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O.S.A.Nos.126, 133 and 287 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2022

DELIVERED ON: 18.11.2022

Coram

The Hon'ble Mr. Justice **PARESH UPADHYAY**
and

The Hon'ble Mr. Justice **D.BHARATHA CHAKRAVARTHY**

O.S.A.Nos.126, 133 and 287 of 2022
& C.M.P.Nos.8246, 8197 & 19045 of 2022

O.S.A.No.126 of 2022

Kumara Rani MeenaMuthiah

.. Appellant

Vs

- 1.Rajah MuthiahChettiar Charitable and Educational Trust,
Represented by its Trustee R.M.Palaniappan
Rani Seethai Hall Building,
No.603, Anna Salai,
Chennai – 600 006.
- 2.Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust
Represented by its Managing Trustee, Dr.A.C.Muthiah
Having its registered office at Chettinad House,
Rajah Annamalaipuram, Chennai – 600 028.
- 3.Mr.M.A.M.M.Annamalai
S/o. Late Kumararajah Sri. M.A.Muthiah
Chettinad House, Raja Annamalaipuram
Chennai – 600 028.
- 4.M.A.M.R.Muthiah
S/o.SekappaChettiar
Chettinad House, Rajah Annamalaipuram
Chennai – 600 028.



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5.Chettinad Logistics Private Ltd.,
Rep. By its Director,
Rani Seethai Hall Building,
No.603, Anna Salai,
Chennai – 600 006.

6.KumararajahMuthiah School of Traditional
Arts and Crafts
Chettinad House, Rajah Annamalaipuram,
Chennai – 600 028.

.. Respondents

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1.KumararajahMuthiah School of Traditional Arts and Crafts
A Public Charitable Society,
Rep. By Secretary
KumararaniMeenaMuthiah
Chettinad House,
Rajah Annamalaipuram,
Chennai – 600 028.

2.KumararaniMeenaMuthiah
W/o. Late Kumararajah M.A.Muthiah,
Chettinad House,
Rajah Annamalaipuram,
Chennai – 600 028.

.. Appellants

vs

1.Rajah MuthiahChettiar Charitable and Educational Trust
Represented by its Trustee R.M.Palaniappan
Rani Seethai Hall Building,
No.603, Anna Salai, Chennai – 600 006.

2.Chettinad Logistics Private Ltd.,
Rep. By its Director,
Rani Seethai Hall Building,
No.603, Anna Salai,
Chennai – 600 006.

.. Respondents



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Dr.M.A.M.Ramaswamy Chettiar of Chettinad
Charitable Trust
Rep. By its Managing Trustee Dr.A.C.Muthiah,
Having its Registered Office at
Chettinad House,
Rajah Annamalaipuram,
Chennai – 600 028.

.. Appellant

vs

- 1.Kumararani Tmt.Meena Muthiah
W/o. Late. Kumararajah Sri M.A.M.Muthiah,
Chettinad House,
Rajah Annamalaipuram,
Chennai – 600 028.
- 2.Rajah Muthiah Chettiar Charitable and Educational Trust
Rep. By its Trustee,
Rani Seethai Hall Building,
No.603, Anna Salai,
Chennai – 600 006.
- 3.Mr.M.A.M.Annamalai,
S/o. Late Kumararajah Sri M.A.M.Muthiah,
Chettinad House,
Rajah Annamalaipuram,
Chennai – 28.
- 4.Mr.M.A.M.R.Muthiah,
S/o. R.Sekkappa Chettiar,
Chettinad House, Rajah Annamalaipuram,
Chennai – 600 028.
- 5.M/s.Chettinad Logistics Pvt. Ltd.,
Rep. By its Director,
Rani Seethai Hall Building,
No.603, Anna Salai,
Chennai – 600 006.



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6.Kumararaja Muthiah School of Traditional Arts and Crafts

Chettinad House, Rajah Annamalaipuram,
Chennai – 600 028.

.. Respondents

Prayer in O.S.A.No.126 of 2022: Appeal preferred under Order XXXIV Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against the order dated 09.02.2022 in O.A.No.412 of 2021 in C.S.No.223 of 2021.

Prayer in O.S.A.No.133 of 2022: Appeal preferred under Order XXXIV Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against the order dated 09.02.2022 in O.A.No.334 of 2021 in C.S.No.198 of 2016.

Prayer in O.S.A.No.287 of 2022: Appeal preferred under Order XXXIV Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against the order dated 09.02.2022 in O.A.No.412 of 2021 in C.S.No.223 of 2021.

OSA No. 287 of 2022

For Appellant	:	Mr.R.Srinivas for Mr.S.Sithirai Anandam
For Respondent No.1	:	Mr.G.Masilamani, Senior Counsel for Mr.T.Sathiyamoorthy
For Respondent No.2	:	Mr.M.S.Krishnan, Senior Counsel for Mr.M.Praveen Kumar
For Respondent No.3	:	No appearance
For Respondent No.4	:	Mr.V.Raghavachari for Mr.T.Balaji
For Respondent No.5	:	Mr.T.Mohan



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for Mr.D.Manimaran

For Respondent No.6 : Mr.AR.L.Sundaresan, Senior Counsel
for Ms.A.L.Ganthimathi

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For Appellant : Mr.G.Masilamani, Senior Counsel
for Ms.A.L.Ganthimathi

