



A. No.1300 of 2022
in
C.S. No.540 of 2017

V.BHAVANI SUBBAROYAN., J.

This application has been filed to permit the applicant/plaintiff to occupy 1st Floor of the property described as Item No.1 of the plaint schedule more fully described in the schedule to the Judges Summons pending disposal of the suit.

2. Mr. S. Ravichandran, the learned counsel for the applicant/plaintiff would submit that the suit is filed for partition and separate possession of the suit schedule properties by metes and bounds by declaring 1/4 share of the applicant/plaintiff in the suit properties and for other reliefs since the suit Properties belonged to applicant's father who died intestate 04.03.2010 leaving behind his wife, two daughter and one son as his legal heirs, entitled to succeed his estate.

3. It has been further submitted that the applicant's father was a Doctor by profession and established the Hospital by name J.M. Hospital at



No 123, Ragavan Road, Perambur, Chennai-600 011. The applicant studied B.D.S and started her career as a Dentist with her father. The applicant's sister/the Second Respondent also studied M.B.B.S and both of them assisted their father in his practice. After the demise of their father, they started independent practice at the aforesaid premises. The ground floor and first floor of the Hospital was utilized for profession and the second floor of Hospital premises was a residential portion where the applicant's father resided till his life time. After the demise of the applicant's father, the respondents shifted their residence to Anna Nagar in the year 2019. The applicant's brother got married and is living with his mother and the applicant's sister got married to a Muslim and has set up a separate matrimonial home. At present the First Floor and second floor of the said house property is vacant.

4. It has been further submitted that the applicant's father was running a hospital in the name and style of J.M. Hospital and he was very successful and popular Doctor who earned good name in the society and also in the entire area. The First respondent, who is a Graduate in Science



was looking after the family by attending to the education of the children and their welfare. The applicant's mother resided under the shelter of her father and she does not have any independent source of income.

5. The learned counsel for the applicant would further submit that the applicant's father was earning good income and through his hard earned money, he has purchased the suit properties in and around Chennai and also made Fixed Deposits in banks. Some of the suit properties was purchased by the applicant's father in the joint names of the first Respondent and other family members. Neither the first Respondent nor other family members had any individual source of income to purchase any property and all the properties were purchased only by the applicant's father and the second and third Respondents were minors at the time of purchasing the properties.

6. It has been further submitted by the learned counsel appearing for the applicant that the 2nd Respondent herein is occupying Ground Floor portion of the property which is item no.1 of the suit property and practicing her profession and the applicant's mother is collecting approximately



Rs.75,000/- as rents from the tenants of the suit schedule properties and other properties. Despite the respondents are enjoying the properties after the demise of late Dr.Jayapaul, they have not come forward to partition of the same.

7. The learned counsel for the applicant would further submit that the applicant has filed O.A. No.745 of 2017 for an order of interim injunction to restrain the Respondents, their men, agents, servants or any other persons acting under them in any manner dealing the suit properties pending disposal of the suit. After filing counter on the side of the respondents stating that they have no intention to alienate the suit Properties, this Court by order dated 19.04.2018 disposed of the aforesaid application recording the aforesaid submissions made by the learned counsel for the respondents.

8. It has been further submitted by the learned counsel for the applicant that during the pendency of O.A. No.745 of 2017, the 1st respondent alienated her 1/3rd share in favour of the respondents 2 & 3



herein under Seven Documents. Hence, the Applicant/plaintiff has filed O.A No 897 of 2019 for an order of interim injunction directly or indirectly encumbering, alienating, or otherwise dealing with the suit properties. After hearing both side, this Court allowed the aforesaid Application by its order dated 17.12.2019 by restraining the Respondents from directly or indirectly encumbering alienating or otherwise disposing of the suit schedule properties in favour of any third parties pending disposal of the suit. Further, the applicant has also filed Application No.4542 of 2018 seeking directions to the Respondents 1 and 2 herein to deposit a sum of Rs. 1,65,97,796.30 and Rs. 56,74,656.54 lying in Syndicate Bank, Perambur Branch in the credit of the present suit in view of the said amounts also forms part of the estate of the applicant's father. However, only a sum of Rs. 9,00,000/- has been deposited in the credit of the suit as per the order dated 20.06.2019 of this Court since the issue has to be decided only after trial and accordingly, the said application was closed.

9. The learned counsel for the applicant would further submit that the applicant is deprived of her share from and out of the rental income and



the same is being collected and appropriated by the Respondents herein.

