respondents 2 & 3 in O.A.No.479 of 2020 and for the applicants in A.No.2132 of 2021 and Mr.E.Prabu, advocate for the 1st respondents in O.A.No.479 of 2020 and for the 4th respondent in A.No.2132 of 2021 and upon reading the Judges Summons and the Affidavit of S.Ganesh filed in A.No.2132 of 2021 and the order dated 09.02.2021 made in O.A.No.479 of 2020 and having stood over consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto and this Court having observed that the injunction granted by this Court in O.A.No.479 of 2020 is in order as being the Co-Sharers of the property, their interest to the extent of 50%, is liable to be protected and on the other hand, if the injunction is to be vacated the right of the plaintiffs to secure their interest in the property would stand negated,

it is ordered as follows:-

That the order of interim injunction granted in pursuance of the order dated 07.10.2020 made in O.A.No.479 of 2020 restraining the respondents therein or any one claiming through them from disturbing in the plaintiff's share of the property morefully setout in the schedule thereunder be and is hereby made absolute.

2. That the A.No.2132 of 2021 do stand dismissed.

3. That the C.S.No.259 of 2020 be posted on 13.09.2021.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
11th DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)i/c

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

KY

12.08.2021

O.A. No.479 of 2020
and
A.No.2132 of 2020
in
C.S. No.259 of 2020

ORDER

DATED :11.08.2021

THE HON'BLE MR.JUSTICE
V.PARTHIBAN

FOR APPROVAL: 12.8.2021

APPROVED ON: 12.8.2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11th DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

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...Respondents

Application praying that this Hon'ble Court be pleased to vacate the interim order of injunction dated 07.10.2020 granted in O.A.No.479 of 2020.

These Applications coming on this day before this court for hearing the court made the following order:

The applicants herein are the second and third defendants in the suit. The respondents 1 to 3 herein are the plaintiffs in the suit and the fourth respondent herein is the first defendant in the suit. The suit has been filed to pass a preliminary decree declaring that the plaintiffs are entitled to half share in the suit schedule mentioned property and other consequential reliefs and O.A.No.479 of 2020, has been filed by the applicants/plaintiffs seeking interim injunction restraining the respondents/defendants from disturbing the share of the plaintiffs in the subject property pending disposal of the suit.

2. This application has been filed to vacate the interim order of injunction dated 07.10.2020, granted in O.A.No.479 of 2020.

3. The facts and circumstances which gave rise to the filing of the present application and the original application in the suit are briefly stated hereunder:

(i) The plaintiffs/respondents 1 to 3 herein have filed a suit for partition of property mentioned in the schedule appended to the plaint, claiming $\frac{1}{2}$ share for themselves and the remaining $\frac{1}{2}$ share to be partitioned to the fourth respondent herein, the first defendant in the suit. The claim of the plaintiffs is that originally the suit property belonged to one Parasmal Jain, the deceased husband of the first defendant in the suit, the fourth respondent herein. According to them, the said Parasmal Jain died on 11.08.1986, leaving behind his mother Sajjan Bhai and the first defendant in the suit, his wife as the surviving legal heirs. The plaintiffs claim their right under the Will dated 14.07.1986, left by the deceased Parasmal Jain and as according to them, the deceased Parasmal Jain and the first defendant, his wife had no issues and the plaintiffs were the nephews of the said Parasmal Jain, born to his brother Rishab chand Jain who predeceased Parasmal Jain. The said Rishab chand Jain had four sons and three of them are the plaintiffs and one Rajesh Kumar whose whereabouts are not known according to the plaintiffs and they have no connection with him whatsoever and vice versa.

(ii) According to the respondents 1 to 3 herein, the plaintiffs in the suit, at the instance of the executor of the Will viz., one Paras singh munoth who was none other than the brother of the first defendant and brother-in-

law of the testator, had filed O.P.No.434 of 2008 before this Court for grant of probate. The plaintiffs along with the first defendant had participated in the probate proceedings. The probate was infact granted by this Court by judgment dated 30.04.2014. According to the applicants herein, the first defendant in the suit appeared to have sold the property to them claiming exclusive right under another Will dated 07.08.1986, left behind by Parasmal Jain.

