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OSA.No.11 of 2023 and CMP.No.266 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 06.06.2023**

**CORAM :**

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN  
and  
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**OSA.No.11 of 2023  
and  
CMP.No.266 of 2023**

1. Mrs. Rajalakshmi
2. S.Govindaraj
3. S.Karthik

**.. Appellants**

**Versus**

1. M.Balasubramaniam
2. M.Sundaram
3. M.Muthuselvam
4. G.Jagannathan
5. M.Vijayalakshmi
6. G.Jayakumar
7. B.Renuka
8. Branch Manager,  
Karur Vysya Bank,  
Purasawalkam Branch,  
No.43, Gandeeshwar Koil Street,  
Purasawalkam, Chennai - 600 084.



9. Branch Manager,  
Lakshmi Vilas Bank,  
Purasawalkam Branch,  
No.75, Gangadeeswarar Koil Street,  
Purasawalkam, Chennai - 600 084.

10. Branch Manager,  
Tamilnad Mercantile Bank,  
Purasawalkam Branch,  
Door No.80-93, First Floor,  
Palace Regency,  
Purasawalkam High Road,  
Chennai - 600 010.

.. Respondents

Original Side Appeal filed under Order 36, Rule 9 of the Original Side Rules read with clause 15 of the Letters Patent, against the order and decretal order dated 30.09.2022 passed by the learned Judge in Application No.4664 of 2021 in C.S.No.362 of 2021.

|                           |   |                                                      |
|---------------------------|---|------------------------------------------------------|
| For Appellants            | : | Mr.R.Thiagarajan                                     |
| For Respondents 1 to 3    | : | Mr.K.V.Babu, Senior Counsel<br>for M/s.Durga V Bhatt |
| For R6                    | : | Mr.V.Nicholas                                        |
| For R8                    | : | Mr.H.Vijayakumar                                     |
| For R4, R5, R7, R9 & R10: | : | No appearance                                        |

### **JUDGMENT**

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This Original Side Appeal has been filed as against the order passed by the learned Judge in Application No.4664 of 2021 in C.S.No.362 of 2021, on 30.09.2022.



2.The facts which are necessary for disposal of this Original Side Appeal are as follows:

2.1. The first appellant herein is the daughter and the respondents 1 to 3 herein are the sons of late P.M.Maruthai Chettiar, who passed away on 07.10.2019. The appellants 2 and 3 are the sons of the first appellant and the respondents 4 to 7 are the surviving legal heirs of the predeceased daughter by name Jeevarathinam of the said Maruthai Chettiar.

2.2. The aforesaid Maruthai Chettiar, had some fixed deposits with the respondent Banks to the tune of Rs.4,27,83,583/-, for which the appellants 1 to 3 were appointed as nominees. Upon the death of Maruthai Chettiar, the nominees approached the banks for withdrawing the monies. Aggrieved by the same, the respondents 1 to 3 herein filed a suit for injunction before the City Civil Court at Chennai in O.S.No.7775 of 2019, in which, an order of *status quo* was granted on 25.10.2019, restraining the banks from releasing the deposit amounts and subsequently, the said interim order was vacated. Thereafter, the amounts were withdrawn by the nominees and the same have not been distributed to the other legal heirs. In the light of the withdrawals made by the appellants herein, the suit has become infructuous and hence, the same was withdrawn by the respondents 1 to 3 on 23.06.2022. Subsequently, the suit in C.S.No.362 of 2021 has been filed by



the respondents 1 to 3 seeking partition of the fixed deposits and other reliefs. In the suit, OA.No.807 of 2021 and A.Nos.4663 and 4664 of 2021 have also been filed for grant of interim injunction and for directions directing the respondents therein to furnish all the details of deposits, fixed deposits, etc, and deposit 3/5th (1/5th for each of the legal heirs) of the monies already withdrawn by the appellants from the deposits of late Maruthai Chettiar into this court.

2.3. It was argued on behalf of the respondents herein before the learned Judge that the appellants 1 to 3 herein were appointed only as nominees of the said deposits and except as nominees, they have no right over the deposits. They would receive the deposits only as nominees in trust on behalf of themselves and on behalf of other legal heirs and hence, they cannot become absolute owners of the monies lying in the fixed deposits. It was further submitted that the appellants 1 to 3, who are acting as merely trustees, have a fiduciary duty to distribute the monies equally amongst all the Class-1 legal heirs.

