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O.A.Nos.477 & 478 of 2018
& A.No.4837 of 2018
in C.S.No.297 of 2018

K.KUMARESH BABU, J.

(i).O.A.No.477 of 2018 has been filed seeking to grant an ad interim injunction restraining the respondents 1 & 2 their men, agents, representatives or persons claiming under or through them from in any manner alienating the schedule mentioned land either in part or as a whole by way of sale exchange mortgage gift lease or any other form of conveyance pending disposal of the above suit.

(ii)O.A.No.478 of 2018 has been filed seeking to grant an ad interim injunction restraining the respondents 1 & 2 their men, agents, representatives or persons claiming under or through them from in any manner putting up construction on the schedule mentioned land.

(iii).A.No.4837 of 2018 has been filed seeking to vacate the interim injunction granted by this Court in O.A.No.478 of 2018 dated 28.04.2018.



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2. Heard Mr.Surya, learned counsel appearing for the applicant and Mr.R.Singaravelan, learned Senior Counsel appearing for Ms.V.Ambika, learned counsel for the respondents 1 & 2.

3.This Court by its order dated 28.04.2018 had granted ad interim injunction restraining the respondents 1 & 2 their men, agents, representatives or persons claiming under or through them from in any manner alienating the schedule mentioned land either in part or as a whole by way of sale exchange mortgage gift lease or any other form of conveyance pending disposal of the above suit.

4.An application to vacate the interim injunction had also been filed by the respondents 1 & 2, wherein the respondents 1 & 2 had categorically undertook that they will not alienate or encumber the suit schedule property or create any third party interest pending disposal of the suit. They had also made a statement that pending this proceedings any construction is made that the same will not enure to their benefit even to claim damages assuming that the suit is decreed in favour of the plaintiff.



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5.Learned Senior Counsel appearing on behalf of the respondents 1 & 2 would submit that the construction is in midway and an injunction would only depreciate the value of the building and that if the respondents 1 & 2 are permitted to continue the construction, it would appreciate the value of the property and in the event that the suit is being decreed, the respondents 1 & 2 will not claim any equities on the aforesaid construction being put up by them and that they would not claim any damages or compensation for the building put up by them.

6.The said statement was objected to by the learned counsel for the applicant by contending that if the respondents 1 & 2 are permitted to construct the property, it may create a third party interest and is also against the provision of Section 34 of the HR & CE Act.

7.I have carefully considered the submission made by the respective counsel appearing on either side and perused the materials available on record.



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8.It is an admitted case that the construction of the building is midway. If the construction is injuncted, it would neither enure to the benefit of the applicant nor the respondents. But on the other hand, if the building is allowed to be completed, it would definitely have an appreciation over the properties. Further, an undertaking had been made across the bar by the learned Senior Counsel that when in the event, the suit is decreed as prayed for, the respondents 1 & 2 will not claim any equities or even compensation for the development that had been made by them, based on the affidavit filed in A.No.4837 of 2018.

9.In view of such undertaking, I am only of the view that the respondents 1 & 2 may be permitted to continue the construction. However with the condition that in the event, the suit is decreed against them they would not be entitled to claim any equities, damages or compensation for the development that had been made by them.

10.Further, the respondents 1 & 2 had specifically made an averment that pending the suit, they would not alienate or encumber the suit schedule property or create any third party interest.



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11.The said undertaking is recorded and there can be no impediment in making the order of injunction absolute in respect of O.A.No.477 of 2018.

12.In fine, the injunction already granted in O.A.No.477 of 2018 is made absolute, the injunction made in O.A.No.478 of 2018 is vacated and the Application No.4837 of 2018 is allowed.

27.06.2023

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