(iii) While the suit was pending, the first defendant/fourth respondent herein has sold an extent of portion of the schedule property measuring an extent of 9135 Sq.ft with 2000 Sq.ft ACC Shed comprised in R.S.Nos.84/1A, 85/1A in Block No.2, Velachery Village, Mambalam-Guindy Taluk, Chennai to the second and third defendants who are the applicants herein, *vide* a registered sale deed dated 06.02.2009, registered as document No.492 of 2009.

(iv) Subsequently, another portion of the aforesaid property measuring to an extent of 12214 Sq.ft with 2000 Sq.ft ACC shed was also purchased by the applicants herein, the defendants 2 to 3 in the suit, from the first defendant by way of another sale deed dated 06.02.2009, registered as Document No.493 of 2009 before the Sub-Registrar, Velachery. Both the sale deeds were executed on the same day. The Sale was effected by the first

defendant claiming an exclusive and absolute right under Will dated 07.08.1986. The total area which was purchased by the applicants herein is to an extent of 21,349 Sq.ft out of the larger extent of vacant land 36,543 Sq.ft. After the purchase by the applicants, the land remained in possession of the first defendant, was to an extent of 15,194 Sq.ft.

(v) Thereafter, it appeared that the probate granted by this Court was revoked at the instance of these applicants, stating that they were bonafide purchasers of the subject property. The learned Judge of this Court after taking note of the objections of these applicants and also the facts as set out above, had revoked the probate granted by this Court *vide* judgment dated 18.10.2016 in T.O.S.No.12 of 2009. The judgment and decree was also confirmed in O.S.A.No.472 of 2018 on 24.01.2020.

(vi) According to the applicants herein, after the purchase of the aforementioned properties, they have been carrying on the business by investing large sums of money. According to them, at the time when they purchased the property, they verified all the documents including legal heirship certificate issued by the competent authority dated 20.04.1988. In the legal heirship certificate, it was stated that the only legal heir of the Parasmal Jain was shown as the first defendant *viz.*, his wife. In the document, it was clearly mentioned that the parents of the deceased

Parasmal Jain predeceased him and the deceased had no issues from the marriage between him and the first defendant. In the said circumstances, the applicants herein had purchased the property from the first defendant, as no other legal heir was shown in the said certificate issued by the Government Authority.

(vii) While matter stood thus, the respondents 1 to 3 herein, namely the plaintiffs having failed in the earlier attempt to inherit the properties under the Will dated 14.07.1986 which is now being contested as a Testamentary Original Suit, has now come forward with the present suit, claiming one 1/2 share on the ground that at the time when Parasmal Jain died on 11.08.1986, he left behind his wife, the first defendant and his mother Sajjan Bhai were his actual legal heirs and that, their claim is in respect of the share devolved on Sajjan Bhai, their grandmother.

(viii) According to the plaintiffs in the suit, dehors their claim under the Will, they were otherwise entitled to one 1/2 share in the property belonging to the mother of the deceased. According to the plaintiffs that the mother of the deceased Sajjan Bhai died on 20.12.2004. The plaintiffs are collectively entitled to one 1/2 share of the property left behind by Parasmal Jain through their grandmother and the another one 1/2 share will go to the

first defendant, his wife.

(ix) According to the plaintiffs, the first defendant in the said circumstances, had no right whatsoever to sell the property on her own, claiming any absolute right to the property. As the defendants 2 & 3 were likely to interfere with their 50% share in the property being the purchasers of the subject property, knowing fully well that the litigation has been pending before this Court, an interim injunction was sought in O.A.No.479 of 2020. This Court on consideration of the pleadings, has granted interim injunction as prayed for in O.A.No.479 of 2020 on 07.10.2020.