2.4. It was argued on behalf of the appellants herein that they were nominated as nominees in respect of deposits made by late Maruthai Chettiar and by virtue of such nomination, they became the absolute owners of the properties. The nomination was made only with an intention to transfer the entire assets after the demise of the original depositor in favour of the appellants, as enough



properties have already been given to the respondents 1 to 3. Further, it was contended that as the appellants are the absolute owners of the movable property, filing of the present suit for partition is not maintainable and that, the respondents 1 to 3 could have filed a suit for declaration and sought for entitlement in respect of the fixed deposits, amongst other contentions.

2.5. Considering the arguments advanced on either side, the learned Judge relied upon Section 45-ZA(2) of the Banking Regulation Act, 1949 and also the decisions of the Hon'ble Supreme Court and held that nomination does not confer any beneficial interest on the nominees and does not make them as owner of the monies and that, all the monies receivable by the nominees by virtue of Section 45ZA(2) would form part of the estate of the deceased depositor and devolve according to the rule of succession, to which the depositor may be governed. Further, relying upon the Circular issued by the Reserve Bank of India in No.RBI/2004-05/490 dated 09.06.2005, it was held that any such payment made to the nominees shall not affect the right or claim which any person may have against the survivor / nominee to whom the payment is made. It was further held that the nominees would receive the money in trust on behalf of themselves and on behalf of other legal heirs who are entitled to succeed the estate of the deceased. In short, it was held that nominees are nothing but holding the deposits for themselves and



on behalf of the other legal heirs of the deceased depositor as well. It was also held that since the cause of action in O.S.No.7775 of 2019 filed before the City Civil Court, Chennai is different when compared with that of the cause of action arose in respect of the present suit in C.S.No.362 of 2021, the bar under Order II Rule 2 CPC to file the present suit, does not arise. It was further held that the question of Court Fee under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965 does not arise, as for the property in joint possession, Court fee has been paid rightly in terms of Section 37(2) of the Act, further holding that the question of filing a suit for recovery of money does not arise. Accordingly, O.A.No.807 of 2021 and A.Nos.4663 and 4664 of 2021 have been allowed by the learned Judge.

2.6. Aggrieved by the order in A.No.4664 of 2021, the present Appeal has been filed.

3.The learned counsel for the appellants has submitted that the respondents 1 to 3 have claimed similar reliefs in C.S.No.362 of 2021 and in O.S.No.7775 of 2019 and it is barred under law inasmuch as it attracts mischief under Order II Rule 2 of CPC. The respondents 1 to 3 ought to have filed a comprehensive suit uniting all the causes of action. The suit for movable property falls under Section



24 of the Tamil Nadu Court Fees and Suits Valuation Act and as such, invocation of Section 37 (1) of the Act is erroneous. They have filed the suit treating the deposits as movable assets held by co-sharers and sought for partition instead of filing a suit for recovery of money and paying court fee under Section 24 of the Act. The learned counsel further submitted that the learned Judge ought to have noticed that the deposits have been appropriating benefits and lost the character of oneness/ joint holding of all shares and hence, the proper remedy available for them is receiver of money and not anything else. In support of his contentions, the learned counsel placed reliance on the following decisions of the Hon'ble Supreme Court:

***(i)State of UP and others v. Visheshwar [1995 Supp (3) SCC 590];***

wherein, it was held that grant of main relief by way of interim order is not proper when by interim order was issued to issue orders for confirming the petitioner as forest guard.

***(ii)Commissioner/Secretary to Government Health & Medical Edu.Deptt.***

***Civil Sectt., Jammu v. Dr.Ashok Kumar Kohli [1995 Supp (4) SCC 214],*** in which, it was observed that interim order must not overreach the main relief when interim directions were issued regarding selection to the post as Lecturer, based on selection list of Jammu and Kashmir Public Service Commission.



**(iii) *Shiv Shankar and others v. Board of Directors, UPSRTC and another***

**[1995 Supp (2) SCC 726]**, wherein, it was held that grant of main relief by way of interim order is not proper, when there were directions to absorption of appellants as Conductors by way of interim order.