For Respondent No.1 : Mr.M.S.Krishnan, Senior Counsel
for Mr.M.Praveen Kumar

For Respondent No.2 : Mr.R.Srinivas
for Mr.S.Sithirai Anandam

For Respondent No.3 : No appearance

For Respondent No.4 : Mr.V.Raghavachari
for Mr.T.Balaji

For Respondent No.5 : Mr.T.Mohan
for Mr.Abhinav Parthasarathy

For Respondent No.6 : Mr.AR.L.Sundaresan, Senior Counsel
for Ms.A.L.Ganthimathi

O.S.A.No.133 of 2022

For Appellant : Mr.AR.L.Sundaresan, Senior Counsel
for Ms.A.L.Ganthimathi

For Respondent No.1 : Mr.M.S.Krishnan, Senior Counsel
for Mr.M.Praveen Kumar

For Respondent No.2 : Mr.T.Mohan
for Mr.Abhinav Parthasarathy



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COMMON JUDGMENT

D. Bharatha Chakravarthy .J

A. The Appeals :

1. These Original Side Appeals arise out of the common order dated 09.02.2022 passed by the learned Single Judge in A.No.1831 of 2006 and O.A. No.334 of 2001 in C.S.No.198 of 2016 and O.A. No.412 of 2021 in C.S. No.223 of 2021 in and by which the prayers of interim injunction restraining the respondents in the respective applications from putting up any construction in the suit schedule 'C' property were rejected.

B. The People :

2. The present set of suits and connected proceedings arise out of the conflict between the members of the family of Rajah Sir Muthiah Chettiar, son of Rajah Sir Annamalai Chettiar and the Trusts/Society declared, constituted and associated with the family.

3. The aforesaid Rajah Sir Muthiah Chettiar was married to Rani Meyyammai and they got two sons viz., Kumara Rajah Muthiah Chettiar and M.A.M.Ramaswamy Chettiar. Kumara Rajah Muthiah



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Chettiar was married to Kumara Rani Meena Muthiah and M.A.M.Ramaswamy Chettiar was married to Sigappi Aachi.

4. While so, on 24.01.1970, the said Kumara Rajah Muthiah Chettiar died untimely. Thereafter his mother viz., Rani Meyyammai died on 01.03.1970. The said Kumara Rajah Muthiah Chettiar and Kumara Rani Meena Muthiah did not have any issues and the said Kumara Rani Meena Muthiah adopted one M.A.M.M.Annamalai on 21.01.1983 (posthumously after the demise of her husband). Similarly, the said M.A.M.Ramaswamy Chettiar and Sigappi Aachi also did not have any issues and on 09.02.1996, the couple adopted one M.A.M.R.Muthiah as their son and the said M.A.M.R.Muthiah is married to one Geetha Muthiah and they have three children by name Meyyammai, Sigapi and Ramaswamy. While so, on 12.05.1984, the aforementioned Rajah Sir Muthiah Chettiar died. On 02.12.2015, the aforementioned M.A.M.Ramaswamy died.

C. The Property :

5. The subject matter of these appeals and the civil suits is an extent of 150 grounds of land in R.S.No.4277, which was adjacent to the palatial residence of the family. Of the said extent, now, an



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extent of 23 grounds is gifted to the Corporation of Chennai to form road and there remains 127 grounds. This property is described as Schedule A property in the suits and in this judgment. About 81.3 grounds of schedule A property is occupied by the school, namely, "Chettinad Vidyashram", which is described as Schedule B property in the suits and in this judgment. The remaining extent of 41.6 grounds is a vacant land surrounded by compound wall which is described as Schedule C property in the suits and in this appeal.

D. The Transactions :

6. On 14.03.1957, the above mentioned Rajah Sir Muthiah Chettiar, Rani Meyyammai Aachi, Kumara Rajah M.A.M.Muthiah Chettiar, Kumara Rani Meenakshi Aachi, M.A.M.Ramaswamy Chettiar and Sigappi Aachi, by a Deed of Trust registered as Document No.213/1957 at the office of the District Registrar, Madras, constituted and founded "Rajah Muthiah Chettiar Charitable and Educational Trust" by transferring and conveying the shares held by them in various companies as mentioned in the schedule to the Trust Deed in favour of the trustees. Rajah Sir Muthiah Chettiar, Kumara Rajah M.A.M.Muthiah Chettiar, M.A.M.Ramaswamy Chettiar, M.P.Damodharam and V.Vaidyasubramanya Iyer were declared



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collectively as the trustees of the said Trust. The objects of the Trust were to establish, run and maintain educational, technical and technological institutions of all kinds in India for the benefit of public; to maintain, support and develop the Annamalai University at Chidambaram, the Lady Pentland Woman and Children's Hospital at Chettinad and such high school or high schools as the trustees may, from time to time, decide and for various other objects mentioned in detail in the Trust Deed.

7. The A schedule property originally admeasuring 150 grounds, originally belonged to the above said Rajah Sir Muthiah Chettiar. By a deed of gift dated 24.03.1960, registered as Document No.517 of 1960, he settled undivided half share in the said property on his son, Kumara Rajah M.A.M. Muthiah Chettiar.

8. Thereafter, by an Agreement of Gift dated 09.03.1969, the said Rajah Sir Muthiah Chettiar and Kumara Rajah M.A.M.Muthiah Chettiar agreed that the aforesaid vacant land be transferred to the Rajah Muthiah Chettiar Charitable and Educational Trust. The relevant clauses in the document read hereunder:-

"Whereas the Donors are desirous of
transferring further assets to the Trust



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as provided for in Clause 10 of the Trust
Deed dated 14.03.1957.

Whereas the Donors are joint owners
of the vacant site delineated in the Green
in the plan attached herewith and are in
possession and enjoyment of the said
vacant plot of land.