(x) The present application is filed by the defendants 2 & 3 seeking to vacate the interim injunction granted by this Court. The case of the applicants herein is that they were innocent purchasers of the property, believing that there was a Will executed by the deceased husband of the first defendant dated 07.08.1986, under which, she had been given an absolute right over the subject property and also the fact that when the legal heirship certificate was shown to them dated 20.04.1988, it had clearly mentioned that only the first defendant was the legal heir of the deceased Parasmal Jain and the parents of the deceased predeceased him. They were not aware of the existence of the deceased mother Sajjan Bhai at all.

(xi) According to the applicants herein, the first defendant having sold the property for a huge consideration, had switched sides and joined with the respondents 1 to 3 herein, the plaintiffs in the suit and in fact, she has been living with the first plaintiff at his residence for several years now. In fact, in the T.O.S. Proceedings, she had become hostile and gave evidence against these applicants, despite the fact that she was the one who executed the sale on the basis of her exclusive claim of right over the subject property. The plaintiffs and the first defendant have colluded together and filed the present suit to defeat the lawful right of the applicants over the property. The interim injunction which has been in force as on date, has been causing grave hardship to the applicants, as they have not been able to develop the property in furtherance of their business interest for several years, despite the fact that they had legally purchased the property, way back in 2009.

4. The factual narrative as above constitute the background in filing the present application to vacate the interim injunction granted by this Court on 07.10.2020 in favour of the respondents 1 to 3 herein, the plaintiffs in the suit.

5. The learned counsel Mr.T.Mohan, appearing for the applicants

herein reiterated the above facts. The learned counsel would submit that the present suit has been filed fraudulently in order to defeat the legitimate rights of the bonafide purchasers *viz.*, the present applicants herein. According to him, the suit is not maintainable as their right to claim over the property had been rejected by this Court earlier in the Testamentary Original suit, resulting in probate being revoked by this Court *vide* judgment and decree dated 18.10.2016 in T.O.S.No.12 of 2009, which was also confirmed by the learned Division Bench in O.S.A.No.472 of 2018 dated 24.01.2020. The present suit thereafter filed collusively by the plaintiffs along with the first defendant.

6. According to the learned counsel, having taken huge sale consideration for the sale of the property, it is not open to the first defendant or the respondents 1 to 3 herein now to claim any right over the property at all. The learned counsel in the course of the arguments, would draw the attention of this Court to a rough sketch of the total extent of the subject property and marked portions purchased by the applicants herein. The learned counsel thereupon suggested that after all if the plaintiffs were to succeed in the suit, they are entitled to only one $\frac{1}{2}$ share of the property and the other one $\frac{1}{2}$ share belonging to the first defendant had in any case was sold by her to the applicants herein by receiving huge sale consideration from them.

7. In the above circumstances, the applicants are willing to give up the marked portion in red colour to an extent of 3078 Sq.ft as a part of 50% of the property available to the share of the plaintiffs and to that extent, injunction may be vacated. According to the learned counsel, in view of the operation of the injunction against the entire property, the applicants have been prevented from developing the property and put the same to use for the advancement of their business. The learned counsel also submitted that only the three brothers have filed the suit and the fourth brother one Rajesh Kumar has not been included. The present suit is therefore not maintainable for non-joinder of necessary and proper party. He therefore impressed upon this Court to vacate the interim order of injunction granted by this Court on 07.10.2020.

8. At this, the learned counsel Mr.Lakshmi Narayanan, appearing for the plaintiffs/respondents 1 to 3 herein had serious objections stating that there cannot be any division of property before the suit is taken up for final consideration. The learned counsel submitted that as being co-sharers in the property, the plaintiffs have got a right to seek division of the property by metes and bounds and the division of property cannot be on the terms suggested by the third party purchaser of the property.

