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C.M.P.Nos.7939, 7945, 7948 & 7949 of 2022
in C.R.P.(PD) No.1456 of 2022

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Reserved on : 28.04.2022

Pronounced on : 27.05.2022

N.SESHASAYEE.J.,

The petitioner in the present CMP.No.7939/2022 is a third party (herinafter would be referred to as 'Bank') to O.S.No.7963 of 2021, and has now filed this application to recall the order dated 22.04.2022 passed by this Court in CRP.(PD) No.1456 of 2022, alleging that the said order was obtained by the revision petitioner / plaintiff in O.S.No.7963 of 2021, by suppression of material facts. And, vide the order now sought to be recalled, this Court has only advanced the hearing of application for interim injunction in the suit to a certain date at the instance of the plaintiff in the suit.

2.1 Facts may be discussed in two parts: This paragraph deals with the title to the property, and the next paragraph would deal with litigations in which a certain property is embroiled in litigation. (For narrative convenience parties would be referred to by their rank in the suit)



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- L.V.Prasad was a doyen of Indian Cinema, and had been conferred with Dadasaheb Palke award. He owned and possessed several properties, of which one of the properties is a residential building in Gandhi Nagar, Adyar, Chennai. It is the subject matter of the present litigation, and henceforth will be referred to as 'the Adyar property'.
- L.V.Prasad had three sons children namely (a) Anand Rao, (b) Ramesh Prasad and (c) Grihalakshmi. Of them, Anand Rao predeceased L.V.Prasad.
- Anand Rao had two sons: Manohar Prasad and Ravishankar Prasad and a daughter Manorama. His widow is Indira. She is the first defendant. Manohar Prasad is the second defendant. Manohar Prasad has a son and a daughter namely Anand Prasad, the plaintiff, and Chandini Prasad, the 6th defendant. Ravishankar Prasad has passed away, and his two daughters are defendants 4 and 5.
- Be that as it may, on 27.07.1990, L.V.Prasad executed a Will bequeathing his assets. So far as the Adyar property referred to above is concerned, it was bequeathed to the second defendant and his brother Ravishankar Prasad. The Will stipulates that *this property would vest in the joint*



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- The said Will of L.V.Prasad came to be probated by this Court in T.O.S.45/1994 and it came to be confirmed by the Supreme Court when it dismissed S.L.P. on 08.10.2001.
- According to the plaintiff, subsequent to the decree passed in the aforesaid testamentary suit attaining finality, on 05.04.2002, a Memorandum of Family Arrangement in the branch of Anand Rao, more specifically between his widow (the first defendant), and his two sons namely Manohar Prasad (the second defendant) and Ravishankar Prasad was entered into. It recites about serious debt-burden of the second defendant and Ravishankar Prasad. It *inter alia* provided that both the sons of Anand Rao would relinquish their right over their properties in favour of their mother Indira, who will now hold these properties in trust for the minor children of both Manohar Prasad and Ravishankar Prasad, that on all her grandchildren attaining the age of majority, Indira would transfer the properties to them.
- Inasmuch as L.V.Prasad had not bequeathed the Adyar property not to Manohar Prasad but to the joint family headed by him, the plaintiff as a



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son of Manohar Prasad claims a share in it by birth.

2.2 Facts on the litigation:

- A certain M/s Kotak Mahindra Bank Ltd., (henceforth would be referred to as 'Bank') moved the Debts Recovery Tribunal in O.A.84 of 2011, for recovery of debts *inter alia* against the second defendant Manohar Prasad and his brother Ravishankar Prasad (now deceased), and obtained a Recovery Certificate dated 09-01-2013 for recovery of about Rs.20.73 crores. During the pendency of the recovery proceedings, the creditor had taken out an application in OA 84 of 2011 for attaching the Adyar property, and on this application a restrain order was initially passed and a final order of attachment was made by the Recovery Officer on 04-02-2017. On 20-02-2017, the Recovery Officer appointed a Commissioner for taking physical possession of the Adyar property and issued a warrant. On 08-01-2018, the Commissioner issued notice to all the certified debtors.
- Now, Indira Anand, the paternal grandmother of the plaintiff (mother of Manohar Prasad) moved the Recovery Officer with M.A.20 of 2018 to



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recall the warrant issued by him to take possession of the Adyar property.