Whereas the Donors are desirous of
transferring the same to the above Trust
as its absolute property.

.

5.The Donors have put the trustees of
the Donee in possession of the properties
from today.

The Donors undertake to execute a
document of Gift and register the same as
soon as the exemption is obtained from the
Government of Tamil Nad for the stamp duty
payable for the Deed."

9. But however as aforementioned, suddenly Kumara Rajah
M.A.Muthiah Chettiar died on 24.01.1970. Immediately thereafter, on



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09.02.1970, Rajah Sir Muthiah Chettiar executed a Will in respect of his properties, which was later registered as Document No.79 of 1984. Further, on 28.03.1970, by a Deed of Declaration of Trust registered as Document No.635 of 1970, the said Rajah Sir Muthiah Chettiar transferred his half undivided portion of the above mentioned 150 grounds in favour of Rajah Muthiah Chettiar Charitable and Educational Trust. It is necessary to extract the relevant passages in the said document which read as follows:-

"Whereas the Donor and his eldest son Kumara Rajah M.A.M.Muthiah Chettiar, pursuant to an agreement and declaration dated 9-3-1969 have jointly conveyed the entire property to the Trust and put the Trustees in possession thereof from 9-3-1969.

Whereas it is now thought desirable to execute a registered document in respect of the same

Whereas the eldest son who executed the declaration jointly with the donor died on the 24th Jan.70 and as the execution of a joint document for the entire property is not possible at this



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stage.

x

x

x

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5.The Donor and his eldest son have already put the Trustees of the Donee in possession of the property with effect from 9th March 1969."

10. Thereafter, as mentioned supra, in the year 1984, the said Rajah Sir Muthiah Chettiar died. In the year 1986, Kumara Rani Meena Muthiah and Dr.M.A.M.Ramaswamy Chettiar founded a society viz., "Kumara Rajah Muthiah School of Traditional Arts and Crafts" which started running the school 'Chettinad Vidyashram' in a portion of the aforesaid property. During the course of the time, the school was developed and ultimately the above said Society is in possession and enjoyment of 81 grounds out of the 150 grounds, which is more fully described as Schedule B property.

11. On 10.05.1995, by a registered Gift Deed, Rajah Muthiah Chettiar Charitable and Educational Trust gifted approximately about 27 grounds out of the 150 grounds to and in favour of Chennai Corporation for formation of road. By an unregistered lease deed



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dated 28.03.2011, Rajah Muthiah Chettiar Charitable and Educational Trust having possession of 41.63 grounds (Schedule C Property) which was the balance after the gift to the Chennai Corporation and the extent of 81 grounds being in the occupation of the school, leased out the same to M/s.Chettinad Logistics Private Limited, a company incorporated under the Companies Act, 1956, with a view to develop the said land in the nature of hospital, commercial complex etc., to generate income to achieve the objects of the Trust. By the said lease deed, the lessee agreed to pay a monthly rent of Rs.2 lakhs for the demised land.

12. Thereafter, on 02.08.2012, all the trustees of Rajah Muthiah Chettiar Charitable and Educational Trust decided to develop the said land of 41.63 grounds, which is more fully described as 'C' Schedule property in the suits and by the resolution, authorised the said Dr.M.A.M.Ramaswamy Chettiar to execute general power of attorney in favour of M.A.M.R.Muthiah, the adopted son of Dr.M.A.M.Ramaswamy Chettiar. Pursuant thereof on 10.08.2012, a general power of attorney was executed constituting M.A.M.R.Muthiah as the power of attorney agent of the Trust. Until this time, there was no patent conflict between the members of the family. It is submitted



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across the Bar that, it is thereafter, there was dispute between the father Dr.M.A.M.Ramaswamy Chettiar and his adopted son M.A.M.R.Muthiah. It is alleged on behalf of the said M.A.M.R.Muthiah that it is the other relatives in the family, who had driven a wedge between the father and son. On the other hand, it is alleged by the other members of the family that the son attempted a hostile take over from the father and hence the relationship between them became sour.

13. In this background, on 09.02.2015, by a Deed of Declaration of the Trust, Dr.M.A.M.Ramaswamy Chettiar constitutes another Trust in the name and style of "Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust" registered as Document No.51 of 2015 at the office of the Sub Registrar, Mylapore. Thereafter, on 18.02.2015, the said Dr.M.A.M.Ramaswamy Chettiar executed a Will bequeathing all his properties which was registered as Document No.16 of 2015 and even in the Will, it is stated that the relationship between the father and son has become severely strained. Thereafter, on 29.10.2015, Rajah Muthiah Chettiar Charitable and Educational Trust represented by its Managing Trustee Dr.M.A.M.Ramaswamy Chettiar, executed a registered lease deed,



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leasing out the entire 127 grounds remaining i.e. both the schedule B and C properties in favour of the School/ Society viz., Kumararajah Muthiah School of Traditional Arts and Crafts, duly represented by its Secretary, Kumara Rani Meena Muthiah. It is pertinent to state here that on behalf of M.A.M.R.Muthiah, the Will dated 18.02.2015, the Declaration of Trust dated 09.02.2015 and the lease deed dated 29.10.2015 are contested as being unduly influenced/ fraudulent and also by contesting that Dr.M.A.M.Ramaswamy Chettiar was not in a sound disposing state of mind, as he was suffering from cancer. It is at this juncture, the matters entered the portals of Courts.