9. As far as the rights of the applicants herein as canvassed by them, the learned counsel would submit that the applicants' claim that they are innocent purchasers of the property, is contrary to the facts and records. This Court's attention has been drawn to various proceedings in which the applicants herein were also the parties and at their very instance, the probate which was granted by this Court earlier came to be revoked. These applicants having full knowledge of the Court proceedings, filed an application for revocation of the probate granted by this court in Application No.8366 of 2014 which was ultimately allowed by this court vide Judgment and decree dated 11.01.2016. Thereafter, these applicants participated in several proceedings before this Court in relation to the subject property. Therefore, these applicants have been in the know of things of the litigations and the dispute connected with the property. In the said circumstances, their claim of being bonafide purchasers is to be rejected out right and they are not entitled to be shown any indulgence by this Court on the ground that the applicants are bonafide innocent purchasers.

10. The learned counsel also submitted that the present suit filed by the plaintiffs cannot said to be not maintainable as the scope of the probate proceedings was completely different from the scope of the present suit as

the suit herein has been filed for the partition of the property on the stated grounds. As far as the probate proceedings is concerned, it is only confined to the execution of the Will and nothing beyond that. The learned counsel submitted that it is not for the applicants to dictate what portion of the property they need to enjoy and what other portion of the property to be left to the other sharers namely the respondents 1 to 3 herein.

11. The learned counsel also relied on the following decision in support of his contentions that the division of property when shares of many others involved, there cannot be any precondition of the extent and the boundaries of the property, before the issues were settled by this Court. On the decision reported in **1990 3 SCC 333**, the learned counsel would draw the attention of this Court to paragraph No.9, which is extracted hereunder:

“ 9. The learned counsel, however, lastly submitted that the petitioner in spite of having substantial interest in the estate is losing her right, to prove that the alleged will by Miss Zoe Enid Browne is not a genuine one and that it is a fictitious one. We must point out that by granting a probate, the court is not deciding the disputes to the tile. Even with regard to a probate granted, it can be revoked as provided under Section 263 of the Act in any one of the cases mentioned therein. But the learned counsel for the petitioner submits that the findings of the Sub Court and the High

Court regarding the caveatable interest will come in the petitioner's way in seeking revocation of the grant of probate. It is needless to say that the findings regarding the caveatable interest of the petitioner have a limited effect and are relevant only to the extent of granting of probate. But they cannot deprive his right, if he has any, to invoke Section 263 of the Act and it is up to the petitioner to satisfy the court."

12. The above decision has been cited by the learned counsel to contend that any finding in the probate proceedings has limited effect or relevant only to the extent of granting of probate. Therefore, any observations or finding in the probate proceedings cannot be imported into this suit by these applicants for advancing their case for the purpose of vacating the injunction granted by this Court.

13. The learned counsel would also draw the attention of this Court to paragraph No.20 of the Judgment reported in **1996 2 L.W 73**, which is extracted hereunder:

"20. In Hindu Law-Principles and precedents by N.R.Raghavachariar, 8th Edition (1987), at page 339, the learned author says:-

"Where the undivided interest of a coparcener has validly passed to a stranger either by operation of law as on

the insolvency of a coparcener or by purchase either in execution of a decree or by private contract, he is entitled to claim a partition as against the other coparceners and to enforce it by a suit both during and after the lifetime of that coparcener. "

Lower down, the learned author further says thus:-

"... Such an alienee of an unascertained share in a joint family property cannot claim mesne profits, nor can he insist upon the possession of any definite piece of property. His remedy is to have that share and interest ascertained by instituting a suit for general partition in which the whole of the joint family property should be included and all the necessary parties joined. He can sue for a general partition ignoring any private partition effected between the coparceners. In such a suit he may also pray for allotment to his alienor the items which he has purchased."