She disclosed about the Will of L.V.Prasd, its probate, about an earlier attachment of the same property by another bank, then about the unregistered Family Arrangement dated 05-04-2002, and contended that the property ultimately belonged to her grandchildren (of who the plaintiff is one). This came to be dismissed by the Recovery Officer, vide order dated 31-01-2018.

- Thereafter, Anand Prasad, the plaintiff, moved the Recovery Officer with M.A.44 of 2018, to stay the order dated 31.01.2018 passed by the DRT in M.A.No.20 of 2018, and M.A.No.45 of 2018, to restrain the respondents from enforcing the said order dated 31.01.2018, or to claim any right / interest over the Adyar property. His efforts though gave early cheers in a certain way, he ultimately lost them when the orders passed in them were confirmed by the Hon'ble Supreme Court.
- He thereafter, preferred a statutory suit within the meaning of Rule 11 of Schedule II of the Income Tax Act, r/w. Section 29 of the Recovery of Debts and Bankruptcy Act, 1993, in O.S.No.7963/2021.
- In this suit, he has taken out an application in I.A.No.3/2021, seeking an



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order of injunction restraining the Recovery Officer from taking possession of the property in question, and that the Recovery Officer remained exparte and still he proceeded to take possession. I.A.No.3/2021 was posted to 13.06.2022. This Court was informed that the Recovery Officer had already taken possession of the first floor of the Adyar property, and that the Commissioner appointed by the Recovery Officer had obtained a consent letter from a permissive occupant of the ground floor portion (the paternal aunt), that it was scheduled to take possession, by the evening of 20.04.2022.

- In this circumstances, the CRP came to be filed before this Court for advancing the hearing of I.A.No.3/2021 to an early date. This Court Vide its Order dated 22-04-2022 disposed of the revision even when the revision was posted for admission, and advanced the hearing of I.A.3/2021 to 27-04-2022, and injuncted the Recovery Officer, the 6th defendant in the suit from taking possession of the remaining portion of the Adyar property till then.



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3. It is in this backdrop, the creditor Bank has approached this Court with the CMP.No.7939/2022, for recalling the above order.

4.1 The learned counsel for the Bank submitted that:

- Anand Prasad/the Plaintiff had filed two applications before the Recovery Officer; one in M.A.No.44 of 2018 to stay the order dated 31.01.2018 passed in M.A.No.20 of 2018, and the other in M.A.No.45 of 2018, to restrain the Bank from enforcing the said order. They came to be dismissed by the Recovery Officer Vide order dated 23.02.2018 chiefly on the ground that if at all the plaintiff was interested in challenging the order of attachment, then he ought to have filed a claim-petition, but he had only interim applications. This was challenged by the plaintiff in A.P.7/2018 before DRT-II, Chennai, and Vide Order dated 29-05-2018, it directed the bank to proceed against the mortgaged properties and suspended the order of attachment.
- Inasmuch as there are no security-properties, the Bank moved the DRAT, Chennai in M.A.11 of 2019. The appellate authority would now hold that



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the Bank need not establish that the judgement-debtor had right over the Adyar property as the litigations are long drawn, that at any rate Manohar Prasad, the second defendant in the suit, had 50% share in the property, and the Family Settlement dated 05-04-2002 was never acted upon by the parties and concluded that the bank was entitled to recover the debt from the Adyar property as well. It proceeded to hold that since at least three properties of the debtors, one each in Mumbai, Andhra Pradesh and Adyar, have been attached, the Bank might proceed against the properties in Andhra Pradesh and Mumbai first, and then to proceed against the Adyar property if required.

- Aggrieved by this the Bank, the petitioner herein, had preferred W.P.No.33319 of 2019 challenging the order passed in M.A. 11/2019. The plaintiff, on his part challenged the order passed by the DRAT in A.P.7/2018 under Article 227 of the Constitution in CRP.No.73/2021 to restore the Chennai property. Both the matter came to be disposed of by a common Order of the First Bench of this Court, vide its order dated 14.07.2021, and this Court permitted the creditor to proceed with the



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auction of all the properties, including the Adyar property. This order was challenged unsuccessfully by Anand Prasad before the Hon'ble Supreme Court.

