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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY  
and  
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

O.S.A.No.327 of 2021  
and C.M.P.No. 19858 of 2021

1.R.Krishnamurthy  
2.Thirugnanaselvi  
3.Aswini Krishnamurthy ..Appellants/ Respondents 1 to 3/  
Defendants 1 to 3

Vs

1.S.Sangeetha  
2.S.Subathra ...Respondents 1 & 2/  
Applicants/Plaintiffs

3.Axis Bank,  
Virugambakkam Branch,  
Rep. By its Manager,  
No. 2/8, 1<sup>st</sup> Floor, 1<sup>st</sup> Cross Street,  
Lampert Nagar, Virugambakkam,  
Chennai - 600 092. .. 3<sup>rd</sup> Respondent/4<sup>th</sup> Respondent/  
4<sup>th</sup> Defendant

Appeal preferred under Order XXXVI Rule 1 of C.P.C. read with Clause 15 of the Letters Patent against the order and decree dated 31.08.2021 in Application No.1178 of 2021 in C.S.No. 106 of 2021.

Prayer in Application No.1178 of 2021:

Application No.1178 of 2021 in C.S.No.106 of 2021 filed and Judge's Summons issued under Order XIV Rule 8 of the Madras High Court Original Side Rules, read with Order XXXVIII Rules 1, 2, 5 and 6, read with Section 115 code of Civil Procedure (CPC), praying to direct the respondents/defendants to furnish security for a value of Rs.2,87,88,703.40, failing which orders may be granted for Attachment Before Judgment of the properties, morefully described in the Schedules herein in the Judge's Summons.



#### Schedule-A

All that piece and parcel of Commercial Unit on the Third Floor in "B" Block of "Shri Krishna's Lake View Estate" ad-measuring 3797.870 sq.Ft. Together with a common area comprised in the undivided share of land of about 1733.200 Sq.Ft. Out of the total extent of 14986 Sq.Ft. In the Schedule-A property and the building, approved by the CMDA in Planning Permit No.B/Spl.BLDG/66A/B/2010, dated 16.02.2010, vide Letter No.BC1/12111/09 and the same has been approved by the Executive Officer Porur Special Grade Panchayat, vide PA.MU.No.44/2010, dated 31.05.2010 in Mu.Mu.No.134/2010.

#### Schedule-B

All That piece and parcel of land comprised in Old Sy.No.2/1 in Kumily village, Kumily Panchayat and ward, Peermade Taluk, Idukki District, bounded on the:

North by : Panchayat Road and Property of Ferndale  
South by : Property of Harikumar  
East by : Property of M.J.Sabu  
West by : Panchayat Road and Property of Ferndale

ad-measuring 10 cents or 4 are 4 Sq.M., within the Sub-Registration District of Peermade and Registration District of Idukki.

#### Schedule-C

All that piece and parcel of land and building with electricity, water and drainage connections (Electricity connection service No.227-038-094) situated in Plot No.79, Old Door No.79, New Door No.14, AVM Colony 3<sup>rd</sup> Cross Street, Virugambakkam, Chennai-600 092, comprised in S.No.84, Virugambakkam Village, No.104, then Mambalam-Guindy Taluk, now Mambalam Taluk, Chennai District, bounded on the:

North by : Plot No.78  
South by : Road  
East by : 10 ft. Road and Children's playground  
West by : Plot No.86

ad-measuring 1035 Sq.Ft measuring as  
North to South on the Eastern side: 23 ft.  
North to South on the Western side: 23 ft.  
East to West on the Northern side : 45 ft.  
East to West on the Southern Side : 45 ft.



within the Sub-Registration District of Virugambakkam and Registration District of South Chennai.

Prayer in C.S.No.106/2021

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Plaint filed under order VII Rule 1 of CPC read with order IV Rule 10 of O.S. Rules Praying

a) to Direct the defendants to pay a sum of Rs.2,87,88,703.40/- (Rupees Two Crores Eighty Seven Lakhs Eighty Eight Thousand Seven Hundred and Three and Forty Paise Only) being the monies illegally withdrawn by the defendants to the plaintiffs towards amount due from insurance policies fixed deposits and amounts withdrawn from the bank accounts of the Plaintiffs;

b) Directing the defendants to return the 550 gm of gold being the plaintiff's husband's share of gold in Locker No.U13/7 with Axis Bank, Virugambakkam Branch, Chennai, valued at Rs.28,18,750/- or in the alternative pay the amount of Rs.28,18,750/- being the amount equivalent to the 550 gms of gold deposited in Locker No.U13/7 with Axis Bank, Virugambakkam Branch, Chennai to the plaintiffs;

c) Directing the defendants to pay an interest at 18% p.a. To the plaintiffs on Rs.1,25,77,251/- being the principal amount illegally withdrawn from the bank accounts of the plaintiffs from the date of filing of the suit till the date of its actual realisation.

d) Directing the defendants to pay the Cost of the present suit and;

For Appellants : Mr.S.Ravi

For Respondents : Mr.K.Gowthamkumar  
for R1 and R2

#### JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

This appeal arises from the order passed by learned Single Judge dated 31 August 2021 in A.No.1178 of 2021 in C.S.No.106 of 2021.

