



WEB COPY



A.4441, 4442, 4443, 4444, 4445 & 2148 of 2021
&
O.A.No.361 & 362 of 2021

C.V.KARTHIKEYAN,J.

All these applications have been filed in aforementioned civil suit, which has been filed seeking a declaration that the plaintiffs as executors under the Will dated 21.06.2004, are entitled to administer the estate of the deceased V.Alamelu Ammal and for further direction against the defendant to render accounts for the income received from the various properties from the date of demise of V.Alamelu Ammal and for permanent injunction restraining the defendant from interfering with peaceful possession of the second plaintiff with respect to item No.4 as stated in the plaint.

2.Item No.4 property is Nanjai and Punjai lands situated at Numbal Village, Velappanchavadi and Puliambedu Hamlet of Numbal, totally measuring 3.79 acres.



WEB COPY

3. Heard arguments advanced by Mr.R.Thiagarajan, learned counsel for the plaintiffs and Mr.V.Srikanth, learned counsel instructed by P.Krishnan for defendant.

4. Even prior to examining the facts of the case, it must be stated that the deceased V.Alamelu Ammal must be wondering as to why ever she executed three Wills leading to internecine quarrels among the parties.

5. The first Will has not been produced either by the plaintiffs or by the defendant. The plaintiffs rely on the second Will. The defendant relies on the third Will.

6. It is incumbent on both parties to produce the first Will and examine whether the same had been revoked in the manner known to law or in proper form by executing the second Will and if it has not been so revoked, whether it had been actually revoked in the manner known to law by what is now termed as the third Will.

7. If both the second and third Wills on which both the parties rely



have not been executed in proper form, then both the parties will have to suffer orders.

8.The plaintiffs had filed the petition seeking probate of what can be termed as a second Will. An affidavit had been filed in support of Caveat as envisaged under the Original Side Rules and therefore the Original Petition had been converted into T.O.S.No.44 of 2013. That Testamentary and Original Suit is pending.

9. The defendant, for good measure who relies on what can be termed as a third Will, had filed O.P.No.715 of 2013 which Original Petition is languishing in the bureau of the Original Side. I do not know when it was earlier listed. But it has not been listed before this Court today.

10.It is claimed by the learned counsel for the plaintiffs that he had entered Caveat and had also filed an affidavit in support of the said Caveat, but, it is stated that the said Original Petition, had not been



converted into a Testamentary and Original Suit. Since that is not an issue to be examined by me today, I will leave it that.

11.The bone of contention is with respect to the property at Velappanchavadi for which an injunction had been granted in present suit in O.A.No.362 of 2021. It is the grievance expressed that the said property had already been dealt with and had been deliberately left out of the list of assets in the Original Petition, with which Original Petition had now been converted into TOS No.44 of 2013. Having left that property out of the schedule, it is claimed that the said property has been now included in this particular suit and an injunction has been obtained for the benefit of the second plaintiff who, according to the learned counsel for the defendant was not a direct beneficiary under the Will. It is stated that the father of the second plaintiff had executed a settlement deed in favour of the mother of the second plaintiff and the mother as beneficiary, had again executed yet another settlement deed in favour of the second plaintiff, her son.

12.Pointing out these facts, the defendant has also filed an



WEB COPY

application, in A. No.4442 of 2021 seeking a direction to the plaintiff to cancel those documents. Such a relief can be examined only if those reliefs had been sought in the written statement filed to the suit. Admittedly, such reliefs have not been sought in the written statement.

13. In the written statement, Order VIII CPC also provides that a counter claim can be filed. If such a counter claim is filed, then that counter claim would be in the nature of a plaint and the averments made therein, can be independently examined even if the suit fails on some ground. Not having sought that relief and not having filed any counterclaim, seeking such a relief by filing an application, in my opinion, cannot be entertained and should not be entertained. However, this opinion would not mean that the defendant's right to seek such relief in the written statement is precluded. Provided the law of limitation is in favour of the defendant, and provided other factors and other rules permit, the defendant is always at liberty to include or file a counter claim seeking relief to cancel those settlement deeds.



WEB COPY

14. It is also trite to point out that a claim can be made in the counter claim, only if it is not barred by law of limitation. That is an aspect, which has to be examined only by the defendant independently. The opinion expressed cannot be taken as a liberty granted to the defendant to straightaway overcome any issue of limitation, which might be put against him in this regard.

15. It is further stated that injunction had also been granted by this Court with respect to that property protecting the possession of the second plaintiff. It is now stated by Mr.R.Thiagarajan learned counsel for the plaintiffs that in TOS No.44 of 2013, an application has been filed seeking to include this particular property in the list of assets. TOS No.44 of 2013 is not before this Court and it is not within my jurisdiction to examine that averment.