14. In the above decision, the learned Judge of this Court has referred to Hindu Law-principles and precedents, the learned author's considered view that alienee of an unascertained share in a joint family property cannot claim mesne profits nor can insist upon the possession of any definite piece of property. The succinct observations would fortify the stand of the plaintiffs, that is not for the applicants herein to dictate that they would give up a part of the property as per their wish from the marked portion of the

rough sketch. The applicants herein cannot be allowed to have open ended right of possession and enjoyment. Such insistence would result in defeating the very right of the co-sharers in the property, that too, at the instance of the third party purchasers. The learned counsel would also refer to the further observations in the same judgment reported in **1996 2 L.W 73**, are extracted hereunder:

“A person, who purchases an undivided share of a coparcener of a joint Hindu family, cannot claim to be put in possession of any definite piece of family property. He does not even acquire any interest in the property sold. He does not become a tenant-in- common with the members of the family. He is not entitled to joint possession with them. He has only an equity to work out his rights by means of a partition standing in his vendor's shoes. The alienee's suit for partition must be one for partition of the entire property and not for the partition of any specific item of, or interest in the family property. Such a suit, however, will not be technically on a par with a suit for partition filed by a coparcener. Such a suit would not have the necessary effect of breaking up the joint ownership of the members of the family in the remaining property nor the corporate character of the family.

A suit by an alienee of an undivided share from a coparcener of a Hindu joint family, will fall under [Article 144](#), so long as property concerned is immovable property.

It cannot be contended that this is not a suit for

possession of any particular item of immovable property as it was a suit for general partition. There cannot be a suit for partition simpliciter, that is to say, a suit for a mere division of joint property without more. Partition in the sense of division is only a step towards the ultimate goal, namely, separate possession of the share in the joint property to which the plaintiff is entitled.

It is true that an alienee of an undivided interest of a Hindu coparcener is not entitled to joint possession with the other coparcener and he is also not entitled to separate possession of any part of the family property. But the alienee is entitled to obtain possession of that part of the family property which might fall to the share of his alienor at a partition. Therefore it is that he institutes a suit for general partition with the prayer that he may be put in possession of that part of the family property which may be allotted to his alienor. The suit is, therefore, a suit for possession of immovable property or on interest therein. Indeed, it is not a suit for anything else. It is wrong to consider his suit as a suit for mere partition. Mere partition will only result in division, but a mere division would not satisfy the plaintiff. What he wants is actual delivery of possession....

The possession of the non-alienating members of the family cannot be deemed to be possession on behalf of the alienee also.”

15. The learned counsel has further drawn the attention of this Court

to the decision reported in **AIR 1985 Madras 283** with reference to paragraph 2 as below:

“2. The order of the learned Judge proceeds on the basis that the respondent has come to purchase 2/3rd share in the suit property and therefore he can be permitted to put up constructions at his risk on condition that he will not make any claim for compensation in future in the event of the plaintiffs succeeding. The question is whether a co-sharer having 2/3rd share in the suit property could be allowed to put up constructions in the suit property even with such a condition as has been imposed by the learned Judge. If the respondent claims to have acquired full title to the suit property and if such a title comes to be questioned by other parties it may be that the court can prima facie proceed on the basis of his full title and permit him to put up constructions, at his own risk and cost without any claim for compensation. But where the respondent has to claimed full title to the suit property, the court cannot permit him to put up constructions on the suit property much to the prejudice of other co-sharers. If the respondent has acquired title to the property only partly, he cannot be taken to be the full owner and he cannot exercise rights to exclusive ownership to the detriment of other co-sharers. Unless he has his share demarcated in a suit for partition or by any other arrangement he cannot put up constructions either on the entirety or on a portion of the property. On the finding given by the learned single Judge

that the respondent has purchased 2/3rd share in the suit property we think that it is not possible to sustain the order permitting the petitioner to put up constructions on the suit property at his risk. The respondent, being a co-sharer, cannot be allowed to cause prejudice to the other co-sharers by putting up a substantial construction during the pendency of a suit for partition filed by the co-sharers. In this view, we are not in a position to uphold the order under appeal on merits.”