2. We have heard learned advocate for the appellants (original defendant Nos. 1 to 3) and learned advocate for respondents (original plaintiffs).

3. Learned advocate for the appellants has submitted that



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directions given by learned Single Judge on an interim application are erroneous on more than one count, since the relief sought in the main suit and in the interim application were essentially identical. The pleadings in both were also the same. Issues are not framed and the burden to disprove the case of the plaintiffs was shifted to the defendants which led to the impugned order. Learned advocate for the appellants has extensively taken this Court through the plaint, interim application on which the impugned order is passed and the reasons recorded in the impugned order and has submitted that what could not be done even after full fledged trial is ordered by the impugned order. Attention of the Court is invited to serious disputes between the plaintiffs and defendants who are close family members (two branches of one tree), the period of the transaction which is the basis in the suit, other disputes / litigations between these two branches and has submitted that the impugned order be interfered with.

4. Learned advocate for both the plaintiffs has vehemently opposed this appeal. It is submitted that the material produced by the plaintiffs are considered by learned Single Judge, which was sufficient to arrive at the conclusion that the defendants were under obligation to pay the amount ordered by the impugned order and in any case that amount was required to be secured which is done by the impugned order. It is submitted that 'note' is also referred to in the impugned order, in which complete details were given by the plaintiffs. It is submitted that no interference be made by this Court. It is submitted that this appeal be dismissed.

5. Having heard learned advocates for contesting parties and having considered the material on record, this Court finds as under:-

5.1 The cause of action as pleaded in the plaint and the relief sought read as under:-

"48. The cause of action for the present suit arose within the jurisdiction of this Court when the husband of the 1<sup>st</sup> plaintiff died on 15.11.2012 leaving behind the 1<sup>st</sup> plaintiff and 3 daughters (including the 2<sup>nd</sup> plaintiff as legal heirs), when the 1<sup>st</sup> plaintiff was inducted into partnership firm M/s.V.Rangasamy & Co. on 18.01.2013 and benefits were given to her to secure her financial needs, when the plaintiffs entrusted the 1<sup>st</sup> defendant with the cheque book of their bank accounts after the demise of the 1<sup>st</sup> plaintiff's husband on the bona fide belief that the 1<sup>st</sup> defendant would



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look after their financial needs, when the firm was acquired by the Company incorporated on 01.04.2013 where the 1<sup>st</sup> defendant was a director, when the 1<sup>st</sup> plaintiff was made a director of the company on 31.07.2017 to secure her financial needs, when certain patent irregularities were discovered in the running of the company on February 2018 where the 1<sup>st</sup> defendant had forged the signature of the 1<sup>st</sup> plaintiff to take over the control of the current account of the company and fraudulently transferred 80,000 shares belonging to the 1<sup>st</sup> plaintiff in favour of the 2<sup>nd</sup> defendant on 25.03.2017, when the defendants had illegally siphoned off funds from the company to purchase properties in his own name, when the 1<sup>st</sup> and 2<sup>nd</sup> defendant undertook to rectify such transfer and believing their words, a Family Agreement Deed was entered into on 22.06.2018, when subsequent to the entering of the said deed, the 1<sup>st</sup> plaintiff unearthed various illegal transfers/ withdrawals from the plaintiffs' bank accounts by the defendants from 2013-2016 to purchase properties in their name, when the defendants threatened the plaintiffs' family with dire consequences when questioned on their illegal activities, when the 1<sup>st</sup> plaintiff filed a police complaint dated 07.02.2019 against his threats, when on 06.03.2019 the 1<sup>st</sup> defendant in writing, admitted his liabilities towards the plaintiffs and agreed to satisfy all the dues to the plaintiffs based on which the police complaint dated 07.02.2019 was withdrawn by the 1<sup>st</sup> plaintiff, when the defendants failed to mend their ways and continued to issue threats to the plaintiffs, when on 25.11.2019 the 1<sup>st</sup> plaintiff preferred a police complaint against the 1<sup>st</sup> defendant, when the 1<sup>st</sup> defendant failed to repay the amount due of Rs.2,87,88,703.40/- till January 2021 and return 550 gms of gold worth Rs.28,18,750/- to the plaintiffs even after receiving legal notice from the 1<sup>st</sup> plaintiff. The legal notice continues even as on date and hence the suit."

