



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 31.07.2025	PRONOUNCED ON 27.10.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.1953 of 2025
in C.S. No.167 of 2022

1. A.S.Raghavan,
2. A.S.Radhakrishnan
3. A.S.Parthasarathy
4. A.S.Jayaraman
5. A.S.Jayalakshmi
6. A.Venkatarangam
7. A.Amirthavalli

A.S.Venkatraman (Deceased)

.....Applicants/Plaintiffs

Vs

1. The Executive Officer,
Arulmigu Parthasarathy Swamy Thirukoil,
Triplicane,
Chennai-600 005

A.K.L.N.Acharyulu (Deceased)

.....Respondent/
Defendant

For Applicant : Mr.T.V.Ramanujam
Senior Counsel for
Ms.R.Ramya

For Respondent : Mr. D.Rajagopal
for R1



ORDER

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This instant application has been filed to direct the 1st Defendant/Respondent to handover possession of newly constructed forming part of A schedule property mentioned in the plaint to the applicant/plaintiffs.

2. Heard Mr.T.V.Ramanujam, learned Senior Counsel appearing for Ms.R.Ramya, learned counsel appearing for the applicants and Mr.D.Rajagopal, learned counsel for the first respondent.

3. Mr.T.V.Ramanujam, learned Senior counsel appearing for the applicants would submit that the plaintiffs being the hereditary trustees of the Trust who owns the suit schedule property had approached this Court by filing the suit including the prayer for handing over the possession of the suit scheduled properties to the applicants within the time fixed by this Court and also for various other reliefs.

4. He would submit that in an earlier proceedings initiated by the applicants in O.S.No.645 of 1984, which had been held in favour of the hereditary trustees was challenged by the first respondent in an Appeal suit in



A.S.No.713 of 1991. He would submit that in the appeal suit, this Court holding that the Ex.A2-Will should be construed as a trust deed, also declared the applicants to be the hereditary trustees of the Dhavanotsavam festival and also in respect of the suit schedule properties and dismissed the suit filed by the hereditary trustees in all other aspects. A SLP filed also dismissed by holding that there are no reasons to interfere with the order, thereby affirming the judgment and decree made in A.S.No.713 of 1991. In view of the judgment and decree made in the aforesaid appeal suit, the first respondent is bound to carry out the work of demolishing in respect of the A-schedule property for which the applicants would have to hand over the property in their possession and on completion of reconstruction are bound to hand over the same to the hereditary trustees who are bound to pay a nominal rent. The A-schedule property was handed over to the first respondent and thereafter, they had put up a construction. After putting up the construction, the first respondent had innocuously put up a notice board indicating that the property belongs to the temple, whereas the judgment and decree in the appeal suit had held that the property in schedule-A is that of the Trust of which the applicants are the hereditary trustees. The first respondent has also attempted to lease out the same to various third parties and hence, the applicants have also filed an



application in A.No.769 of 2023 for an injunction restraining the first respondent in any way inducting any third parties in the plaint A-suit scheduled property.

5. When the matter was taken up, the learned counsel appearing for the first respondent had expressed that there was no intention on the part of the temple authorities to induct any third parties and hence, recording the said statement, the said application was closed. On completion of the building, the applicants have been demanding possession of the newly constructed building. Having completed the construction, the first respondent has been refusing to hand over the possession of the suit scheduled property in compliance with the judgment and decree of the first Appellate Court. Therefore, he seeks this Court to direct the first respondent to hand over the possession of the newly constructed building in plaint A-schedule property within a time fixed by this Court failing which to direct the Officer of this Court to perform the same.

6. Countering his submissions made by the learned Senior Counsel, Mr.D.Rajagopal, learned counsel appearing for the first respondent would firstly contend that the prayer in the interim application to hand over the possession of Schedule-A property which is same as the first relief that had been sought for in the suit and therefore, such interim relief should not be



entertained by this Court. He would submit that in the suit A-schedule property, there was originally a small building with a built up area of 576 sq.ft which was only handed over by the applicants. Now a large construction has been put up consisting of 12 flats measuring from 650 sq.ft. to 800 sq.ft. Therefore, the applicants are not entitled for the entire building and they would be entitled to only a proportionate built up area of the building that was handed over to the first respondent. He would further submit that the first respondent is entitled for the fair rent as required under the Provisions of the Tamil Nadu HR&CE Act (hereinafter referred to the “Act”) as fixed by the committee under Section 34A. He would further submit that the demand made by the applicants for handing over the property is wholly unjust. He would further submit that a Committee has fixed a fair rent for the premises and had recommended a rent of Rs.8,200/- for the flats which had a plinth area of 812.50 sq.ft and similarly the fair rent has been fixed for the property. He would further submit that the applicants would have to pay the rent fixed by the appropriate Authorities under the Provisions of the Act.

