



O.A.No.653 of 2023 in

C.S.No.133 of 2023

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R.N.MANJULA,J.

This application has been filed seeking interim injunction restraining the 1st respondent / 1st defendant or her men, agents or servants from in any manner whatsoever assigning, transferring, encumbering, alienating or disposing the suit schedule properties morefully described in the schedule to the Judges Summons pending disposal of the suit.

2. The suit has been filed for partition by the plaintiff who is the daughter of the first defendant. The second defendant is the another daughter of the first defendant. The suit schedule comprises of four properties out of which the "D" schedule property is situated at Villupuram.

3. The learned counsel for the applicant / plaintiff submitted that the first respondent / first defendant is making hectic attempts to deal with the suit properties during the pendency of the suit and that would affect the interest of the applicant, even if she could get a successful decree in her favour at the conclusion of the trial.



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4. From the counter filed by the first respondent / first defendant, it is seen that the first respondent has entered into some sale agreement in respect of D schedule property with the third party and received an advance amount of Rs.2,25,00,000/-. So far as the properties in the schedule A, B & C are concerned, there seems to be no imminent apprehension that those properties will also be dealt by the first defendant or the second defendant in any manner before disposal of the suit. So I find no difficulty in granting an interim relief in respect of A, B & C schedule of the suit properties. So far as D schedule property is concerned, even according to the applicant, the said property belonged to her maternal grandfather.

5. The applicant / plaintiff sets up her claim with D schedule property by stating that the owner of the property who is her maternal grandfather died intestate on 31.07.1993. However, he had orally given the said property to the applicant and the second respondent. Having said that the grandfather died intestate, a contradictory stand is taken by the applicant / plaintiff that some oral arrangement has been taken place in respect of the immovable property. On the other hand, the respondents /



defendants have alleged about the registered Will executed by the first respondent's father in respect of D schedule property on 29.06.1989.

6. However, the learned counsel for the applicant vehemently argued that the Will cannot be considered, since it has not been probated. The respondents also admits that the Will is not probated. Even if it is taken that there is no Will and the maternal grandfather of the plaintiff had died intestate, the first respondent will fall under the class - I legal heir of her father along with other siblings, if any. So far as the applicant / plaintiff is concerned, she has been claiming right on the basis of some oral arrangement and he will not stand in any better footing than the first respondent in respect of title with regard to the property under schedule D.

7. The first respondent who is the class - I legal heir of the father has a better right and he has the balance of convenience in her favour. Since the applicant / plaintiff did not establish a *prima facie* case and prove that the balance of convenience lies in her favour in respect of D schedule property, I feel no interim order can be granted as against D



schedule property. Hence this application is dismissed partly in respect of
D schedule property.

8. In the result, this application is partly allowed and the interim injunction is granted in respect of the properties in A, B & C schedule and the application is partly dismissed in respect of D schedule property.

25.08.2023

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