Further, the Respondents are not rendering any account in this regard and have been spending the amounts at their whims and fancies. The properties have been alienated by the applicant's mother to complicate the issues though the application for injunction was pending. Taking advantage of the order of injunction restricting to Item No.1, the first Respondent has transferred two items of Properties after disposal of the injunction application with mala-fide intention, though an undertaking was given by the learned counsel for the respondents/defendants that they do not have the intention to alienate the suit schedule properties.

10. It has been further submitted that though the applicant is one of the legal heir of the deceased Dr. A. Jayapal, she is not enjoying any part of the properties left behind by her father and the same is being enjoyed only by the Respondents herein.

11. The learned counsel for the applicant would further submit that the applicant was assisting her father in his profession till his demise and



also practicing as a Dentist. After her father demise, the applicant has been prevented from entering into the property for personal family reasons and it is under the control of the applicant's mother/First respondent and Ground Floor utilized by the Second respondent for her profession.

12. It has been further submitted that the applicant is practicing along with one of her friends namely Dr. M.Saveetha in her Clinic after leaving the said property who is having her clinic namely Saveetha Dental Clinic, at 51/56, First Floor, Yaser Nagar, 4th Street, Vyasarpadi, Chennai 600 036 for the past four years. As the applicant finds that it is extremely difficult to travel from her residence to Vyasarpadi during the peak hours she decided to set up her own Clinic. Therefore, the applicant prefers to set up her clinic in the First Floor of item No. 1 of the suit property since her residence is nearer to it and hence, the applicant has filed the present application to permit her to occupy the 1st floor of Item No.1 of the suit property.

13. Per contra, Mr. Asok Menon, the learned counsel for the



respondents/defendants would submit that the Applicant did not work even for a single day in the hospital run by 1st respondent's Husband, under the name J.M. Hospital at No.123, Raghavachari Street, Perambur, Chennai - 600 011. In fact, after the applicant got married, the 1st respondent's husband was totally devastated and shattered, and never spoke a single word to the applicant after her marriage, until his demise.

14. It has been further submitted that the Applicant herein had never at any point of time used any portion of premises No.123, Raghavachari Street, Perambur, Chennai - 600 011 for practice as a Dentist. Further, the applicant herein had finished her BDS studies in May,2004 and she got married in August, 2004 having fallen in love with one Sri. Suresh. She had started her individual practice in the above premises and that she had assisted her father in her practice is nothing but a utter falsehood, as she herself is well aware.

15. The learned counsel for the respondents/defendants would further submit that since no case whatsoever had been made out for



permitting the applicant herein for occupying the first floor of the property described in Item No.1 in the plaint schedule namely No.123, Raghavachari Street, Perambur, Chennai - 600 011, the applicant herein does not deserve any sympathy from this Court, keeping in mind her conduct for the last several years.

16. It has been further submitted that while the notice dated 18.08.2017 was served by the learned counsel for the applicant/plaintiff informing us that an interim injunction was granted in Application No. 745 of 2017 in the above suit on 03.08.2017 and had also permitted private notice returnable by 03.08.2017 without enclosing suit related papers. When the above case came up before this Court on 11.09.2014, this Court pointed out that no order of interim injunction had been passed in the aforesaid application and in reply the learned Counsel for the applicant/plaintiff has stated that an error had been committed by his stenographer while typing the notice and that by mistake it had been mentioned that injunction had been ordered. Thereafter on 05.02.2018 the applicant herein broke into the property described in the schedule 2 of the plaint along with several rowdy



elements and took forcible possession of the same. When the above case came up before this Court on 06.02.2018, the respondents were directed to hand over the keys of the property described in schedule 2 to the Assistant Registrar -1, Original Side, High Court for safe keeping. Thereafter, this Court has referred this case to the Mediation Centre. In the Mediation Centre, the Applicant insulted the 1st respondent during the discussion with regard to mediation. It plunged the 1st respondent into deep sorrow and it took me a very long time to recover from the trauma generated by that incident.

17. The learned counsel for the respondents/defendants would further submit that when O.A. No. 745 of 2017 came up before this Court seeking for interim injunction, restraining the respondents/defendants from alienating or encumbering the 1st item of the suit schedule property till the disposal of the above suit, an undertaking was given that that the respondents/defendants had no intention to alienate the 1st item of the suit schedule property and accordingly, this Court passed an order of interim injunction restraining the respondents/defendants from alienating or



encumbering the items of the said schedule property namely No.123, Raghavachari Street, Perambur, Chennai - 600 011, pending disposal of the above suit.