7. In support of his contention that the interim mandatory relief sought not to be granted, he had relied upon the judgment of the Hon'ble Apex Court in the case of *Dorab Cawasji Warden Vs Coomi Sorab Warden and others*



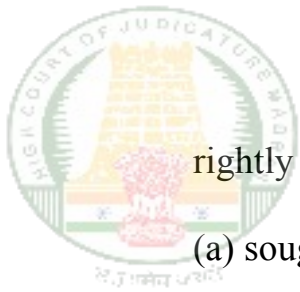
and Mohd. Mehtab Khan and others Vs Khushnuma Ibrahim Khan and others reported in **1990 (2) SCC 117 and 2013 (9) SCC 221.**

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8. Relying upon the judgment of this Court in **1996 (2) LW 826**, he would contend that the relief sought for in the suit has already been decided in the earlier suit and therefore, the said relief is hit by principles of *res judicata*. Concluding his arguments, the learned counsel appearing for the first respondent would vehemently contend that the applicants are not entitled for the relief of interim mandatory injunction for handing over of the plaint A-schedule property to the applicants.

9. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

10. The present application is seeking for a direction to hand over the A-schedule property upon which a construction has been put up by the first respondent. The prayer (A) of the suit that has been sought for is in the nature of a mandatory injunction to direct the defendants to hand over the possession of the properties morefully described in the schedule A & B of the plaint within a time frame fixed by this Court failing which to direct the Officer of this Court to take possession and hand over the same to the plaintiffs. As



rightly pointed out by the learned counsel for the first respondent, the prayer (a) sought for in the suit is identical with the relief in the interim application.

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11. The judgments relied upon by the learned counsel for the first respondent reported in **1990 (2) SCC 117** and **2013 (9) SCC 221** throws light to the extent to which this Court could grant interim mandatory injunctions pending disposal of the suit. The Hon'ble Apex Court in the judgment reported in **1990 (2) SCC 117** has enunciated the principles upon which a relief of interlocutory mandatory injunctions could be granted. For better appreciation, the relevant paragraphs are extracted hereunder:-

“...16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or



irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion...”

12. On the facts of the said case, the Hon'ble Apex Court had held that not only refusal to grant an interim mandatory injunction will do irreparable injury to the appellant, but, also has found the balance of convenience in favour of the appellants therein for grant of such injunction. Thereby, the Hon'ble Apex Court had set aside the judgment of the High Court and restored



the order of the Trial Court which had granted such interim mandatory injunction.

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13. In the judgment reported in **2013 (9) SCC 221**, it had held that mandatory injunctions can be granted in a suitable case which requires highest degree of satisfaction to the Court which is much higher than a case involving grant of prohibitory injunction. For better appreciation, the relevant paragraphs are extracted hereunder:-

“...17. While the bar under Section 6(3) of the SR Act may not apply to the instant case in view of the initial forum in which the suit was filed and the appeal arising from the interim order being under the letters patent issued to the Bombay High Court, as held by a Constitution Bench of this Court in P.S. Sathappan v. Andhra Bank Ltd. [(2004) 11 SCC 672] , what is ironical is that the correctness of the order passed in respect of the interim entitlement of the parties has reached this Court under Article 136 of the Constitution. Ordinarily and in the normal course, by this time, the suit itself should have been disposed of. Tragically, the logical conclusion to the suit is nowhere in sight and it is on account of the proverbial delays that have plagued the system that interim matters are being contested to the last court with the greatest of vehemence and fervour. Given the ground realities of the



situation it is neither feasible nor practical to take the view that interim matters, even though they may be inextricably connected with the merits of the main suit, should always be answered by maintaining a strict neutrality, namely, by a refusal to adjudicate. Such a stance by the courts is neither feasible nor practicable. Courts, therefore, will have to venture to decide interim matters on consideration of issues that are best left for adjudication in the full trial of the suit. In view of the inherent risk in performing such an exercise which is bound to become delicate in most cases the principles that the courts must follow in this regard are required to be stated in some detail though it must be made clear that such principles cannot be entrapped within any straitjacket formula or any precise laid down norms. The courts must endeavour to find out if interim relief can be granted on consideration of issues other than those involved in the main suit and also whether partial interim relief would satisfy the ends of justice till final disposal of the matter. The consequences of grant of injunction on the defendant if the plaintiff is to lose the suit along with the consequences on the plaintiff where injunction is refused but eventually the suit is decreed has to be carefully weighed and balanced by the court in every given case. Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. Though experience has shown that observations and clarifications to the effect that the findings recorded are prima facie and tentative, meant or intended only



for deciding the interim entitlement of the parties have not worked well and interim findings on issues concerning the main suit has had a telling effect in the process of final adjudication it is here that strict exercise of judicial discipline will be of considerable help and assistance. The power of self-correction and comprehension of the orders of superior forums in the proper perspective will go a long way in resolving the dangers inherent in deciding an interim matter on issues that may have a close connection with those arising in the main suit.

