



OSA.No.54 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

O.S.A.No.54 of 2022
and
C.M.P.Nos.4235 of 2022
& 18289 of 2023

E.Jeevanandam

...Appellant

Vs.

Rajalakshmi Sungavally

...Respondent

Prayer: Original Side Appeal filed under XXXVI Rule 2 of the O.S.Rules
r/w. Clause 15 of the Letters Patent, against the order dated 05th January
2022 made in Application Nos.3667 of 2021 in O.A.No.311 of 2010 in
C.S.No.216 of 2010.

For Appellant : Mr.Thanka Sivan S

For Respondent : Mr.Srinath Sridevan, Senior Advocate
for Ms.Aiswarya S Nathan



J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The appellant is aggrieved by the order passed in Application

No.3667 of 2021 dated 05.01.2022, discharging the order of injunction in

O.A.No.311 of 2010 on 11.09.2018.

2.The suit is filed for declaration that the notice dated 25.06.2007 and the consequential rejoinder on 29.08.2007 issued by the defendant seeking to cancel the memorandum of understanding dated 05.07.2002 as illegal and unenforceable, permanent injunction restraining the defendant from executing any deed or action distributing the plaintiff's right in the memorandum of understanding dated 05.07.2022, mandatory injunction directing the defendant to comply with the defendant's obligations under Clauses 9 & 10 of the Memorandum of Understanding dated 05.07.2002 and for costs.

3.Pending the said suit, an application was filed by the defendant in Application No.311 of 2010 seeking an order of injunction restraining the defendant from either alienating or encumbering the property subject matter of the suit. Though no order of injunction was granted, originally, this



Court on 11.09.2018 granted an injunction restraining the defendant from alienating or encumbering the property. Even before the said date namely, 11.09.2018, the defendant had settled the property on her grand children as early as on 01.08.2011. It is admitted at the bar that the applications filed by the plaintiff, seeking to implead the settlees under the settlement deed dated 01.08.2011 namely the grand children was dismissed and the said orders were confirmed by the Hon'ble Supreme Court. It is also not in dispute that an attempted amendment to convert the suit into one for specific performance also failed and such failure was confirmed up to the Hon'ble Supreme Court.

4. In view of the changed circumstances, particularly, the dismissal of the application for impleading, the defendant moved an application in A.No.3667 of 2021 seeking to vacate the order of injunction granted on 11.09.2018. The learned single Judge who heard the application accepted the contentions of the applicant in A.No.3667 of 2021 and vacated the order of injunction. Aggrieved, the plaintiff is on appeal.



5.We have heard Mr.Thanka Sivan.S, learned counsel for the appellant and Mr.Srinath Sridevan, learned Senior Counsel instructed by Ms.Aiswarya S Nathan for the respondents.

6.Mr.S.Thanka Sivan, learned counsel appearing for the appellant would vehemently contend that the order dated 11.09.2018 having become final, the learned single Judge was not right in vacating the said order while it was open to the respondent / defendant to challenge the said order by way of an appeal, she could not have moved an application for vary or discharge the order.

7.Mr.Srinath Sridevan, learned Senior Counsel appearing for the respondent would point out that this submission of the learned counsel for the appellant overlooks Rule 4 Order 39 of the Code, which empowers a Civil Court to vary or discharge an order of injunction on proof of change of circumstances. Order 39, Rule 4 with its two provisions read as follows:-

"4. Order for injunction may be discharged, varied or set aside.-Any Order for an injunction may be discharged, or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order:



Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an Order for injunction has been passed after giving to a party an opportunity of being heard, the Order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the court is satisfied that the Order has caused undue hardship to that party." (emphasis applied)

8.The plain language of the second proviso to Order 39 Rule 4 makes it clear that the Court has the power to vary an order of injunction, if it is satisfied that there are change in the circumstances. The learned single Judge has found that the dismissal of the impleading petition as well as an application seeking amendment would amount to change of circumstances, which would satisfy the requirements of the proviso to Rule 4 of Order 39 of C.P.C.



9.The alienation in favour of the settlees was as early as on 01.08.2011, for almost seven years therefrom there was no order of injunction in the suit. The order of injunction was granted only on 11.09.2018. The application to implead the settlees came to be dismissed by this Court and the same was affirmed by the Hon'ble Supreme Court. Therefore, the order of injunction even if in force, as of today will not bind the settlees, who had become the owners of the property even in August, 2011. The injunction would be only on paper. Therefore, we are unable to fault the learned single Judge for having vacated the order of injunction. We therefore, do not find any merit in the appeal. This appeal fails and it is accordingly, **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) (R.S.V., J.)
26.03.2024

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Internet:Yes

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Speaking

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