E. The Litigations :

14. Firstly, the lessee in respect of the suits 'C' schedule property viz., M/s.Chettinad Logistics Private Limited filed a suit in O.S. No.201 of 2016 on the file of the City Civil Court, Chennai for declaring that the subsequent lease deed dated 29.10.2015 registered as Document No.3203 of 2015 in favour of Kumararajah Muthiah School of Traditional Arts and Crafts as null and void and for a permanent injunction restraining the defendants in the suit from interfering with their peaceful possession and enjoyment. It is a matter of record that, after contest, by order dated 11.04.2016 in



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I.A.No.436 of 2016, there is an injunction which was granted in favour of M/s.Chettinad Logistics Private Limited restraining the respondents from interfering with their peaceful possession of the suit 'C' schedule property. As a matter of fact, the respondents in the suit filed C.M.A.No.68 of 2016 on the file of the V Additional City Civil Court, Chennai and by judgment dated 30.07.2018, the said C.M.A. stood dismissed and the injunction order stood confirmed and thereafter the matter was not carried any further and as on date, the said suit is pending.

15. In the meanwhile, Rajah Muthiah Chettiar Charitable and Educational Trust issued a notice of termination dated 10.02.2016 terminating the lease to Kumararajah Muthiah School of Traditional Arts and Crafts. To the said notice, a reply notice was issued by the said Society on 09.03.2016. On 28.03.2016, C.S.No.198 of 2016, on the file of this Court, was filed by the Rajah Muthiah Chettiar Charitable and Educational Trust for declaring the lease deed dated 29.10.2015 as null and void and to demolish the existing superstructure and to direct the Society to quit and deliver vacant possession of the entire property and to direct the defendants to pay a sum of Rs.3 crores as damages for use and occupation of the suit



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property and for a permanent injunction. In the said suit, applications for injunction restraining the School/Society from putting up further constructions were filed in O.A. Nos.238 and 239 of 2016 and by a common order dated 26.06.2019, the said injunction was refused, considering the fact that the School which was in possession of the

land, needed the building for its purposes. The matter was carried on appeal by way of O.S.A.No.194, 196 and 165 of 2020 and by judgment dated 01.10.2020, recording the undertaking given by the learned counsel appearing on behalf of the Society that they will not claim any equity on the basis of the constructions put up by them and that they will not put up further constructions, the order refusing injunction was confirmed. Thereafter, in May 2021, the first defendant in the suit in C.S.No.198 of 2016 viz., Kumararajah Muthiah School of Traditional Arts and Crafts filed O.A. No.334 of 2021 seeking an injunction restraining the plaintiff in the suit from putting up construction in the suit C schedule property being 41.63 grounds which was the vacant land separately surrounded by a compound wall.

16. On 14.06.2021, Kumara Rani Meena Muthiah also filed a



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suit in C.S.No.223 of 2021 for partition of the entire property being 127 grounds and for separate possession of 5/32 share to her. In the said suit, O.A.No.412 of 2021 was again filed for an injunction restraining the defendants including Rajah Muthiah Chettiar Charitable and Educational Trust, M.A.M.R.Muthiah and M/s.Chettinad Logistics Private Limited from putting up any further construction in the 'C' schedule property of the suit. The above two applications for injunction in both the suits, between the same parties and the disputes being one and the same, were taken up together for disposal by the learned single Judge, who by an order dated 09.02.2022, dismissed the applications for injunction. Aggrieved by the same, the present Original Side Appeals are filed.

17. It is pertinent to state here that in the meanwhile, since the Rajah Muthiah Chettiar Charitable and Educational Trust also obtained a plan approval, the newly constituted Trust viz., Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust challenged the same stating that it is also entitled to the property as the share in the property which has been bequeathed to the Trust and the said challenge in W.P.No.18058 of 2021 was rejected by this Court on 23.06.2022. As against the order in the said writ petition, a



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writ appeal in W.A.No.1459 of 2022 was also filed, which was again dismissed by the Division Bench of this Court by order dated 12.07.2022. It is at this juncture, the aforesaid three appeals are taken up for hearing by this Court.

F. The Submissions :

18.1 Mr.G.Masilamani, learned senior counsel appearing for Kumara Rani Meena Muthiah, the appellant in O.S.A. No.126 of 2022, taking this Court in detail through the pleadings and relevant documents, submitted that the learned single Judge erred in finding that there was no prima facie case for the plaintiffs. The learned senior counsel, would rely upon the Agreement of Gift Deed dated 09.03.1969 and thereafter the Deed of Declaration of Trust dated 28.03.1970 and would submit that though there was an agreement between the father and son to convey the entire property to the Trust. Unfortunately, the same did not happen and it can be seen from the registered Deed of Declaration of Trust that only one half of the 150 grounds is transferred to the Trust. Therefore, the remaining one half of the 150 grounds was not vested in the Trust as there is no registered document, executed by the said Kumararajah M.A.Muthiah



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Chettiar or his legal heirs in compliance of Section 123 of the Transfer of Property Act and Section 17 of the Registration Act and therefore it is only one half of the schedule A property in the suit which is vested in the Trust and the balance will devolve upon the members of the family as per the genealogy and accordingly, Kumara Rani Meena Muthiah has rightly filed the suit for partition.

18.2 The learned senior counsel would further submit that merely because as a Secretary to the Educational Society viz., Kumararajah Muthiah School of Traditional Arts and Crafts, the plaintiff – Kumara Rani Meena Muthiah had taken lease of the entire property, that will not in any manner preclude her from claiming title. As far as the Educational Society is concerned, Rajah Muthiah Chettiar Charitable and Educational Trust was its landlord. Therefore, being the tenant, she cannot deny the title of the landlord. The non-denial of the title of the landlord, will not in any manner affect her title to the suit property and therefore he would submit that the finding of the learned single Judge in this regard as if the plaintiff is approbating and reprobating is unsustainable.

