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O.A.No.96 of 2023

O.A.No.96 of 2023
&
A.No.858 of 2023

Reserved on 24.04.2023	Delivered on 05.06.2023
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K.KUMARESH BABU., J

The instant Arbitration Original Petition had been filed seeking to grant Ad interim injunction restraining the respondent/defendants/their men/agents from in any way and in any manner either alienating or encumbering the suit properties with specific boundaries including the share of the applicant/plaintiff, till the final decree is effected by means of ad-interim injunction.

2.Heard the learned counsels appearing for the parties.

3.Ms.S.Hemalatha, the learned counsel appearing for the applicant would submit that the applicant is a legally wedded wife of one Mr.B.Muralidharan and that marriage took place on 16.11.2011. The respondents 1 & 2 are the children of one of the sisters (one of the deceased), the respondent 3 is another sister of the applicant's husband. The schedule mentioned property belonged to the mother of the applicant's husband, thereby



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the applicant's husband was entitled to 1/3rd share in the schedule mentioned property. The applicant's husband passed away on 16.12.2001 and thereafter she was sent to her parents house under one pretext or the other. When she had come back from her parents house, the respondents/defendants denied her permission to enter the property and the portion where she and her husband was staying, was rented out to third party. She had also learnt that the respondents are trying to alienate the suit schedule property without reference to the rights of the applicant. She had addressed a letter to the Sub-Registrar, Adyar not to entertain and register any documents in respect of the suit schedule property. She had also caused a notice on 03.01.2022, calling upon the respondents for partition of the schedule properties and allot 1/3rd share of her husband's rights in the property in her favour and therefore, she had filed this application seeking for a relief of interim injunction restraining the respondents from in any manner alienating or encumbering the suit schedule property and to appoint a Receiver to preserve the suit schedule property pending the suit.

4.Mr.K.Pattashi, the learned counsel appearing for the respondent denied the claims made by the applicant. He would also specifically deny the



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marriage of the applicant with Muralidharan. He would further submit that the applicant had left the company of late Muralidharan after having received huge amount. He would further submit that there was no relationship of husband and wife between the applicant and the said late Muralidharan. The applicant has been creating documents to substantiate her claim. He would further submit that the property originally belonged to one Sivabushanammal and that the said Sivapushanammal had executed a settlement deed and will on different dates to her elder daughter B.Kuppabai with limited rights prohibiting her not to sell or mortgage the property in favour of any third person and she has to only enjoy the property till her death by receiving the rents from the building and after her death, the children born to her, were entitled to the property absolute. He would further submit that the property was managed by Muralidharan who has wayward life and incurred heavy debts he had also infact paid the applicant a sum of Rs.25,00,000/- upon which the applicant had left the company of Muralidharan and that not even bothered to attend the last rites of the said Muralidharan. Therefore he would submit that the applicant has no right or interest in the property. He would further contend that the suit itself is not maintainable for non-joinder of practice, as one of the legal heirs of Kuppabai namely Kirupavathy is also no



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more and her husband Giridharan is also entitled to share in the property. His non joinder of the suit will have a bearing on the maintainability of the suit and on the ground alone, the injunction will have to be refused. He would further contend that no injunction could be granted against the co-owner, even if the case of the applicant is to be accepted. He would submit that all the documents that had been produced by the applicant are all documents of recent origin which has been created only to substantiate the claim of the applicant. Hence he would seek this Court to dismiss the application filed by the applicant. In support of his contention, he relied upon the judgment in the case of *Sunil Kumar & Anr., vs. Ram Parkash & Ors.*, reported in (1988) 2 SCC 77, & would state that alienation of joint family property by Karta cannot be prohibited by way of an injunction as coparceners are not entitled to seek an injunction against a Karta from making alienation. Further relying upon the judgment made in the case of *Subramania Odear & Ors. vs. Govindammal & Anr.*, reported in 1993 2 MLJ 129, he would submit that the appointment of Receiver is one of the harshest remedy and it cannot be given even for more asking that too when the claim is against the co-shares of a property.



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5. I have considered the rival submissions made on either side and perused the materials placed on record.

6.The suit had been initiated seeking for a partition of the suit schedule property. The claim of the applicant is that her husband Muralidharan is entitled to 1/3rd share in the property. The respondents had denied the marriage of the applicant with Muralidharan, but they have not denied the relationship between the said Muralidharan and the applicant. Admittedly the property had originally belonged to one Mrs.Sivabushanammal who had settled the property with life estate on her daughter Kuppabai, who had three children namely Girupavathy, Geetha and Muralidharan, who had to inherit property absolutely after the death of Kuppabai. It has also been admitted by the respondents in their counter affidavit that the property had been managed by the said Muralidharan. Even though the claim of the respondents are that the applicant has never married to Muralidharan, they have admitted in the counter that on payment of a sum of Rs.25,00,000/-, the applicant had been left the company of Muralidharan which itself would suffice to *prima facie* hold that there was some relationship between the applicant and the said Muralidharan.



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7.The claim of the parties as regards to the relationship of the applicant and the Muralidharan can be decided only during the trial of the Suit and in this interim application at this instant stage, this Court need not dwell upon the said issue. When the respondents have admitted that the property on the death of Kuppabai had come into the hands of her legal heirs namely, Kirubavathy, Geetha and Muralidharan and they cannot deal with the property without reference to the interest of the others. The claim of the respondents that they had managing the property of the Karta is without any basis as in their counter, they have admitted that after the death of Kuppabai, Muralidharan has been managing the property. The disputes arose only after the death of Muralidharan, I am *prima facie* satisfied that the respondents are trying to deal with the property without reference to the interest of Muralidharan. In such circumstances, the interim injunction granted by this Court on 30.03.2023, is made absolute.

8.The legal heir certificate issued by the Revenue Department also indicates that the applicant is the sole surviving class-I legal heir of the deceased Muralidharan, which *prima facie* concludes that the applicant is



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entitled to share in the suit mentioned property.

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9. As regards to the claim for appointment of the Receiver, I am not inclined to entertain the same, as the respondents are also co-owners of the property. But however, it would be suffice to direct the respondents to file quarterly statement of accounts as regards to the suit mentioned property pending disposal of the suit.



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In fine injunction application in O.A.No.96 of 2023 is allowed and the application in A.No.858 of 2023 is disposed of on the above terms. However there shall be no order as to costs.

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**Pre-Delivery Judgment
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