16. The learned Division Bench of this Court has clearly held that unless a share is demarcated in the suit for partition or by any other arrangement, no one can be permitted to put construction either on the entirety or on a portion of the property, causing prejudice to the rights of the co-sharers. According to the learned counsel that the above observations would further reinforce the legal principles that it is not for the applicants to insist on a particular portion of the property for development and their complete enjoyment and possession even assuming that they have any right over the property, in the first place.

17. According to the learned counsel, as far as the injunction which is in operation, is only to the extent of disturbing plaintiffs' share in the property, pending disposal of the suit and the possession of the applicants

herein is not being disturbed or interfered with at all. Therefore, in effect, the applicants are not prejudiced by operation of the injunction. In any case, the written statements have been filed in the matter and the suit can be posted for trial at an early date, so that, the partitioning of the suit property by metes and bounds could be finalised.

18. The learned counsel for the applicants herein in his reply would rely on the same decisions as relied on by the learned counsel for the respondents 1 to 3 herein. He would particularly refer to paragraph No.1 of the order of the learned Division Bench of this Court reported in **AIR 1985 Madras 283**. According to the learned counsel, in that case, the party therein had purchased $2/3^{\text{rd}}$ share in the suit property and has put up construction in the entire property. Therefore, the Court was constrained to intervene in the matter. The learned counsel would also submit that Paragraph No.20 which has been extracted supra from the order of the learned Judge of this Court reported in **1996 2 L.W 73**, the learned Judge has also held that where the undivided interest of a coparcener has validly passed to a stranger either by operation of law or on the insolvency of a coparcener or by purchase either in execution of a decree or by private contract, he is entitled to claim a partition as against the other coparceners. Therefore, the right of these applicants cannot be completely negated and

they also have equal right as being the bonafide purchasers of the property.

19. In conclusion, both the learned counsels pleaded their respective claims to be allowed as against each other on the basis of the legal concept of “Balance of Convenience”. The learned counsel for the applicants requested this Court to vacate interim injunction granted by this Court. Per contra, the learned counsel for the plaintiffs/respondents 1 to 3 herein, requested this Court not to disturb the interim injunction already granted by this Court.

20. The learned counsel for the fourth respondent herein, the first defendant in the suit, has made his submissions. The learned counsel attempted to vehemently argue against the interest of the applicants herein, but, this Court however is not inclined to hear him elaborately as the fourth respondent/the first defendant happened to be person who created the entire controversy by selling the property to the applicants herein, without establishing her sole right over the suit property. In any event, the present *lis* is only between the applicants and the respondents 1 to 3 herein and therefore, no credence need to be attached to any arguments from the side of the 4th respondent herein, the first defendant in the suit.

21. This Court heard the submissions of the learned counsels for the

parties and perused the pleadings and the materials placed on record.

22. Although, it is a fact that the earlier suit was filed for grant of probate in respect of the Will left behind by Parasmal Jain dated 14.07.1986 and probate was also granted on 30.04.2014 and yet, it was ultimately revoked at the instance of the Applicants herein by the judgment of this Court dated 18.10.2016. While ordering revocation of probate, this Court felt that these applicants had caveatable interest by being the purchasers of the said property and the matter has been ultimately posted for trial in T.O.S.No.12 of 2009. The revocation has also been confirmed in O.S.A.No.472 of 2018 dated 24.01.2020. This is as far as the earlier litigation by the parties claiming right under the Will dated 14.07.1986 is concerned.

23. But as far as the present suit is concerned, it is entirely premised on the ground that at the time when Parasmal Jain died on 11.08.1986, he had his wife and mother living and they both belonged to class I legal heirs. In the absence of a proved Will, the property had to devolve on both the legal heirs in equal shares i.e., 50-50%. The plaintiffs who filed the suit are the respondents 1 to 3 herein, claim their right to the one 1/2 share which devolved on their grand mother Sajjan Bhai. She having died in 2004, her

one 1/2 share ought to have devolved on them collectively. Therefore, the sale of the large portion of the subject property to the applicants herein by the fourth respondent herein is questionable, as prima facie the fourth respondent herein cannot have exclusive and sole right over the subject property in order to deal with the same, as she dealt with by selling the property to third parties on her own.