x x x

"(a) to direct the defendants to pay a sum of Rs.2,87,88,703.40/- being the monies illegally withdrawn by the defendants to the plaintiffs, towards amount due from Insurance Policies, Fixed Deposits and amounts withdrawn, from the



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Bank Accounts of the plaintiffs;  
(b) to direct the defendants to return the 550 Gm. of Gold being the first plaintiff's husband's share of Gold in Locker No.U13/7 with Axis Bank, Virugambakkam Branch, Chennai, valued at Rs.28,18,750/- or in the alternative, pay the amount of Rs.28,18,750/- being the amount equivalent to the 550 gms. of Gold deposited in Locker No.U13/7 with Axis Bank, Virugambakkam Branch, Chennai to the plaintiffs;  
(c) to direct the defendants to pay an interest at 18% p.a. to the plaintiffs on Rs.1,25,77,251/- being the principal amount illegally withdrawn from the Bank Accounts of the plaintiffs from the date of filing of the suit till the date of its actual realisation, and  
(d) to direct the defendants to pay the costs of the present suit."

5.2 In substance, the grievance voiced in the suit and the reliefs sought are as noted above. The date of filing of the suit is 22 February 2021. Along with the plaint, interim application was also filed being A.No.1178 of 2021. The relief sought in the application was as under:

"Application No.1178 of 2021 in C.S.No.106 of 2021 filed and Judge's Summons issued under Order XIV Rule 8 of the Madras High Court Original Side Rules, read with Order XXXVIII Rules 1, 2, 5 and 6, read with Section 115 Code of Civil Procedure (CPC), praying to direct the respondents/defendants to furnish security for a value of Rs.2,87,88,703.40, failing which orders may be granted for Attachment Before Judgment of the properties, morefully described in the Schedules herein in the Judge's Summons."

5.3 The directions in the impugned order read as under:-

"71. There shall be a direction to the respondents 1 to 3 / defendatns 1 to 3 to furnish security for a value of Rs.2,87,88,703.40 (Rupees Two Crores Eighty Seven Lakhs Eighty Eight Thousand Seven Hundred and Three and forty paise only), on or before 01.10.2021."

5.4 The conjoint consideration of the relief sought in the suit, relief prayed in the form of interim application and the direction given by learned Single Judge leaves no room to hold



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that the direction which could have given against the defendants finally, in substance are given at this stage, not in the form of direction to pay to the plaintiffs but in the form of providing security to that effect. We find that giving any direction in interim application in favour of the plaintiffs can certainly be done, when the plaintiffs can be said to have strong prima facie case, if the balance of convenience is in favour of the plaintiffs and further if non-grant of interim relief is likely to cause irreparable loss to the plaintiffs. We find that, whether plaintiffs, on the basis of the pleadings can be said to have made prima facie case or not itself is an issue coupled with the fact that the suit being barred by limitation is one of the ground raised in appeal, however since the suit is large open, we do not express any opinion in that regard. However, so far rest of the two conditions are concerned, we do not find that in the facts like this, balance of convenience can be said to be in favour of the plaintiffs. This is coupled with the reasons recorded in the impugned order, which in substance are holding various things against the defendants, even though no issues are even framed so far. The documents which are attempted to be relied by learned advocate for the plaintiffs, reference to which is also made in the impugned order are not exhibited documents. Whether these documents can be said to have been legally placed on record or not, is also an aspect, which may be addressed in the trial.

5.5 In totality, we find that not only the plaintiffs were not entitled to any interim relief in their favour during pendency of the trial, the impugned order according to us is without any evidence which can be taken into consideration legally. The impugned order is also, inter alia based on the failure on the part of the defendants to discharge their obligation to disprove the case of the plaintiffs. According to us, this could not have been done. No relief can be granted to the plaintiffs in these facts and with these considerations. The impugned order therefore is unsustainable and the same needs to be quashed and set aside.

6. In view of above, the following order is passed.

6.1 This appeal is allowed.

6.2 The impugned order dated 31 August 2021 in A.No.1178 of 2021 in C.S.No.106 of 2021 is quashed and set aside.

6.3 Liberty is reserved to the plaintiffs to move appropriate application for taking up the suit for early disposal, with further direction to the defendants (present appellants) to cooperate in the trial for expeditious disposal of the suit.



6.4 No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-  
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,  
Original Side,  
High Court, Madras.

+1cc to M/s.Gupta & Ravi, Advocate, S.R.No.65631  
+1cc to Mr.K.Gowtham Kumar, Advocate, S.R.No.65527

O.S.A.No.327 of 2021

GJ(CO)  
SB(03/01/2022)