**(iv) *Union of India and others v. Modiluft Ltd [(2003) 6 SCC 65]***, in which, it was pointed out that final relief by way of interim order cannot be granted, when a direction to grant NOC to relaunch airline, was issued by the High Court.

**(v) *State of UP and others v. Ram Sukhi Devi [(2005) 9 SCC 733]***, wherein, it was observed that final relief by interim order and the subject matter was appointment made on compassionate ground, without considering the GO, which clarified that dying in harness Rules 1974 not applicable to Part time employees; and

**(vi) *Kalabharati Advertising v. Hemant Vimalnath Narichania and others [(2010) 9 SCC 437]*** in which, it was laid down that Dismissal or withdrawal of the case culminates in nullification of interim order.

With these submissions, the learned counsel prayed for setting aside the order impugned herein.

4. On the other hand, the learned senior counsel for the respondents 1 to 3, placing reliance on the decision of the Hon'ble supreme court in ***Sucha Singh***



***Sodhi (dead) through legal representatives v. Baldev Raj Walia and another***

***[(2018) 6 SCC 733]***, has submitted that there is no bar under Order 2 Rule 2 CPC for the respondents 1 to 3 to file the second suit, when the first suit was dismissed as withdrawn. Referring to the decision of the Hon'ble Supreme Court in ***Inacio Martins (Deceased through LRs) v. Narayan Hari Naik and others [(1993) 3 SCC 123]***, the learned senior counsel submitted that the present suit is filed for partition, whereas the previous suit was filed for permanent injunction restraining the respondents therein from withdrawing the amounts of the fixed deposits and hence, the cause of action for both the suits are different. The learned senior counsel further submitted that nomination merely gives right of depositor to receive money lying in account and it does not make nominee owner of money lying in account and the 1949 Act is in no way concerned with question of succession. To substantiate the same, he placed reliance on the decisions of the Hon'ble Supreme Court in ***Sarbati Devi (Smt) and another v. Usha Devi (Smt) [(1984) 1 SCC 424]***; and ***Ram Chander Talwar and another v. Devender Kumar Talwar and others [(2010) 10 SCC 671]***; and the decision of the Bombay High Court in ***Shakti Yezdani and another v. Jayanand Jayant Salgaonkar and others [2016 SCC Online Bom 9834]***. Thus, according to the learned senior counsel, the learned Judge has rightly passed the order impugned herein, on proper



appreciation of records and on consideration of relevant Circulars and decisions of the Hon'ble Supreme Court and therefore, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.By order dated 21.03.2023, this court has ordered the petition viz., CMP.No.6342 of 2023, filed by the appellants praying to receive the affidavit dated 03.07.2015 executed by the late Maruthai Chettiar, as additional evidence in this original side appeal, subject to its admissibility and relevancy. However, a xerox copy of the affidavit alone was filed on the side of the appellants. This court has also perused the same.

7.There is no dispute with regard to the relationship between the parties. Admittedly, the deceased Maruthai Chettiar owned some fixed deposits with the respondent banks and he nominated the appellants 1 to 3 for the same. It is also an admitted fact that after the demise of the said Maruthai Chettiar, the appellants / nominees have withdrawn the fixed deposits lying in the bank. Claiming their



shares in the fixed deposits owned by the deceased, the respondents 1 to 3 instituted two suits viz., OS No.7775 of 2019 before the City Civil Court, Chennai for permanent injunction restraining the appellants from withdrawing / transferring the fixed deposits made by the depositor and permanent injunction restraining the respondent bank from releasing any fund to the appellants 1 to 3 without insisting upon the succession certificate. However, the said suit was dismissed as withdrawn; and (ii)C.S.No.362 of 2021 before the learned Judge, for partition of the fixed deposits mentioned in the schedule appended to the plaint and consequential reliefs. Along with the suit, they have taken three applications, one among which is A.No.4664 of 2021 for directing the respondents therein to deposit 3/5th share of the monies already withdrawn by them into the court. The said application was allowed by the order impugned in this appeal.