18.3 The learned senior counsel would rely upon the Division



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Bench judgment of this Court in **Dr.Raja Sir M.A.Muthiah Chettiar Vs. Commissioner of Income Tax, Madras** reported in **1983 SCC**

Online Mad 247, where, in respect of the very same Trust viz., Rajah Muthiah Chettiar Charitable and Educational Trust, after going through the very same set of documents, it was held that unless there is a registered Gift Deed, the property cannot be said to be dedicated to the Trust. He would rely upon the reasoning given by the Division Bench of this Court that when the dedication is to the existing Trust and that Trust not being an idol or religious institution, except by way of a registered document, the property could not have been conveyed to the Trust. The learned senior counsel would rely upon paragraphs 6, 8, 12, 13 and 14 of the said judgment in extenso. Thereafter, commenting upon the finding of the learned single Judge regarding the balance of convenience, the learned senior counsel would submit that when the litigations are pending regarding title, which goes to the root of the matter, as far as possible, Courts would protect the status quo existing on the date of the suit and irreparable loss would arise if the Court permits alteration of status quo.

18.4 Learned Senior Counsel would also submit that being the widow of Kumararajah M.A.Muthiah Chettiar, Kumara Rani Meena



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Muthiah, lived in the family amicably with the other members and there was absolutely no dispute whatsoever in respect of any of the properties as things went smooth among the members of the family as well as the Trust. The disputes started in or about 2014, only in the year 2018, she had come to know about the details of the declaration of Trust by deed, whereby it became clear that her only half property was vested in the Trust and, therefore, she had filed the suit thereafter.

18.5 Learned senior counsel, pointing out the nature of building which is sought to be put up being in the nature of 14 storied hospital cum commercial complex, would submit that such a development, cannot be permitted to come up. Learned senior counsel relied upon the judgment of the Honourable Supreme Court of India in **Maharwal Khenwaji Trust (Regd.) Faridkot Vs. Baldev Dass** reported in **2004 (8) SCC 488** for the said proposition. Learned senior counsel also relied upon the judgment in **Manari Parvathi Amma and Ors. Vs. Nellikkal Parvathi Amma and Others** reported in **1982 SCC Online KER 179** for the proposition that a lessee from a co-sharer is entitled to the rights of the lessor and can also enforce partition simultaneously and the same are not mutually



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destructive.

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18.6 Mr.AR.L.Sundaresan, learned senior counsel appearing for the Kumararajah Muthiah School of Traditional Arts and Crafts Society, once again reiterating the above submissions, would submit that the Educational Society is the defendant in the suit in C.S.No.198 of 2016. When the defendant attempted to put up further construction, it was due to sheer necessity as they were not permitted to use some of the floors, being violative of the fire safety norms pursuant to the Kumbakonam School accident and therefore only in the context of dire necessity, constructions were made for the school. But in the case of the other side viz., Rajah Muthiah Chettiar Charitable and Educational Trust, firstly the same is a commercial venture consisting of basement upto 14 floors. Therefore, it will permanently and irreparably alter the nature of the suit property. He would submit that the possession of the said suit C schedule property has been consistently and from the very beginning disputed by the Educational Society. He would submit that with sound disposing state of mind, the managing trustee has executed a lease deed in respect of the entire property in favour of the Educational Trust. The subsequent medical certificate given by the doctor at the time of



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admission into the hospital itself would prove that the lease deed was validly executed. Several of the deeds in respect of the family members are executed from home only.

18.7 Learned senior counsel would submit that the finding of the learned single Judge as if Kumara Rani Meena Muthiah has been taking different stand in both the suits is factually incorrect as even in the original written statement as well as the injunction application in C.S.No.198 of 2016, it is clearly averred that only half of the property belongs to the Trust and the balance devolve among the members of the family and therefore, there is no different stand which is taken in both the suits. He would further submit that the Rajah Muthiah Chettiar Charitable and Educational Trust, took a willful and reckless risk in depositing the fee for planning permission etc., which they ought not to have done. The fee itself approximately being Rs.40 crores, it can be seen that the project would be of worth about Rs.500 crores and therefore such a huge improvement cannot be permitted to be made, when the dispute of title is at large to be decided in the suit.

18.8 Mr.R.Srinivas, learned counsel appearing for the appellant



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in O.S.A. No.287 of 2022 would submit that the appellant Trust viz., Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust is also sailing along with Kumara Rani Meena Muthiah and the educational society. He would submit that the Rajah Muthiah Chettiar Charitable and Educational Trust is not a religious Trust but a secular one. Initially, only shares were dedicated to the said Trust and even though both the daughters-in-law of the family viz., Kumara Rani Meena Muthiah and Sigappi Aachi were also propounders, they were precluded from being trustees to the said Trust. As a matter of fact, the document dated 09.03.1969 clearly is an agreement of gift and the words used in this document 'desirous', 'undertake', would clearly demonstrate that it is not a concluded transfer. In any event, it cannot stand the scrutiny of Section 17 of the Registration Act. Once the Agreement of Gift is not a concluded contract, when on 24.01.1970, Kumara Rajah Muthiah Chettiar died, then of the 50% of the extent of property which belonged to him devolved upon his mother Rani Meyyammai - 25% and his wife Kumara Rani Meena Muthiah - 25%. Subsequently, when his mother passed away, 25% belonging to her devolved on her legal heirs belonging to both the sons and therefore it can be easily deducted that Dr.M.A.M.Ramaswamy Chettiar came to be vested with 27.77 grounds



