



O.A.No.81 of 2023
in C.S.No.552 of 2019

WEB COURT **SENTHILKUMAR RAMAMOORTHY,J.**

Originally the suit was instituted only against the 1st and 2nd defendants. The allegation of the applicants/ plaintiffs is that the father of the 1st and 3rd plaintiffs had appointed a watchman, who was given a small room for purposes of taking care of the property. The said watchman and his sons and daughters have unlawfully put up construction in the suit schedule property. Therefore, the present application is to restrain them from alienating, encumbering and dealing with the property and also to prevent them from continuing with the construction.

2.Learned counsel for the applicants invited my attention to the Will dated 23.09.1980. In particular, he pointed out that the boundaries of the property are described thereunder and that the said Will dealt with 1060 sq.ft. He also referred to the sale deed dated 14.03.1975 and pointed out that the said sale deed was restricted to 400 sq.ft.

3.Learned counsel also pointed out that there are two versions of



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the death certificate of A.Kannabiran and that the place of death as specified in these two death certificates does not tally. By drawing reference to the unregistered Will of 20.05.1990, he submits that this is a fabricated document and purportedly deals with 4996 sq.ft in S.No.95, from and out of 2 acres and 60 cents.

4.Since the 3rd to 9th respondents have proceeded with unlawful construction by relying upon fabricated documents, he submits that they should be restrained from dealing with the property or proceeding with such construction.

5.The 3rd to 9th respondents have filed a counter affidavit. In the said counter affidavit, these respondents trace title on the basis that the late Mr.Kannabiran married Muniyammal in the year 1948. The said Munniyammal is said to be the maternal grandmother of the 3rd to 7th respondents. Learned counsel for these respondents relies on the Will dated 23.09.1980. In terms thereof, it is stated that the property was bequeathed in favour of the 6th and 7th defendants and that the Will has not been challenged or questioned till date. Learned counsel, therefore,



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submits that even if the Will dated 26.05.1990 is disregarded for interlocutory purposes, these respondents are entitled to rights over the suit schedule property.

6.Learned counsel states that these respondents agree not to alienate or encumber the property. Pursuant to a direction, the 3rd to 9th respondents have provided details of rental agreements entered into by them with about five tenants. They have also placed on record a sanctioned plan dated 17.12.2020. Therefore, it is stated that the construction was authorised by the planning authorities and the Corporation and that such construction should not be restrained at this juncture.

7.Upon examining the material documents and considering the above submissions, it appears that there are rival claims in respect of the property. Although learned counsel for the applicants has pointed out the discrepancies in the extents and boundaries of the relevant property, no definitive finding can be recorded at this juncture in relation thereto.



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8.The photographs on record indicate that the construction has reached an advanced stage. The rental agreements, in fact, indicate *prima facie* that tenants have been put in possession. These documents, however, would need to be tested in the course of trial.

9.In order to balance the equities at this stage, the following directions are issued:

(i)Respondents 3 to 9 are restrained from alienating or encumbering the suit schedule property in any manner pending disposal of the suit.

(ii)No further construction shall be undertaken by the 3rd to 9th respondents in respect of the suit schedule property.

(iii)Except for the portions that were let out to tenants under Rental Agreement dated 10.06.2021; Rental Agreement 27.12.2022; Rental Agreement 25.01.2021 in favour of Karthick; Rental Agreement 25.01.2021 in favour of Gopal; and Rental Agreement 25.01.2021 in favour of Santhanam; no other portions of the schedule property shall be let out on lease or licence basis; and



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(iv)Mr.Athiban Vijay, Advocate, 230F, Railway Quarters, Poonamalee High Road, Egmore, Chennai – 600 008, Mobile No.9566139138, is appointed as Commissioner to inspect the property and provide a report in relation to the extent of construction and the portions let out to tenants. The warrant shall be issued to the Commissioner on or before 13.03.2023. The applicants are directed to pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) as initial remuneration to the learned Advocate Commissioner. Learned Advocate Commissioner is directed to place a report before this Court on 23.03.2023.

10.This order shall not stand in the way of the CMDA or the Corporation initiating action in accordance with law in relation to the construction.

11.For filing of Advocate Commissioner's report, list the case on 23.03.2023.

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