8.The first contention of the learned counsel for the Appellants is that a suit for movable assets falls under Section 24 and hence, payment of Court Fee under Section 37(2) of the Tamil Nadu Court Fee and Suit Valuation Act was not maintainable. However, a reading of the plaint would show that it is a suit for partition of movable assets and the plaintiffs have pleaded that they are in joint possession and therefore, the plaintiffs have valued the suit under Section 37(2)



of the Act. It is trite law that the court fee must be decided based on the averments in the plaint and cannot be decided based on the objections raised in the written statement. It will be useful to refer to the following judgments on this aspect:

**(a) *The Hon'ble Apex Court, comprising of three judges, in Neelavathi v.***

***N. Natarajan, (1980) 2 SCC 247***, it was held as under:

*“6. On reading of the plaint as a whole, we are unable to agree with the view taken by the High Court. It is settled law that the question of court fee must be considered in the light of the allegation made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. All the material allegations contained in the plaint should be construed and taken as a whole vide S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar [AIR 1958 SC 245 : 1958 SCR 1021, 1031-32 : 1958 SCJ 407]. The plaint in para 5 states that Muthukumaraswamy Gounder died intestate and undivided and Muthukumaraswamy's father Vanavaraya Gounder was managing all the ancestral joint family property as the head of the Hindu undivided joint family till his death. In para 8 the plaintiffs stated that on the death of Muthukumaraswamy Gounder his 1/3rd share in the joint family properties devolved upon his sons and daughters. It further alleged that the plaintiffs were in joint possession of the properties along with Vanavaraya Gounder and his other sons. In para 9, it is stated that each of the plaintiffs is entitled to a share in the suit properties as heirs of the late Muthukumaraswamy Gounder and also as heirs of the late Vanavaraya Gounder. In para 11, it is stated that since the death of Vanavaraya Gounder Defendants 1 to 6 are receiving the income from the properties and are liable to account to the plaintiffs. In para 12, it is stated that since the death of Vanavaraya Gounder Defendants 1 to 6 failed to give the plaintiffs their share of income and the plaintiffs could not remain in joint possession. Therefore the plaintiffs demanded partition and the Defendants 1 to 6 were evading. Again in para 13, it is claimed that each of the plaintiffs as co-owners is in joint possession of the suit properties, and this action is laid to convert the joint possession into separate possession so far as the shares of the plaintiffs are concerned. Throughout the plaint, the plaintiffs have asserted that they are in joint possession. We are unable to agree with the High Court that*



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recitals in all the paragraphs is merely a formal statement repeating the statutory language. The plea in para 12 which was relied on by the High Court states that the Defendants 1 to 6 failed to give the plaintiffs their share of the income and the plaintiffs could not remain in joint possession. The plea that they were not given their due share would not amount to dispossession. Reading the plaint at its worst against the plaintiffs, all that could be discerned is that as the plaintiffs were not given their share of the income, they could not remain in joint possession. The statement that they are not being paid their income, would not amount to having been excluded from possession. The averment in the plaint cannot be understood as stating that the plaintiffs were not in possession. In fact, the defendants understood the plaint as stating that the plaintiffs are in joint possession of the suit properties. In para 18 of the written statement the defendants pleaded that the plaintiffs have framed the suit as though they are in joint possession and enjoyment of the suit properties. Asserting that the plaintiffs were out of possession, the defendants stated: "While it is so, the allegation that they are in joint possession of the suit properties, is not correct".

7. The trial court has not placed any reliance on the recitals in para 12 of the plaint on which the judgment of the High Court is based. The trial court found on evidence that the plaintiffs never enjoyed the suit properties at any time. This finding is not enough for, the mere fact that the plaintiffs were not paid their share of the income or were not in actual physical possession, would not amount to the plaintiffs having been excluded from joint possession to which they are in law entitled. On a consideration of the plaint as a whole and giving it its natural meaning, we are unable to agree with the conclusion arrived at by the High Court.

8. Section 37 of the Tamil Nadu Court Fees and Suits Valuation Act relates to partition suits. Section 37 provides as follows:

"37. (1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the rates prescribed."