*18. There is yet another dimension to the issues arising in the present appeal. The interim relief granted to the plaintiffs by the appellate Bench of the High Court in the present case is a mandatory direction to hand over possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the court; much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power, the governing principles whereof would hardly require a reiteration inasmuch as the same which had been evolved by this Court in *Dorab Cawasji Warden v. Coomi Sorab Warden* [(1990) 2 SCC 117] has come to be firmly embedded in our jurisprudence...”*

14. On the facts of the said case, the Hon'ble Apex Court had held mandatory injunction ought not to have been granted. Applying the principles laid down in the aforesaid judgments. This Court now would have to look into



the facts of this case to decide as to whether the applicants would be entitled for the mandatory injunction as prayed for.

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15. It could not be in dispute that the property belongs to a Trust. This Court in an Appeal Suit in A.S.No.713 of 1991 filed by the first respondent herein had given a categorical finding that the respondents 1 & 2 therein are the hereditary trustees of Dhavanotsavam festival and also in respect of the properties which would include the suit schedule properties. This fact remains undisputed. For better appreciation, the relevant paragraphs in the aforesaid judgments are extracted hereunder.

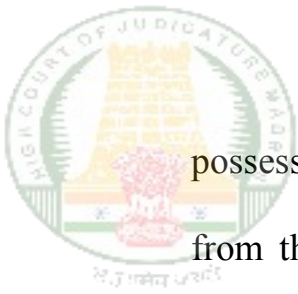
“...23. It is represented that in Door No.86, T.P.Koil Street, Triplicane, Madras, in which, the family members of the testator are residing. It it is so, the family members of the testator are permitted to reside in the suit premises, in a nominal rent as fixed by the appellant temple authorities lesser than the other tenants and if the temple authorities want to demolish and reconstruct the said premises, they shall hand over the possession of the said premises within six months from the date of demand by the temple authorities so as to enable them to proceed with demolition and reconstruction. After reconstruction is over, again the temple authorities so as to enable them to proceed with demolition and reconstruction.



After reconstruction is over, again the temple authorities shall permit the family members of the testator to occupy the reconstructed premises in a nominal rent, without making any demand except the existing formalities.

24. In fine, it is hereby declared that Ex.A2 Will dated 1.2.1872 has been construed as Trust Deed and the respondents are declared as the hereditary trustees of the Dhavanotsavam festival and in respect of the suit properties as per the Will under Ex.A2 dated 1.2.1872. In all other respects the suit is dismissed...”

16. It is also not disputed that the applicants hereunder are the legal heirs of the hereditary trustee, thereby becoming entitled to be the hereditary trustees after their death. It is further to be noted that the judgment and decree made in the appeal suit had been affirmed by the Hon'ble Apex Court while dismissing the Special Leave Petition filed against the same by some of the aggrieved parties. Under the judgment and decree particularly paragraph 23 as extracted above, the suit A-schedule property which is also the Judge's summons schedule mentioned property was to be in possession of the family members of the testator to be used for the residential purpose on a nominal rent as fixed by the first respondent. The judgment further envisages that if the first respondent wants to demolish and reconstruct the said premises, the person in



possession of the property should hand over the premises within six months from the date of demand by the temple authorities so as to enable them to proceed with the demolition and reconstruction and that after reconstruction is over, the first respondent should permit the family members of the testator to occupy the reconstructed premises on a nominal rent without making demand except the existing formalities.

17. When that being so, the first respondent cannot claim to usurp the property to its benefit and it is for them to only hand over the building reconstructed back to the family members of the testator. The applicants are indisputably the family members of the testator. In such an event, this Court is of the considered view that the applicants are entitled for the interim mandatory injunction as prayed for.

18. As noted above from the judgment and decree in the Appeal Suit in A.S.No.713 of 1991, it is the hereditary trustees who are entitled for possession of the Judges summons mentioned property after construction and are also liable to pay the nominal rent. This Court in its order dated 10.04.2024, had framed an issue with regard to the mandatory injunction with regard to the Judges summons schedule mentioned property. It could be seen



that no issues have been framed by this Court with regard to the nominal rent which the applicants are liable to pay.

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19. In such view of the matter, this Court is of the considered view that an additional issue as regards to the nominal rent payable would have to be framed.

20. For the aforesaid reasons, the following orders are passed,

a) Applicants are entitled for a relief of interim mandatory injunction in the facts and circumstances of the case and the first respondent is hereby directed to handover the possession of the newly constructed schedule-A plaint mentioned property to the applicants within a period of eight weeks from the date of receipt of this order or otherwise the applicants are at liberty to approach this Court for further orders to take the possession of the said property.

b) The following additional issue is framed to be considered in the suit,

“What would be the nominal rent payable by the family members of the testator for their



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occupation of the reconstructed premises?”

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Internet : Yes / No

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