18. It has been further submitted that in order to harass the respondents/defendants to the extent possible, the applicant filed Application No. 4542 of 2018 in this Court praying to deposit a sum of Rs. 1,65,97,796.30/- and Rs. 56,74,656.54/- allegedly lying in Syndicate Bank, Saving Bank Account Nos: 60012010098331, Perambur Branch into this Court to the credit of the above suit. The Authorities of the Syndicate Bank produced the statement of accounts of the husband of the 1st respondent and this Court thereafter directed the respondents/defendants as an interim measure to deposit a sum of Rs. 9,00,000/-, in a separate fixed deposit in the 1st respondent's name with all their three children to be shown as nominees with a provision for automatic renewal since the claim of the applicant herein as to the amounts in the bank accounts belonging to the husband of the 1st respondent/1defendant, it has to be decided only after trial. The same was complied with by the respondents/defendants.



thereafter by order dated 17.12.2019, this Court passed interim injunction in A.No. 897 of 2019 restraining the respondents/defendants from directly or indirectly encumbering, alienating or otherwise disposing of the suit schedule properties in favour of any third parties till the disposal of the suit.

19. The learned counsel for the respondents/defendants would further submit the applicant herein is not working anywhere much less with one Dr. Savitha. If indeed she had been working in Vysarapadi, she has admittedly been travelling to Vysarapadi for the past 4 years. There is no change of circumstance now for her to suddenly pray that she may be permitted to occupy the first floor of item No. 1 of the plaint schedule properties while the 1st floor of premises No. 123, Raghavacheri Street, is not lying vacant. Further, the 2nd Respondent is running her clinic in the 1st and 2 floors of the above premises, and the respondents 1 and 2 shall stay often overnight in the 2nd floor. Despite the Applicant is very well aware of this, she has now come forward with this application only with ulterior motives.



20. It has been further submitted that as it was brought to the notice of this Court that the applicant/plaintiff along with several people had broke open schedule-II property, this Court directed both parties to hand over the keys of the Schedule -II property for safe keeping till the disposal of the suit.

21. The learned counsel for the respondents/defendants would further submit that after the demise of the husband of the 1st respondent herein, the applicant's husband Sri. Suresh started threatening the respondents herein and started demanding money and property from them. On several occasions the applicant and her husband attempted to threaten the tenants of the respondents/defendants with dire consequences if they continued to pay the rents to them. In fact the applicant filed A. No. 4541 of 2018 in the above suit praying to appoint an Advocate Commissioner to collect the rental income from the suit property and deposit the same into this Court. That application was dismissed by this Court by order dated 14.02.2019. After issues were framed by this Court on 12.02.2021, the matter was posted 03.03.2021 before the Learned Additional Master-1 for



recording evidence. Even though the case was posted before the learned Additional Master-1 for recording evidence on 15 occasions, but on each occasion the applicant took an adjournment and did not let in evidence. If she had got into the witness box on 03.03.2021, by now perhaps the evidence on both sides would have been completed.

22. It has been further submitted that the applicant herein would be entitled only to 1/3 of 2/3d share in item No.1 of the suit schedule property. She now wants to get into possession with the idea to harass the respondents/defendants to the maximum extent possible. Hence, the respondents apprehend that the applicant and her family, if put into possession, will bring rowdy elements into the premises and create all sorts of problems for the respondents/defendants and also refuse to vacate even after the suit is decreed.

23. Heard the learned counsel for the applicant and the learned counsel for the respondents and perused the material available on records.



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24. It is an admitted fact that the applicant is one of the legal heirs of the deceased Dr.A.Jayapal and she is also entitled for the suit property subject to the disposal of the present suit. Further, the applicant is practising as a Dentist in her friend's clinic situated at Vysarpadi being a BDS Graduate for the last four years. Under such circumstances, the applicant prefers to set up a clinic of her own. Hence, she requires the 1st Floor of the 1st item of the suit schedule property, to practice as a dentist in the said premises since it has been stated that the 2nd respondent is occupying both the floors in the premises.

25. In consideration of the fact that the daughters have some misunderstanding in occupying the same premises of the 1st schedule property, this Court is inclined to pass the following orders to give quietus to the issue till the suit is decided by declaring the respective shares.

i) The applicant shall be handed over the 2nd schedule property to continue her profession as dentist till the suit is decided.



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ii) As the 2nd schedule property is said to have been locked as per the direction of this Court and that the key has been handed over to the Assistant Registrar-I, Original Side, the Assistant Registrar-I, Original Side, is hereby directed to hand over the key of the 2nd schedule property to the applicant in the presence of the counsel for the respondents / defendants.

26. It is made clear that it is only a temporary arrangement to enable the applicant to run a Dental clinic of her own till the disposal of the present suit and not for the permanent occupation of the applicant. As and when the suit is decided by this Court, the applicant is hereby directed to act upon as per the out come of the present suit without any obstruction whatsoever.

27. In the result, this application is disposed of with the aforesaid directions.

27.04.2022

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