It will be seen that the court fee is payable under Section 37(1) if the plaintiff is "excluded" from possession of the property. The plaintiffs who are sisters of the defendants, claimed to be members of the joint family, and prayed for partition alleging that they are in joint possession. Under the proviso to Section 6 of the



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*Hindu Succession Act, 1956 (Act 30 of 1956) the plaintiffs being the daughters of the male Hindu who died after the commencement of the Act, having at the time of the death an interest in the Mitakshara coparcenary property, acquired an interest by devolution under the Act. It is not in dispute that the plaintiffs are entitled to a share. The property to which the plaintiffs are entitled is undivided "joint family property" though not in the strict sense of the term. The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under Section 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been "excluded" from joint possession to which they are entitled in law. The averments in the plaint that the plaintiffs could not remain in joint possession as they were not given any income from the joint family property would not amount to their exclusion from possession. We are unable to read into the plaint a clear and specific admission that the plaintiffs had been excluded from possession.*

*9. In the result both the appeals are allowed. As we have found that the trial court was in error in directing the plaintiffs to pay the court fee under Section 37(1), the preliminary decree for partition and possession of 1/72 share in the B. Schedule properties and the shares in deposit in State Bank of India at Pollachi, and in the share in the Gnanambika Mills, is confirmed. The direction by the trial court as to payment of court fee under Section 37(1) of the Court Fees Act and the judgment of the High Court in A.S. No. 924 of 1974 and A. Section 811 of 1975 are set aside. The appeal is allowed with costs."*

(b) The Hon'ble Apex Court comprising of Three Judges, in **Lakshmi**

**Ammal v. K.M. Madhavakrishnan [(1978) 4 SCC 15]** held as under:

*"2. It is unfortunate that long years have been spent by the courts below on a combat between two parties on the question of court fee leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to grapple with the real issues and not spend their*



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*energies on peripheral ones. Secondly, the court fee, if it seriously restricts the rights of a person to seek his remedies in courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable, of course, the benefit must go to him who says that the lesser court fee alone be paid.*

*3. In this particular case there is hardly any difficulty in holding that the plaintiff in para 14 of the plaint has clearly alleged that she is in joint possession and is seeking partition and separate possession of her half share in the suit properties as heir of deceased, Paramayee. Obviously, the court fee that is payable is as she has claimed, namely under Section 37(2) which corresponds to Article 17(b) of the Central Act, which is the predecessor legislation on the subject. We allow the appeal and send the case back to the trial court and direct that Court to proceed with the suit expeditiously. We make it clear that our decision on the question of court fee does not have any implications on the merits, including the validity or otherwise of the Will. No costs."*

9. At the cost of repetition, the main relief sought in the case is the partition.

Partition is nothing but division and redistribution of existing rights by and between co-owners or co-parceners in movable or immovable property into shares, based on the law of the land applicable to them, followed by delivery of possession. The effect is the termination of joint ownership and vesting of independent and absolute rights from thereon. Every Property though can be valued in terms of money, the valuation may not be accurate at times. Just because, they can be valued in terms of money, even approximately, it cannot be contended that every suit relating movable property must be treated as a suit for recovery of money and court fee must be paid accordingly. The main relief claimed in the suit is to be taken into account while determining the court fee. In



the plaint, it has been clearly pleaded that they are in joint possession of the property in the capacity as legal heirs of the deceased. Hence, considering the judgments referred to above and the averments made in the plaint, we have no hesitation in holding that the suit has been valued properly.

10.The next point contended is that the suit is barred under Order II Rule 2. It is pertinent to mention here that the appeal is against the direction issued by learned Judge, in the nature of temporary mandatory injunction. The appellants/defendants had not filed any application claiming that the suit is barred by law. Be that as it may, as rightly contented by the learned counsel for the respondents, the earlier suit was for permanent injunction and the present suit is for partition, the bar under Order II Rule 2 will not apply. It is also relevant to point out at this juncture that in the earlier suit filed before the city civil court, initially, an order of *status quo* was granted and the same was vacated subsequently, upon which, the funds were released, forcing the respondents/plaintiffs to withdraw the earlier suit and file the present suit, which *prima facie*, from the averments in the plaint, disclose a different cause of action. The judgement relied upon by the learned counsel in ***Sucha Singh Sodhi (dead) through legal representatives v. Baldev Raj Walia and another [(2018) 6 SCC***



733], is applicable. It will be useful to refer to the judgment of the Hon'ble Apex

Court in ***Rathnavathi v. Kavita Ganashamdas, (2015) 5 SCC 223 : (2015) 2 SCC***