16. So far as the other applications in this suit are concerned, application No.2148 of 2021 is to appoint the first plaintiff as a receiver/administrator of the estate of Alamelu Ammal. Since the defendant



has filed written statement, it is only appropriate that the parties are relegated to the trial process and appointment of any person as receiver can be canvassed on conclusion of trial. Let the properties therefore remain as they are. I would relegate the parties to trial on that particular issue.

17.If at all any relief is sought in the written statement, then O.A.No.361 of 2021 can be re-examined. The Hon'ble Supreme Court in *Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LRs and Ors 2008 4 SCC 594* had stated that while examining an order of interim injunction, the Court will have to examine possession of the party and also have to examine if there is a cloud created over the title over property. If a cloud is created, then parties should be relegated to file a separate suit for declaration of title and then seek injunction.

18.If the defendant had raised an objection regarding the settlement deeds in the course of the written statement and provided again, if law of limitation is in his favour then the nature of possession of the second



WEB COPY

plaintiff can always be examined as an issue in the suit and whether he is in lawful possession. With that observation, the said application is closed with the interim order already passed to remain.

19.O.A.No.362 of 2021 had been filed seeking to restrain the defendant from dealing with the property. Section 52 of the Transfer of Property Act, 1882 is very clear on this aspect. The owner of the property should inform the Court about any intention to deal with the property, must put the other side on notice about that intention to deal with the property and must reveal the name of the person with whom he would deal with the property and give the details about the consideration and give the choice of pre-emption, and then, if the Court specifically grants leave, deal with the property. Even if permission is granted then in any conveyance deed, the fact that the suit is pending should be mentioned. All these aspects will have to be complied and therefore, I confident that without obtaining leave of the Court, no party can deal with the property. With the said observation, O.A.No.362 of 2021 stands closed.



WEB COPY

20.The defendant, for good measure had also filed several applications. A.No.4443 of 2021 is to disqualify the first respondent from acting as the executor of the estate of the deceased Alamelu Ammal. This is a direction which flows out of application No.2149 of 2021 and since the parties have been relegated to the trial process in A.No.2148 of 2021, this application has become otiose. The first plaintiff cannot claim to be a receiver / administrator. That aspect is made clear. This application can be closed.

21.In the other application No.4445 of 2021 a direction is sought to the plaintiff to produce two particular documents of the year 1992-1993. I am not informed whether the procedure as envisaged in the Code of Civil Procedure, to first issue notice to produce and filing an application under Order 11 Rule 4 CPC had been followed or not. If that procedure had been followed in manner known to law then, if still the documents are not produced an inference under Section 114 (g) of the Indian Evidence Act, 1872 can be drawn. This inference can be drawn only when, during the cross examination questions are put asking the reasons for non-production.



The Application at this stage is closed but the defendant can always take advantage at the time of arguing the main case of the fact that he actually filed this application.

22.Application No.4442 of 2021 had been filed to produce two further documents. Again the procedure as stated in the Code of Civil Procedure will have to be followed and witnesses will have to be cross examined on the reasons for not producing the documents and thereafter arguments will have to be advanced seeking inference to be drawn under Section 114 (g) of the Indian Evidence Act, 1872. Observing as above, this application stands closed.

23.Application No.4444 of 2021 has been filed seeking stay of further proceedings of this particular suit under Section 151 CPC. A specific provision for stay of suit has been provided under Section 10 CPC which is applicable when an earlier suit is pending between the same parties and with respect to the same properties and with respect to the same issue. Here the defendant had joined issue and has filed a written



statement. It is only appropriate that a finality given to the entire litigation I would therefore dismiss the said application.

24.The defendant had also filed application No.4441 of 2021 to revoke the leave granted. This again is with respect to the property which is stated to be out of the jurisdiction of this Court. It is the grievance of the learned counsel for the defendant that the said property was included in the schedule to this suit but excluded in the Original Petition seeking probate of the second Will of Alamelu Ammal. That petition has been subsequently converted as TOS No.44 of 2013. By revoking the leave granted, the plaintiffs would only be relegated to that particular Court where the territorial jurisdiction is vested. Clause 12 of the Letters Patent gives authority to the Court to grant leave if part of cause of action arises within the jurisdiction of this Court. Even if leave is to be revoked, the suit will only have to be transferred to that particular Court having territorial jurisdiction. Both the parties having joined issues here. Let the suit continue here and the issue of inclusion of the property in this suit and the exclusion of the property in the Original Petition and the subsequent



WEB COPY

application in TOS No.44 of 2013 to include the property can be addressed after evidence is recorded. Holding as above, I would therefore close this application.

25.All these applications are accordingly disposed of.

26.Post the suit for framing of issues on 22.09.2022.

sms

09.09.2022

C.V.KARTHIKEYAN,J.



WEB COPY



sms

A.4441, 4442, 4443, 4444, 4445
& 2148 of 2021 & O.A.No.361
& 362 of 2021

09.09.2022