

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 2332 of 2002@@  
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arising out of  
Special Leave Petition (C) No. 17494 of 2000@@  
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M. Supraschand & Ors. ...Appellant(s)

Versus

C. Dhandapani & Ors. ...Respondent(s)

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Leave granted.

One T. Rajamannar (hereinafter referred to as "the testator"), who was possessed of many properties, executed a Will on 21st of January, 1967. Property Nos. 178/79 and 180 China Bazaar Road, and 3, Hanumantharayar Koil Street were to be converted into a Trust which was to be administered by the wife of the testator, Smt. Ruthi Rajamannar, Shri T. Ramachandran, Shri C. Radhakrishnan Chetty and Shri Viswanathan. The remaining properties of the testator were to be given to his wife Smt. Ruthi Rajamannar. A Trust Deed was executed on 22nd August, 1969. The main object of the said Trust was to find out ways and means to provide shelter for "pavement dwellers" in the City of Madras. The Board of Trustees was given the absolute powers over the properties including the power to lease or mortgage or alienate in any manner whatsoever as it considered fit and proper.

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Trustees were given the powers to construct or sell the trust properties and also to put up tenements for the pavement dwellers in and out of the sale proceeds and provide shelters to them with such terms and conditions as they deemed fit and proper from time to time. The trustees were also given the power to utilise the moneys realised by rents and sales for other charitable purposes which they considered proper.

The Will was probated and the properties in question were handed over to the Trust. The trust property was fetching a rent of Rs.6,000/- per month. The Board of Trustees, being of the opinion that with the sale proceeds of the properties, they could create more income for achieving the objects of the trust, sold property No. 128, NSC Bose Road, Madras to various third parties (which was one of the trust properties) to various third parties. The sale of the said property by the Trust to the third parties has not been challenged in any proceedings.

An agreement to sell was entered into between the

trustees and the appellants for sale of property no. 124, NSC Bose Road, Chennai, again a part of the trust property. In pursuance of the said agreement to sell, the sale was effected on 10th of September, 1991. After the purchase of properties, the appellants filed RCOP 3183/91 against the tenants for the purpose of fixing fair rent. There were certain other

litigation to the same effect with which are not concerned, hence no reference is being made for the same.

In the year 1992, sub-tenants filed OS 9180/92 on the file of the City Civil Court Madras, seeking restraining the appellants from entering the property and demolishing the same and from executing the order of eviction passed against the tenants. The said suit was dismissed. In the year 1994, another civil suit No. 1031/94 was filed by the sub-tenants for injunction along with application for ad interim injunction. The said suit was dismissed on 22nd of November, 1994 by a learned Single Judge of the High Court in exercise of his jurisdiction on original side. The appeal preferred against the said judgment was also dismissed. The third suit i.e. civil suit No. 831/95 was filed by certain persons claiming to be the pavement dwellers in the High Court of Madras, inter alia, alleging that the trustees had committed breach of trust. Prayer for setting aside the sale deed in favour of the appellants and other reliefs similar to the one claimed in the present suit was made. This suit was dismissed on 30.4.1997. This order became final.

The fourth suit (present suit) was filed under Section 92 of the Code of Civil Procedure, inter alia, alleging that the plaintiffs being the pavement dwellers, were filing the suit. The delay in filing the suit was explained by saying that due to poverty, illiteracy, lack of cooperation, finance

and proper legal assistance they could not file the suit earlier. It was alleged that the trustees had committed a serious breach of trust and had failed to fulfil the conditions of the Will and implement the objects of the trust. Along with the suit an interim application under Order 39 Rules 1 and 2 CPC was also filed for restraining the appellants, their agents, servants, transferees etc. from raising any construction on the suit property no. 124 NSC Bose Road, Chennai or from alienating or dealing with the suit property in any manner, pending disposal of the suit. The learned Single Judge by his order dated 26th November, 1999 dismissed the interim application, inter alia, holding that the plaintiffs had failed to make out a prima facie case for grant of injunction; that the balance of convenience was also not in their favour; that the building had almost been completed and sold to the third parties. The third parties have been put in possession and were carrying on their business.