- After foreclosing all his options the petitioner had instituted O.S.No.7963/2021. Now, whatever the plaintiff needed to contend, he had already made, and whatever order that had been passed earlier to the order passed by the First Bench had already merged with the order of the First Bench, and now with the Hon'ble Supreme Court dismissing the SLP preferred by the plaintiff, he does not even have a *locus standi* to institute the suit.
- Strategically enough the plaintiff did not implead the creditor- bank in the suit, but has impleaded only the Recovery Officer. The Recovery Officer is after all a statutory officer, and he is not a representative of the creditor -bank in any suit or other litigations. To require the impleadment of the bank in the suit, the bank has filed C.M.P.7945 of 2022.



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4.2 Shifting his focus on the maintainability of the suit, Mr.Karthik Seshadri made the following submissions :

- The suit is founded not on the original title of Anand Prasad, and only on the family arrangement dated 05.04.2002.
- Indeed there were three orders of attachment passed, first in 2005, next in 2012 and the third one in 2017. Of the three orders of attachment, the first order was passed by this Court and the next two orders were passed by DRT in 2012 and 2017 respectively.
- Taking the Court through various proceedings, he submitted :
 - (a) The timing of the petitioner moving the Recovery Officer with M.A.No.44 and M.A.No.45 of 2018 is significant. They are filed after the rejection of M.A.No.20 of 2018 filed by Indira Anand.
 - (b) Indira Anand, when she filed M.A.No.20/2018, claimed that she represents the interest of her grandchildren. The Recovery Officer however says that the family arrangement does not disclose who the grandchildren are.



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(c) The foundation for the cause of action of the suit was traced to the aforesaid family arrangement, but that the family arrangement could not have been in existence prior to M.A.No.20/2018 filed by Indira Anand. In an appeal in O.S.A.No.191 of 2017 preferred by Manohar Prasad against the order adjudicating him an insolvent in creditor's IP.NO.5/2013, an affidavit of Manohar Prasad was enclosed with the report of the Official Assignee, he claims that he has absolute right to the extent of 50% over the property in question. There is however no reference to the family arrangement. This apart, after the second order of attachment, Anand Prasad along with his sister Chandini Prasad approached the DRT, and in that affidavit, they laid consistent emphasis essentially on Manapakkam property and not on Adyar property. In either of this document, there is no reference to family arrangement. This is followed by a settlement deed dated 28.01.2019 executed by Manohar Prasad in favour of his mother Indra Anand, who in turn executed another settlement deed in favour of Anand Prasad. In neither of this documents, the family arrangement was disclosed.



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Indeed, Manohar Prasad claims that he is the absolute owner of the property.

- There is a bar under Section 33 to maintain the prayer (b) of the suit.

5. Heard Mr.V.Raghavachari for the revision petitioner / plaintiff. He took this Court particularly through paragraphs 6, 13 and 23 of the plaint, wherein the plaintiff has laid emphasis on his original title based on the nature of bequeath made by L.V.Prasad in his Will dated 27-07-1990.

6. When this Court passed an order advancing the hearing of I.A.3/2021 in O.S.7963 of 2021, it considered it as a kind of order that affected none of the rights of the parties viz-a-viz the subject matter of the suit. After all what was sought by the plaintiff was a right of hearing, which if denied, will render futile the very purpose of instituting the suit. However, bank now alleges that the very suit itself is not maintainable, and has almost hinted that this Court might have been possibly misled when it took cognizance of the suit, and possibly it might have been misled into believing that the plaintiff has a prima facie case.