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out of the suit property. From the extract of the town survey register which is of the year 1971, it is clear that the suit A schedule property stands jointly in the name of the estate of Kumara Rajah Muthiah Chettiar and Rajah Muthiah Chettiar Charitable and Educational Trust. Dr.M.A.M.Ramaswamy Chettiar executed a Will, by a reading of which, it would be clear that of the residue of his assets which are not expressly dealt with by the other bequests are bequeathed to the appellant Trust i.e., Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust. Therefore, the appellant Trust is also claiming share in the property. He would submit that from the Government Order rejecting the plan approval passed by the original authority, it would be clear that the entire A schedule property is vested with the school authorities as it is shown as the site for the school and therefore the very further classification as B and C schedules are artificial and the school is in possession and enjoyment of the entire property. Therefore, he would submit that prima facie, the Rajah Muthiah Chettiar Charitable and Educational Trust does not have the title, nor it can be said to be in possession of the property and thus there is no prima facie case in favour of the said Trust to put up any construction in the suit schedule C property. Once there is a dispute as to the title and the possession is also being disputed, the balance of convenience



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clearly lies only in maintaining the status quo of the schedule C property which is a vacant land surrounded by a compound wall as on date. The alteration of status quo would result in irreparable prejudice to the parties.

18.9 Learned counsel also specifically taking this Court through paragraph 78 of the judgment of the learned single Judge would submit that the finding therein as if the earlier Division Bench judgment relates to the present suit schedule property is factually incorrect. Similarly, the finding of the learned single Judge in paragraph 80 that the gift deed executed in favour of the Corporation and the Agreement of Gift are not challenged is incorrect in law as there was no occasion for the parties to challenge the same. Therefore, the order of the learned single Judge is not at all sustainable and prayed that that appeals be allowed.

19.1 Opposing the above submissions, Mr.M.S.Krishnan, learned Senior Counsel appearing on behalf of Rajah Muthiah Chettiar Charitable and Educational Trust, would submit that, on the face of it, the lease deed allegedly executed by Dr.M.A.M.Ramaswamy Chettiar on 29.10.2015 was soon before his death on 02.12.2015. He was



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suffering from Stage IV of the cancer and was not in the sound disposing state of mind. He did not convene any meeting of the Trustees nor any decision was taken by the Board of Trustees to execute the lease deed. Unilaterally, the said Dr.M.A.M.Ramaswamy Chettiar alone is alleged to have executed the lease deed. Further, he would submit that, for such a huge extent of 127 grounds in the heart of the city, the demised rent is only a sum of Rs. 1,20,000/- per year which works out to a paltry sum of Rs.10,000/- per month. The lease is executed for a period of 25 years and the lessor is prevented from terminating the lease and it also mandates entering of fresh lease deed. Thus, on a bare perusal of the lease deed, the nature of the fraudulent transaction will be evident.

19.2 Learned senior counsel would further submit that, Kumara Rani Meena Muthiah was in thick of things even from the first document dated 14.03.1957 of constitution of the Trust and, therefore, she cannot plead ignorance. He would submit that by a reading of the Agreement of Gift Deed dated 09.03.1969 along with Deed of Declaration of Trust dated 28.03.1970, it would be clear that, there was intention to dedicate the property to Trust and the Trust was put in possession of the property. The same is enough to convey



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the title to the Trustees and no further document is necessary. In any event, even the much bleated claim, is only 5/32 share, and when her own Educational Society is in possession of more than 81 grounds of the property, there was no question of laying claims on the Schedule C property. He would submit that, all the pleadings made by the appellants herein when their construction was sought to be injuncted, would be squarely applicable to the present applications also. They cannot be permitted to blow hot and cold. When they have made submission that they will not claim any equity by putting up construction and the very same undertaking is given on behalf of the respondent / Trust that they will not claim any equity on account of the development of the property in the event of losing their suit and hence there is no necessity at all for grant of an interim injunction.

19.3 The learned Senior Counsel would submit that, when Kumara Rani Meena Muthiah accepted lease of the entire 127 grounds for her Educational Society from the Rajah Muthiah Chettiar Charitable and Educational Trust and she is contesting the suit for upholding the said lease deed and therefore, on the same strength she cannot turn the tables and claim that Rajah Muthiah Chettiar



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Charitable and Educational Trust does not have title in respect of the property. By taking this Court through the various documents, over a period of time, he would submit that, the entire family acted and with due intention and conducted themselves all along for over a period of forty years as if the entire suit property was that of the Trust property. While so, belatedly, now the suit for partition is only an abuse of process of law. The entire attempt is made only to stall the construction. Having failed to vacate the injunction in favour of M/s.Chettinad Logistics Private Limited, first attempt is made by filing an injunction application in the suit filed by the Rajah Muthiah Chettiar Charitable and Educational Trust. Having failed in the attempt, the second suit for partition is filed so that one more attempt to stall the construction can be made by filing an application for interim injunction. As a matter of fact, third attempt was also made by filing the aforesaid writ petition and writ appeal and, therefore, he would submit that the entire applications as well as these appeals are gross abuse of process of law. He would submit that, the possession of the suit Schedule C property, is unquestionable and it would be clear from the Agreement of Gift Deed dated 09.03.1969 and the Deed of Declaration dated 28.03.1970. When the property is only sought to be developed, there



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was no occasion for the other side to feel aggrieved and therefore, prays for dismissal of the appeals.

