



O.A.No.637 of 2022

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O.A.No.637 of 2022
in
C.S.No.218 of 2022

Reserved on 18.04.2023	Delivered on 07.06.2023
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K.KUMARESH BABU., J

The instant application had been filed seeking for an interim injunction restraining the respondent/defendant for any person claiming from in any manner dealing with, including interfering with applicants use, occupation and enjoyment of the Suit properties morefully described in the schedule.

2.The case of the applicant is that the respondent and applicant are brothers and that the property to the suit schedule belonged to the joint family property of the applicant, respondent and their deceased father. He would further submit that item No.1 of the property to the schedule is a residential property in which the applicant is in portion of the property and the respondent is in possession of the other remaining property. He would further submit that there has been a family arrangement between the parties along with their father in which the item No.1 property as the properties to the schedule has been allotted to the share of the applicant herein. Based



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upon the said family arrangement, the parties have also acted upon in respect of some of the properties. He would also submit that in item No.1 of the schedule property, the applicant and his family are residing there continuously for a very long time. As regards to the item No.2 to the schedule property, the applicant is having an office as being Honorary Council of Finland. Taking advantage of the old age of the father of the parties, the respondent had executed a settlement deed from his father without reference to the MoU/family arrangement that had been entered between the parties. Earlier he had filed a suit for implementation of the family arrangement, dated 10.08.2018, including the oral family arrangement dated 11.09.2002 and also for declaration of the illegal settlement deed and power of attorneys executed by late father in favour of the respondent as null and void and also for a permanent injunction restraining them from in any way alienating or encumbering the suit properties of which somewhere outside the jurisdiction of this Court. The leave to sue application was however dismissed by the learned Single Judge of this Court against which the applicant had preferred an Intra Court Appeal in OSA No.233 of 2022. In the interregnum, the respondent is trying to interfere with the possession of the suit schedule properties to the



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Suit and therefore, he was constrained to file the present Suit seeking for an interim relief.

3.He would also submit that he had also taken out the application in A.No.4385 of 2022, seeking leave of this Court to institute another suit to specifically perform or execute the family arrangement, dated 10.08.2018, including the oral family arrangement, dated 11.09.2002 in respect of this suit schedule properties, in which the respondent is yet to file a counter. He would further submit that he is confident of being successful in the Intra Court Appeal filed against the application to leave to sue. He would further submit even if the Intra Court Appeal goes against him, it is always open to the applicant to initiate appropriate proceedings in various Courts as per the jurisdiction to the property concerned. He would further rely upon the letters written by the father of the parties to submit that these letters would substantiate the existence of a family arrangement between the parties. He would also submit that the family had owned a Coffee Estate under the name and style of Geethanjali Coffee Estate, which had been allotted to the respondent under the family arrangement and the respondent had sold the same based upon the family arrangements without reference to the applicant. This itself would suffice to show that the parties have been acting upon the



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basis of the family arrangement, even though it is an unregistered document.

He would further submit that he is not in possession of the original documents, as the respondent through his Manager had ransacked the office in which the original documents were kept after the death of the father and had taken away the various documents including the family arrangement.

4.He would further submit that even though the item No.2 of the schedule property stands in the name of the company, he would seek this Court to lift the veil of the company and see that the said company has been a family company only with the father, the applicant and the respondent being the Directors of the company. He would submit that the plaintiff and the respondent had 15% share each and the remaining shares held by the father and upon his death, 50% share held by the father would automatically fall upon him as per the family arrangement. He had also relied upon the judgment of the Hon'ble Apex Court in the case of *Sangramsinh P.Gaekwad & Ors., vs. Shantadevi P.Gaekwad (Dead) Through Lrs., & Ors.*, reported in *2005 11 SCC 314*; *Kale & Ors., vs. Deputy Director of Consolidation & Ors.* reported in *1976 3 SCC 119*; *K.K.Modi vs. K.N.Modi & Ors.*, reported in *1998 3 SCC 573*; *Hari Shankar Singhania & Ors., vs.*



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Gaur Hari Singhania & Ors., reported in ***(2006) 4 SCC 658*** and ***Smt.Phul***

Kumari Tripathi vs. Smt.Bina Devi @ Saraswati Devi reported in ***2003***

SCC online pat 683 to support his contentions.