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7.1 Was this Court in wrong in believing in the *prima facie* maintainability of the suit when it entertained this revision and passed orders advancing I.A.3/2021? This requires some serious consideration of the facts presented before it. They are now stated:

- Admittedly the Adyar property originally belonged to late L.V.Prasad. It is also not in dispute that he had executed a Will dated 27.07.1990, and the same had since been probated. And, the probate-proceedings concluded with the dismissal of the S.L.P. Civil No(s).13613-13614/2021 on 08.10.2021. Therefore the genuineness of the Will can never be debated now.
- In terms of the Will, the Adyar property was bequeathed to testator's grandsons through his predeceased son Anand Rao. But there is a rider to the bequeath, in that it was given to the respective branches of the joint family headed by each of the grandsons, namely Manohar Prasad and Ravishankar.



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- The next question that would arise for consideration is whether a property bequeathed under a Will executed by a male Hindu will be the personal property of the legatee, or will it be an ancestral property. This relates to the construction of the Will, and the Hon'ble Supreme Court in ***C.N.Arunachala Mudaliyar Vs C.A.Muruganantha Mudaliyar & another*** [AIR 1953 SC 495] has held that it depends on the intent of the testator as could be gathered on a construction of the Will. The question whether the property would be ancestral in the hands of Manohar Prasad (the second defendant) and his brother late Ravishankar Prasad has not been decided in any forum thus far.
- If the Adyar property assumes the character of an ancestral / coparcenary property on a construction of the Will of L.A.Prasad in terms of the ratio in AIR 1953 SC 495, then the plaintiff as the son of Mahonar Prasad will be entitled to a share in it by birth. The plaintiff makes a pointed claim to his share by birth in paragraph 6,13 and 23 of the plaint.

The situation now throws open the following possibility: If on a construction of the



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Will of late L.V.Prasad along lines of the ratio in ***C.N.Arunachala Mudaliyar Vs C.A.Muruganantha Mudaliyar & another*** [AIR 1953 SC 495] and the Adyar property is found to be an ancestral property, then necessarily the plaintiff would be entitled to a fractional share in it. Therefore, the Family Arrangement and the documents that it gave birth to, if true they are, might have to be understood contextually, and might have to be even read down. This is a possibility that the facts throw, and is good enough to form a reasonable prima facie view that plaintiff may have something to justify his suit.

7.2 Turning to the orders passed in M.A.No.44 of 2018 and M.A.No.45 of 2018, and all the proceedings subsequently emanated there from, the original title of the plaintiff is not decided. Indeed, the Recovery Officer himself has dismissed these petitions as not sustainable under the procedure. If closely analysed the entire proceedings which M.A.44 and 45 of 2018 had triggered, revolved around the issue whether Adyar property could be attached and sold.

8. Having thus stated, it has to be underscored that there is merit in the contention of the Bank that it was not made a party in O.S.No. 7963 of 2021. This Court does



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believe that in all fairness, the Bank have to be made a party to the suit.

Accordingly, **C.M.P.No.7945 of 2022**, filed by the Bank to implead them in the suit in O.S.No.7963/2021 pending on its file, **is allowed**.

9. Now, maintainability of the suit may require a deeper consideration, and this can be conveniently done by the trial court. For the present this Court cannot consider that the suit is an abuse of judicial process. It requires a deeper investigation. Hence, it is only appropriate that the Bank which is now impleaded as 8th defendant in the suit, approaches the trial Court, places its contention which it has raised before this Court now. Hence, this Court does not consider it appropriate to recall the order that it had passed on 22.04.2022 in C.R.P.(PD) No.1456/2022. It however, must have to be told that the order of this Court has gone defeated since I.A.No.3/2021 could not be taken up for hearing on 27.04.2022, as was ordered by this Court, in view of the pendency of the present C.M.P.No.7939 of 2022 filed by the Bank for recalling that order.

10. The trial Court is now required to dispose of the I.A.No.3/2021 pending on its file, within a period of 15 days from the date of its next posting, and also to hear the



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Bank in I.A.No.3/2021, uninfluenced by any observation of this Court made in paragraphs 7.1 and 7.2. There will be an order of status quo till the trial Court takes up the matter. The trial court is also at liberty to advance the hearing of the case after notice to all the parties including the bank, if it is required.

11. In view of the same, CMP.No.7939 of 2022, CMP.No.7948 of 2022 and CMP.No.7949 of 2022 are closed, while CMP.No.7945 of 2022 is allowed.

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Pre-delivery order in
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