19.4 Mr.V.Raghavachari, learned counsel appearing on behalf of M.A.M.R.Muthiah, the adopted son would submit that, the allegations about the strained relationship between the father and son are not at all relevant to the instant case as the proposal for development of the property started in the year 2012 itself which would be clear from the minutes of the meeting of the Board of Trustees dated 02.08.2012 very much during the life time of M.A.M.Ramaswamy Chettiar. As a matter of fact, he had already executed power of attorney in favour of his son even during his life time. That being the situation, during the fag end of his life, it is only the other members of the family, who had poisoned his mind otherwise and when he was not in a sound disposing state of mind, weak and fragile due to the disease, coerced him to execute the deed of lease as well as the Will against the interest of his own son.

19.5 Mr.V.Raghavachari, learned counsel, taking this Court through the various documents would submit that, as a matter of fact, Kumara Rani Meena Muthiah always had the knowledge of these



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facts and the same would be clear from the pleadings in the suit filed by the M/s.Chettinad Logistics Private Limited before the City Civil Court. Taking this Court through the findings of the learned City Civil Judge in the interim application, he would submit that, the findings would clearly reflect the knowledge of the entire affairs and having waited till the last hour, belatedly, the suit is filed. Learned counsel also would submit that, even during the arguments in the earlier injunction application when the Educational Society wanted to put up construction for the School, arguments were made as if they are concerned only with the 81 grounds and they are not concerned with the balance of 41.63 grounds. Now, they have turned around and sought for the present injunction. Learned counsel would also submit a compilation of judgments in support of his proposition that the dedication to a charity need not necessarily be by a registered instrument. Learned counsel more specifically relied upon the judgment of the Supreme Court in the case of **Kalyanasundaram Pillai Vs. Karuppa Moopnar** reported in **AIR 1927 PC 42**. Reference would be made in respect of the other judgments submitted by him, if necessary, at the relevant stage of the case.

19.6 Supporting the above two learned counsel, Mr.T.Mohan,



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learned counsel appearing on behalf of M/s.Chettinad Logistics Private Limited would submit that, in the present appeals, this Court is concerned with the correctness or otherwise of the order and for the said purpose, the only question which would arise is that, whether or not the learned single Judge has correctly exercised his discretion in giving a finding as to the prima facie case and balance of convenience. He would submit that, when the property is a vacant land and only construction is being put up, the same will not in any manner diminish the value of the property and will not in any manner hamper the other side from enjoying the family properties for the purpose of the School. Therefore, no exception can be taken in respect of finding about the balance of convenience. As far as prima facie case is concerned, the learned counsel taking this Court through the judgment of the City Civil Court in CMA No. 68 of 2016 would submit that, the possession of the Suit C Schedule property by M/s.Chettinad Logistics Private Limited got confirmed on 30.07.2019. When their possession and enjoyment is protected by a duly contested interim order, these very petitions are a direct attempt to undo the said injunction order and hence are prima facie bad. The said company, having entered into the lease with an object of developing the property has been put to irreparable loss. He would



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therefore submit that, no exception can be taken to the finding of the learned single Judge so as to make out a case under Clause 15 of Letters Patent for this Court to interfere.

G. The Points for Consideration:

20. All the learned counsel appearing on behalf of the parties addressed this Court at length as if it is the final hearing of the suits. We have considered the said submissions and perused the material records of the case. In these intra-court appeals arising out of an interlocutory order, when the learned single Judge has exercised his discretion to permit the development in the C schedule property by refusing to grant the injunction which is prayed for, the primary question before us is as to whether or not the learned single Judge has exercised his discretion in accordance with law and whether it requires interference? To determine the same, the points which arise for consideration are as follows:-

1. Whether the applicants in the injunction applications and those who are supporting the same, have made out a prima facie case?

2. Whether the balance of convenience is in favour of the grant of interim injunction as prayed for



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by the parties?

3. Whether permitting construction would result in irreparable injury to the appellants ?

21. As far as Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust is concerned, firstly, it can be seen that the said Trust is constituted by Dr.M.A.M.Ramaswamy Chettiar. He himself was party to the resolution dated 02.08.2012 resolving to develop the C schedule property. He had executed a general power of attorney towards the said object on 10.08.2012. In the Deed of Declaration of Trust dated 09.02.2015, the suit property is not the subject matter which is dedicated to the trustees. When he executed the Will dated 18.02.2015, the suit property does not find place in the schedule of properties though he has expressly mentioned all the immovable properties. When the Will has been presented for grant of probate, the suit property is not mentioned in the schedule to the petition nor it was valued in the list of assets in the petition. Therefore, there is prima facie force in the contention of the respondents that the claim of Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust is only an afterthought. As a matter of fact, the writ petition filed by them in W.P.No.18058 of 2021 for the very same attempt to prevent



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the construction was dismissed and they withdrew the writ appeal in W.A.No.1459 of 2022. Therefore, we find force in the contention of the respondents that there is no prima facie case on the part of the appellant in O.S.A.No.287 of 2022.