***(Civ) 736 : 2014 SCC OnLine SC 860***, wherein, it was observed as under:

*“26. One of the basic requirements for successfully invoking the plea of Order 2 Rule 2 CPC is that the defendant of the second suit must be able to show that the second suit was also in respect of the same cause of action as that on which the previous suit was based. As mentioned supra, since in the case on hand, this basic requirement in relation to cause of action is not made out, the defendants (appellants herein) are not entitled to raise a plea of bar contained in Order 2 Rule 2 CPC to successfully non-suit the plaintiff from prosecuting her suit for specific performance of the agreement against the defendants.*

*27. Indeed when the cause of action to claim the respective reliefs were different so also the ingredients for claiming the reliefs, we fail to appreciate as to how a plea of Order 2 Rule 2 CPC could be allowed to be raised by the defendants and how it was sustainable on such facts.*

*28. We cannot accept the submission of the learned Senior Counsel for the appellants when she contended that since both the suits were based on identical pleadings and when cause of action to sue for relief of specific performance of agreement was available to the plaintiff prior to filing of the first suit, the second suit was hit by bar contained in Order 2 Rule 2 CPC.*

*29. The submission has a fallacy for two basic reasons. Firstly, as held above, cause of action in two suits being different, a suit for specific performance could not have been instituted on the basis of cause of action of the first suit. Secondly, merely because pleadings of both suits were similar to some extent did not give any right to the defendants to raise the plea of bar contained in Order 2 Rule 2 CPC. It is the cause of action which is material to determine the applicability of bar under Order 2 Rule 2 CPC and not merely the pleadings. For these reasons, it was not necessary for the plaintiff to obtain any leave from the court as provided in Order 2 Rule 2 CPC for filing the second suit.*

*30. Since the plea of Order 2 Rule 2 CPC, if upheld, results in depriving the plaintiff to file the second suit, it is necessary for the court to carefully examine the entire factual matrix of both the suits, the cause of action on which the suits are founded, the reliefs claimed in both the suits and lastly, the legal provisions applicable for grant of reliefs in both the suits.*



*31. In the light of foregoing discussion, we have no hesitation in upholding the finding of the High Court on this issue. We, therefore, hold that the second suit (OS No. 2334 of 2000) filed by the plaintiff for specific performance of agreement was not barred by virtue of the bar contained in Order 2 Rule 2 CPC.”*

11.The next and main contention of the learned counsel for the appellants is that the appellants being the nominees, are the absolute beneficiary of the deposits and they cannot be characterised as agents / trustees or collecting agents for the respondents 1 to 3, but are the real persons, entitled to hold, possess and deal with the same. While so, the decision rendered by the learned Judge with regard to the rights of the appellants at the interlocutory stage is without any legal basis and is liable to be set aside. Whereas, it is the stand of the respondents 1 to 3 that nominee does not get absolute right over the deposits made by the deceased depositor and the provision regarding nomination was made with an intent to protect the estate of the deceased till his legal representatives take appropriate steps and therefore, the respondents are entitled to have their shares in the fixed deposits made by the deceased and the same was accordingly, ordered by the learned Judge.

12.This court finds *bona fide* in the contentions so raised on the side of the respondents 1 to 3. In the given factual matrix, the learned Judge relied upon



Section 45-ZA(2) of the Banking Regulation Act, 1949 and the decision of the Hon'ble Supreme Court in ***Ram Chander Talwar & Anr. v. Devender Kumar Talwar & Ors. [2010(10) SCC 671]***, wherein it has been held that Section 45ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account, but by no stretch of imagination it makes the nominee the owner of the money. The learned Judge has also relied upon the decision of the Hon'ble Supreme Court in ***Shipra Sengupta v. Mridul Sengupta & Ors. [(2009) 10 SCC 680]***, Circular of RBI dated 09.06.2005 for settlement of claims in respect of deceased depositors, judgment of the Hon'ble Supreme Court in ***Vishin N.Kanchandani & Others vs. Vidya Lachmandas Khanchandani & others [2000 (6) SCC 724]*** with regard to the issue relating to entitlement of the nominee towards National Savings Certificate and Section 19 and 88 of the Indian Trusts Act, 1882, went on to hold that the nominees cannot claim any absolute right over the properties of the deceased depositor based on the nomination in respect of fixed deposit receipts, but they are only entitled to receive the deposits and the said deposits would devolve upon all persons, who are entitled to succession under law and that, a trustee is bound to keep clear and accurate accounts of the trust-property at the request of the beneficiary, to furnish him with full and accurate information as to



the amount and state of the trust-property and that, a trustee or an agent is bound in a fiduciary character to protect the interest of the principal and the former would hold the property for the benefit of the member of the person on whose behalf, he acted as an agent. Having held so, the learned Judge has rightly allowed the application by directing the respondents therein to deposit 3/5th of the monies already withdrawn by them from the deposits of the deceased Maruthai Chettiar before the Court.