5.Countering his arguments Mr.A.R.L.Sundaresan, learned Senior counsel would submit that the respondent is the owner of the property by way of a registered settlement deed executed by his father and therefore, no injunction can be granted against the true owner. He would further submit that when there is no prayer for declaration as the title over the property, the applicant is not entitled for an injunction. He would further submit that the family arrangement has been produced before this Court is only a xerox copy and the original document had not been filed. Based upon a xerox copy of the family arrangement, the applicant cannot make a pleadings that the property had been allotted to him, as the said document cannot be an admissible evidence in the Court of Law. He would further submit that the father himself had filed an affidavit before this Court in the earlier proceedings contending that there is no family arrangement that had been entered into between the parties. When that being the factual scenario, he would submit that the applicant cannot be heard to say that there has been a



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family arrangement. He would further refute the allegations made that the father had suffered from dementia. He would also submit that there are no pleadings as regards to the shares of the parties either in the plaint or in the present application and these are all made only during the time of arguments. He would further contend that it is all imagination of the applicant to claim that the original documents have already been taken into custody by this respondent by asking his manager to ransack the office of the company. With regard to the complaint filed by the applicant, he would submit that the complaint had been closed as mistake of fact. As regards to the grant of injunction, the learned Senior counsel had also relied upon the judgments of the Hon'ble Apex Court in the case of *Anathula Sudhakar vs. P.Buchi Reddy (Dead) by Lrs., & Ors.*, reported in (2008) 4 SCC 594; *Jharkhand State Housing Board vs. Didar Singh & anr.*, reported in (2019) 17 SCC 692 and *Kayalulla Parambath Moidu Haji Vs Namboodiyil Vinodan* reported in 2021 SCC Online 675.

6.I have heard the rival submissions made on either side and perused the materials placed on record.



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7.The lis is a dispute between the brothers as regards to the properties that had belonged to the father of parties who had inherited most of the properties by way of a partition. The case of the applicant is that the father envisaged a part of family arrangement between the brothers as early as in 2002 and infact had even drafted a family arrangement, but for the various reasons, the same had been finally concluded in the year 2018. It is true that what has been produced before this Court is a xerox copy of the alleged family arrangement. The allegations and counter allegations as to the existence of a family arrangement are all subject matter of the trial in the suit.

8.It is an admitted case by both the parties that the property had come into the hands of their father along with various other properties by way of a family partition as early as in the year 1970. The applicant claims that there was a family arrangement and had produced the copy of the said family arrangement. The same is disputed by the respondent by contending that the same could not be relied upon as the original of the said document which had not been produced before this Court in the civil proceedings. Even though he disputes the existence of such a family arrangement, the



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respondent had not disputed his signature in the said family arrangement.

The respondent had also not disputed the possession and enjoyment of the suit schedule properties by the applicant. He would contend that the property in item No.1 had been vested with him by way of a registered deed executed by the father.

9.It is to be seen that as per the claim of the applicant, the family arrangement came to be concluded in the year 2018 and the settlement deed has been executed by the father in favour of the respondent in the year 2022. If the applicant succeeds in establishing the existence of a family arrangement in which the property that had been settled in favour of the respondent by their father in 2022 had been allotted to the applicant and that such family arrangement has been acted upon by the parties, then the settlement deed executed by the father in favour of the respondent would become an invalid document. This is because after having allotted a property in favour of the applicant under the family arrangement, father does not have any right over the property to execute the settlement deed in favour of the respondent. Further, this Court decides not to venture upon the well settled legal principle relied upon by the respective learned Senior



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counsel for the parties in dealing with the issue.

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10.As I have already found that there is no dispute as regards the possession of the property, I am *prima facie* convinced that the applicant is entitled for an injunction in his favour in respect of both the items in the suit schedule property. Even though this suit is simpliciter for a bear injunction, when it has been brought to the notice of this Court about the pendency of Intra Court Appeal as against the order refusing or leave to sue in respect of properties outside the jurisdiction of this Court, it cannot be said that the said suit earlier initiated by the applicant, wherein he had also sought for a declaration in respect of the settlement deed upon which the respondent claims titled to the property, lis could not be prosecuted further. In the event the Intra Court Appeal is dismissed as against the applicant, the plaint would only be returned to the applicant to be presented before the appropriate Court. The applicant can always remove the properties outside the jurisdiction and present the same before this Court for adjudication. Therefore, the arguments of the learned Senior counsel appearing for the respondent that no declaration has sought for in the plaint in the present Suit is without any merits. In view of the fact that the respondent had not



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disputed the possession of the schedule mentioned properties by the applicant, if no injunction is granted protecting his possession, there could be all possibilities of him being dispossessed of the properties and therefore, the balance of convenience and irreparable injury is also in favour of the applicant for grant of the injunction.

11.In view of the above said findings and reasoning, the injunction granted by this Court in its order dated 27.09.2022, is made absolute. It is also clarified that this injunction will not prevent the respondent from using the office of the company, which is situated in the item No.2 of schedule mentioned property.

In fine, the Application No.637 of 2022 is allowed with the aforesaid observations. However, there shall be no order as to costs.

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