



CMA.Nos.2663 & 2664 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 07.12.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.Nos.2663 & 2664 of 2023
& CMP.Nos.24762 & 24775 of 2023

- 1.Guruvammal
- 2.Chandrasekar
- 3.Annakili
- 4.Jayanthi
- 5.Jayalakshmi
- 6.Lakshmi
- 7.Bakiyalakshmi
- 8.Maniyammal
- 9.Vijaya
- 10.Sengalaiyammal

... Appellants in both CMAs

-Vs-

- 1.Durai
- 2.Jagadesan
- 3.Manosanker
- 4.Srinivasan
- 5.Gopi
- 6.Anand
- 7.Devi
- 8.P.Rajasekar
- 9.Viji
- 10.Yuvaraj
- 11.Balasubramani
- 12.Mohan
- 13.Udhaya
- 14.Mageswari

...Respondents in both CMAs



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Common Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code, against the fair and decretal order dated 02.09.2023 in I.A.Nos.3 & 4 of 2023 in O.S.No.4607 of 2023, XXI Additional City Civil Court at Allikulam, Chennai

In both CMAs

For Appellants	: Mr.D.Rajagopal
For R1 to R4	: Mr.V.Raghavachari, Senior Counsel Asst. by M/s.S.Thamizharasi
For R5 to R10 & R12	: No appearance
For R11, R13 & R14	: Mr.E.Viswanathan

COMMON JUDGMENT

These twin appeals are preferred by the plaintiffs in OS.No.4607 of 2023 on the file of the XXI Additional City Civil Court, Chennai. The suit is laid for cancellation of a decree dated 18.03.1948, a settlement deed dated 09.12.2010 and few other sale deeds, all executed in 2021 before the trial Court and consequent to these relief, the plaintiffs also seek partition of their share in the property.



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2.The case of the plaintiffs is that;

- the suit property originally belonged to a certain Periapiratti Ammal, that on 17.03.1928, she had settled the property in favour of her nephews creating only life interest for her and after her demise constituted one of her nephews as the trustee to collect the income and to utilize half the income for his up-keeping as well as for the up-keeping of his children and to deposit the remaining 50% in a bank and post the demise of the appointed trustee, the property was to be taken equally between the sons of the trustee. Subsequently, a suit came to be filed in OS.No.393 of 1947 as between the trustee and another settlee and that came to be decreed. This was followed by few other documents. The case of the plaintiffs is that at the time when the settlor executed the document, some 95 years from now, she was not in a sound state of mental disposition.
- Turning to OS.No.393 of 1947, the plaintiffs allege it is a collusive decree. Plaintiffs, therefore proceed to build the cause of action for their suit on the contention that as per the settlement deed dated



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17.03.1928, after the demise of the settlor, the trustee constituted under the settlement deed takes charge of the management of the property, who shall collect the income and was authorized to spend 50% thereof *inter alia* for the up keep of his children, which implies that such up keep will also enure to the benefit of the daughters and the plaintiffs are the great grandchildren of the trustees so constituted through the daughters.

- Along with the suit, the plaintiffs had taken out I.A.No.3 of 2023 and I.A.No.4 of 2023 respectively for an order of injunction against putting up construction by the defendants 1 to 4 and also against alienation of the property *pende lite*. It may have to be stated that the defendants 1 to 4 are the settlees and purchasers of the property.
- These Applications came to be dismissed by the learned trial Judge on the ground that the plaintiffs have not established the triple criteria required to be established for granting an order of interim injunction. The correctness of these orders are now under challenge in these appeals before this Court.



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3.The learned counsel for the appellants/plaintiffs submitted that the settlement deed dated 17.03.1928 on its face provides an arguable case and hence, the trial Court ought not to have entered a finding on its construction and when once it is admitted that the plaintiffs/appellants herein are great grandchildren of Ayyavu Nadar, the trustee constituted under the settlement deed dated 17.03.1928, then they ought to be considered as sharers. After all, possession by one co-sharer is possession for all and the trial Court has lost site of the same and when once the plaintiffs could *prima facie* establish that they are the co-sharers then, they are entitled to preserve the present *status quo* vis-a-vis the physical features of the suit property *pende lite* and also required to preserve the ownership of the property. The trial Court has over looked it and hence, its orders deserve to be interfered with by this Court.

4.Per contra, the learned senior counsel appearing for the respondents 1 to 4 submitted that the suit is a grant demonstration of how judicial process can be abused. Here is a document executed in 1928, but is challenged in 2023. This apart, a decree passed in 1948 is also



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challenged after 75 years. It may be that the clock might have stopped on the plaintiffs and their predecessors in title, but not the law of limitation.

It should not be lost sight of that the plaintiffs herein are not even the granddaughters of the trustee Ayyavu Nadar but, are the great granddaughters, who today are around 70 years. The contention of the appellants that the property is held in co-ownership itself is a matter of presumption but, on facts the parties have begun enjoying the property.

5.This apart, the settlor under the settlement deed dated 17.03.1928 has indicated how the property shall be dealt with on the demise of the trustee Appavu Nadar. When rights have devolved and vested in the manner contemplated, it is improbable that some right could still be kept alive for the benefit of the plaintiffs. Turning to the order of injunction, at the end of the day, no civil court can grant an order of interim injunction unless the triple criteria is satisfied.

6.Here, even if the statement of the learned counsel for the appellants vis-a-vis establishing a strong *prima facie* case is taken on its face value, which the plaintiffs fail to establish, how the balance of convenience is



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tilted in their favour is not established. The learned counsel also added, here is a strange case where the plaintiffs claim a right under the settlement deed, even as they allege that the executor of the document was not mentally sound.

7.Rival submissions are weighed carefully.

8.So far as the *prima facie* case is concerned, this Court does not intend to interfere much except to the limited extend that the plaintiffs status as great granddaughters of the trustees constituted under the settlement deed is not disputed. How the document has to be constructed is something that has to be attempted at a later stage in the suit. The arguments of the learned counsel for the contesting respondents that the suit is a abuse of judicial process is something, on which, this Court does not want to make an immediate statement and the issue is left open.

9.Turning to the merit of the impugned orders in this case, this Court subscribes to the line of reasoning of the trial Court. Here, this Court cannot disturb a *status quo* that has been there for the last 75 years and



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merely because the plaintiffs have come forward with a case, does not *ipso facto* imply that they deserve an order of interim injunction.

10.In the result, both the Civil Miscellaneous Appeal are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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To

- 1.The XXI Additional City Civil Court at Allikulam,
Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

Tsg

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