13. Though the learned counsel for the appellants referred to various decisions, the same do not assist the case of the appellants as the decisions deal with the proposition that the final relief cannot be granted by way of an Interim Order and with the dismissal of main case, the interim relief also lapses. Further, all except two judgements deal with service matters and one case out of the two, relates to grant of NOC for relaunching the Airlines and another was relied to drive the proposition that withdrawal means abandonment and after withdrawal of the main case, the benefit of interim order cannot be relied. The proposition put forth by the appellant, though a general proposition, is not universal as the facts of a case might warrant grant of interim relief, though amounting to main relief, the failure of which would render nothing to be adjudicated in the main suit. One such



circumstances would be to preserve the subject matter of the suit. It would be

relevant to refer to the judgment of the Apex Court in ***Deoraj v. State of***

***Maharashtra [2004 (4) SCC 697]***, wherein it was held as under:

*“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.”*

14.The above proposition was followed and reiterated by the Apex Court in

***Hammad Ahmed v. Abdul Majeed, (2019) 14 SCC 1 : (2020) 1 SCC (Civ) 475 :***

***2019 SCC OnLine SC 467***, in the following passage:

*“58. The ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction. In Deoraj v. State of Maharashtra [Deoraj v. State of Maharashtra, (2004) 4 SCC 697] , this Court held that Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of*



justice. Therefore, in appropriate case, ad interim injunction in mandatory form can be granted. The Court held as under : (SCC p. 703, para 12)

*“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.”*

*59. The argument that under Order 39 Rules 1 and 2 of the Code, the Court has the jurisdiction to maintain the status of the parties on the date of filing of the suit or on the date of passing of the order but cannot direct the parties to do something which was not in existence at the time of filing of the suit, is not a general rule of universal application. The nature of the orders claimed by the appellant are not passed ordinarily in a routine manner as the plaintiff is required to have a case which should be of higher standard than mere prima facie case. But in view of the agreement between the parties, as recorded by the Division Bench in an earlier round of litigation the primary question was agreed to be that who is to act as Chief Mutawalli. Both the learned Single Judge and the Division Bench have examined such question only. Even, before this Court, the parties have argued primarily on the question as to who shall be the Chief Mutawalli. Therefore, a prima facie opinion would lead to consequential order in respect of management of the affairs of Hamdard.”*



15.It is also relevant to refer to Section 39 of the Specific Relief Act, which deals with Mandatory Injunction as under:

*“When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.”*

16.In this case, it is beyond doubt that the order has been passed to protect the subject matter of the suit property, the movable assets, pending the rival claims and partition. As there is no dispute to the fact that the plaintiffs are the legal heirs of Maruthai Chettiar, it is natural that the subject matter of the suit property is protected until disposal of the suit. A perusal of the order under challenge also indicates that the Learned Judge has issued the direction having found a *prima facie* case in favour of the respondents/plaintiff. Therefore, we are of the view that the order of the Learned Judge, is also in line with the principles of equity. The other issues like limitation, nature of relief sought in the suit by way of grounds, are all matters that are to be agitated during trial. Thus, this Court finds no reason to interfere with the order so passed by the learned Judge.

17.In such view of the matter, this Original Side Appeal is liable to be dismissed and is accordingly, dismissed. However, the parties are at liberty to raise all the contentions in the suit. The xerox copy of the affidavit dated 03.07.2015



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filed by the appellants, shall form part of the record. No costs. Consequently,  
connected miscellaneous petition is closed.

**[R.M.D., J.] [M.S.Q., J.]**

**06.06.2023**

rk

Index : Yes / No

Internet : Yes / No



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**R. MAHADEVAN, J.**  
and  
**MOHAMMED SHAFFIQ, J.**

rk

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