Aggrieved against the said order of the learned Single Judge the plaintiffs filed the appeal numbered as OSA 73/2000 which was disposed of by the impugned order. The Division Bench overturned the order of the Single Judge. In doing so, the Division Bench accepted the interim application partly and the following two directions were given:

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"(1) The respondents are hereby directed to

maintain "status quo" as on date i.e. as on date i.e, the respondents should not alienate or encumber or dealt with the property in any manner whatsoever till the disposal of the suit.

(2) The respondents are further directed not to put up any manner of further construction and induct persons in the properties."

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Though number of arguments were raised on merits of the disputes including the filing and maintainability of the successive suits, the plea of resjudicata and the locus standi of the plaintiffs to file the suit, but we would not like to express any opinion on the merits of the dispute, lest it may prejudice either of the parties in the trial of the suit. It is not disputed before us that the appellants have finished the construction of the building and they have put up 165 shops out of which 90 per cent have already been sold and vendees put in possession. Vendees are carrying on their business in the premises purchased by them. Only 10 percent remains to be sold. In case the construction has already been completed, the balance of convenience would lie in permitting the appellants to sell the property subject to certain conditions. In our opinion, no purpose would be served in keeping the balance of the constructed building vacant during the pendency of the proceedings in the suit. Accordingly we

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accept the appeal and dispose of the same in the following terms:

1. The appellants shall be permitted to sell/mortgage/lease the remaining built up portions of the property in question subject to the condition that they introduce a clause in the sale/motgage/lease deed to the effect "that the sale/mortgage/lease deed would be subject to the decision of the suit filed by the plaintiffs/respondents and that the result of the suit would bind the vendees/lessees of the property as well." Suit would include futher appeals as well.

2. The appellants or the would be purchasers/lessees would not be permitted to put up external construction to add to the existing building. However, the appellants or the future purchasers or lessees would be permitted to make internal changes in the property for putting it to proper, effective and convenient use keeping in view the nature of business being carried.

3. The appellants would be permitted to lay flooring in the prayer hall said to have been constructed in the building.

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We make it clear that any observations made by the Single Judge or the Division Bench of the High Court or by us in this order be not taken as an expression of opinion on the merits of dispute while disposing of the suit.

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( DORAISWAMY RAJU )@@  
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New Delhi;  
March 21, 2002.

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( ASHOK BHAN )@@  
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ITEM No.1  
NMD CASE

Court No.11

SECTION XII  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.17494/2000

(From the judgement and order dated 14/08/2000 in OSA 73/2000  
of The HIGH COURT OF MADRAS)

M. SUPRASCHAND & ORS.

Petitioner (s)

VERSUS

C. DHANDAPANI & ORS.

Respondent (s)

(With prayer for interim relief)  
( With Appln(s). for permission to submit additional document(s)  
c/delay in filing counter affidavit )  
( For Final Disposal )

Date : 21/03/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU  
HON'BLE MR. JUSTICE ASHOK BHAN

For Petitioner (s) Mr. Sivasubramaniam, Sr. Adv.  
Mr. Senthil Jagadeesan, Adv.  
Mr. V. Ramasubramanian, Adv.

For Respondent (s) Mr. A.T.M. Sampath, Adv.  
  
Mr. P.R. Kovilan Poongkuntvan, Adv.  
Mr. Rakesh K. Sharma, Adv.

UPON hearing counsel the Court made the following  
O R D E R

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Delay condoned.  
Heard Mr. Sivasubramaniam, Adv. from 10.35 a.m. to  
11.30 p.m. and thereafter Mr. Sampath, Adv. for 10 minutes.  
Leave granted.  
Appeal disposed of in terms of the signed order.

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(J.S. Rawat)

(Suneet Bala Sharma)

Court Master

Court Master

(Signed order is placed on the file)