22. As far as the appellant in O.S.A.No.133 of 2022 is concerned, the society is only claiming rights as per the lease deed dated 28.03.2011. At this stage itself, it may not be correct for this Court to render any opinion as to the correctness or otherwise about the free state of mind of Dr.M.A.M.Ramaswamy Chettiar, his authority to execute the said lease deed, the alleged lopsided clauses of the lease deed in respect of the amount of rent, renewal clause etc., which have to be gone into only in the trial, after due examination and cross-examination of the parties. But as far as the claim of possession is concerned, prima facie, when injunction was confirmed in favour of M/s.Chettinad Logistics Private Limited in I.A. No.436 of 2016 in O.S. No.201 of 2016, it is still not open for the school society to contend that it is in possession in the present injunction application filed in the year 2021. This apart, the observations made in the order of this Court dated 28.03.2016 when the appellant -school society wanted to put up further construction, in which there



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is a categorical finding that the Trust desired to develop C schedule property and it is only the B schedule property which is in possession of the appellant school society, also stares at them. Further, it is agreed across the bar that the schedule C property is also all along maintained as a separate entity duly surrounded by compound wall. All these factors, clearly point out that there is no prima facie case in respect of the claim for possession by the said appellant viz., Kumara Rajah Muthiah School of Traditional Arts and Crafts as far as C schedule property is concerned.

23. As far as the claim of Kumara Rani Meena Muthiah is concerned, it is true that in respect of the 50% of the schedule A property, there is no registered document conveying or dedicating the same to Rajah Muthiah Chettiar Charitable and Educational Trust and therefore the suit is filed for partition among the legal heirs. The question as to the effect of the Agreement of Gift Deed dated 09.03.1969 coupled with the other documents whether by itself would amount to vesting of the title is the question which has to be answered in the trial which also we would not like to express any opinion at this stage. But however, from the Agreement of Gift dated 09.03.1969, from the relevant portions which were extracted supra, it



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is clear that in any event, possession has been handed over to Rajah Muthiah Chettiar Charitable and Educational Trust. Prima facie the appellant Kumara Rani Meena Muthiah and the other members of the family, had all along conducted themselves and treated the property only as that of belonging to the Trust. Even in the present suit, there is no prayer which is raised regarding the gift of 23 grounds out of the 150 grounds to the Corporation of Chennai. All the family members are in the knowledge of the fact that Rajah Muthiah Chettiar Charitable and Educational Trust is trying to develop the property from the year 2012. When the lease deed was executed in respect of the entire schedule A property in favour of the appellant School Trust, it is the appellant Kumara Rani Meena Muthiah who accepted the lease on behalf of the School Trust as its Secretary in the year 2011. Therefore, the suit filed by Kumara Rani Meena Muthiah to the extent it claims as if she was all along asserting her right for the balance 50% and that the patta was fraudulently transferred behind her back and that she came to know only in the year 2018, prima facie appears not to be factually correct. Thus, we answer the first question to the limited extent of deciding the application for interim injunction and we consciously refrain from rendering our findings on the other questions which are agitated by



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the parties.

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24. On the question of balance of convenience, the respondents only want to develop the property and have categorically undertaken that they will not in any manner claim equity on the basis of the development of the property. It must also be seen that before the present suits before this Court, already in O.S.No.201 of 2016, there is an injunction from in any manner interfering with the possession of M/s.Chettinad Logistics Private Limited. It is with their consent and arrangement, the present development is proposed. Therefore, the prayer in the present injunction applications, directly will have the effect of modifying the said injunction granted earlier that the schedule C property, to the effect that the said company can only be in possession on paper and that it cannot do anything. The is school is conveniently being run Schdule B property. There is no inconvenience or any mischief which is likely to be caused the appellants by the development of the property. Thus, balance of convenience lies in favour of the respondents.

25. If the suits are decreed in favour of the appellants, the respondents have no other go than to walk away by leaving back the



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superstructure or after demolishing and removing the same. On the other hand, if the suits are ultimately to be dismissed, inspite of an order of injunction relating to possession in their favour, the respondents would be put to irreparable loss and injury. The argument that status quo is normally be maintained, would hold good, that if there is any superstructures or facilities are there or if the property is an agricultural property and the nature is sought to be altered. But in this case, the suit C schedule property is a vacant land and therefore the parties cannot insist that it should remain vacant and alteration of status quo will not in any manner result in any injury much less irreparable injury. In a worst case scenario, the suit C schedule property, can be handed over to whoever gets the title, in the same condition as it were before putting up of superstructure. In that view of the matter, the irreparable injury will only be caused to the parties who want to develop the property and not the applicants in the injunction petition. It is pertinent to state here that the above observations, were exactly the arguments of the appellants, in the earlier injunction application which was filed against the school society. Therefore, if the respective parties are in possession, the enjoyment thereof is a concomitant right and by the prayer of injunction the possession cannot be divested indirectly. Thus, we



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answer the questions against the appellants in all the three appeals.

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26. In view of the above, we are broadly in agreement with the various findings of the learned single Judge and the ultimate conclusion reached by the learned single Judge that the injunction applications deserve to be dismissed. Thus, the order of the learned single Judge does not require any interference.

H. The Result:

27. In the result, the following order is passed:-

- (i) O.S.A.Nos.126, 133 and 287 of 2022 are dismissed.
- (ii) The order of the learned single Judge dated 09.02.2022 stands confirmed.
- (iii) The undertaking given on behalf of the learned senior counsel appearing on behalf of the Rajah Muthiah Chettiar Charitable and Educational Trust that they will not claim any equity based on putting up of superstructure pending the suit, is recorded.
- (iv) There will be no order as to costs.



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(v) Connected miscellaneous petitions are closed.

(P.U.J.,) (D.B.C.J.,)
18.11.2022

Index:Yes
mmi

To

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



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**PARESH UPADHYAY.,J
and
D.BHARATHA CHAKRAVARTHY.,J**

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Pre-Delivery Judgment in
O.S.A.Nos. 126,133 and 287 of 2022

18.11.2022.