24. Although much has been said about the collusive nature of the suit that the first defendant has ultimately joined hands with the plaintiffs with a view to undo the sale to the applicants herein, the fact of the matter is that one 1/2 share ought to have devolved on Sajjan Bhai, the mother of the deceased and after her demise on 20.12.2004, that one 1/2 share ought to have thereafter devolved upon the respondents 1 to 3 herein, the plaintiffs in the suit. This position, if it is proved in the suit, the plaintiffs would become entitled to have the property divided by metes and bounds by the orders of this Court. The offer made by the applicants herein for giving up more than 3,000 Sq.ft of the property purchased by them under valid sale consideration to protect the ultimate interest of the plaintiffs though appears attractive at the precipitous understanding, but, in the face of the case laws cited by the learned counsel for the respondents 1 to 3 and also his arguments, the offer of the applicants herein cannot be the reason or basis for varying the

injunction order passed by this Court.

25. As contended by the learned counsel for the respondents 1 to 3 herein, it is not for the applicants herein to suggest the plaintiffs as to what share in the suit property to be enjoyed by them in the event of partition suit being allowed. In fact, on behalf of the respondents 1 to 3 herein, the learned counsel has clearly submitted that the applicants herein are occupying the front portion of the property having locational advantages and if the suggestions are to be agreed upon, the respondents 1 to 3 herein would be relegated to the rear portion of the property fetching less value, compared to the front portion occupied by the applicants herein.

26. This Court is in agreement with the above submission of the learned counsel for the respondents 1 to 3 herein, in this regard. The purchasers of the joint family property, on their purchase, would step into the issues of the co-sharers and in case, they want to divide the property, it can be either by mutual agreement or by seeking partitioning of the property through Court proceedings. This position has also been explained in the above cited decisions. In the absence of any arrangement mutually between the parties, the applicants herein may have to wait till a decision is taken in the suit for dividing the property by metes and bounds. In the event of vacating the interim injunction granted by this Court and allowing the

applicants herein to have exclusive and unhindered right over a major portion of the property, the same would certainly amount to interfering with the equal rights of the respondents 1 to 3 herein, the plaintiffs in the suit. The vacation of interim injunction ought not to result in negation of the rights of the plaintiffs/the co-sharers in the property to the extent that even if they were to succeed in the suit, they would not be in a position to realise the actual one 1/2 share value in the property to be divided between the parties equitably.

27. In fact, on behalf of the applicants herein, the learned counsel submitted that the suit was collusive as between the plaintiffs and the first defendant and the first defendant had become hostile against the applicants' interests subsequent to the sale of the property to the applicants and that, the suit has been fraudulently laid. These arguments may not stand the scrutiny of this Court for the reason that no doubt the conduct of the first defendant towards the applicants was questionable and not to be appreciated. These matters are always in the realm of one's perception as to whether the first defendant played any fraud on the applicants or she genuinely believed there was a Will in support of her claim of exclusive right over the property.

28. This Court is of the considered view that as far as the respondents 1 to 3 herein are concerned, their right to inherit the property is

independent of the probate proceedings which has been contested in the T.O.S.No.12 of 2009. From their perspective, the injunction granted by this Court in O.A.No.479 of 2020 is in order as being the co-sharers of the property, their interest to the extent of 50%, is liable to be protected. On the other hand, if the injunction is to be vacated the right of the plaintiffs to secure their interest in the property would stand negated.

29. For the above said reasons, this Court is of the view that the balance of convenience is in favour of respondents 1 to 3 herein namely the plaintiffs in the suit and hence, the interim injunction as granted in O.A.No.479 of 2020 dated 07.10.2020 is made absolute and the Application in A.No.2132 of 2021, seeking to vacate the injunction stands dismissed.

30. Post the suit for hearing on 13.09.2021.

Sd./-V.P.N.J
11.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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