



properties took place in the year 1924.

One of the questions which arose for consideration in the suit was as to whether the said partition was in respect of all the properties or a partial partition. Appellants contend that even assuming that Puttathyamma adopted M. Ramachandra, from a perusal of a deed of adoption, it will appear that some properties were still been jointly possessed.

5. On 23.5.1938, upon the death of Sri T.M. Chikkaranganna his legal representatives partitioned his self-acquired properties, both moveable and immovable. On 22.2.1954, the children of Muniswamappa executed a registered Partition Deed, by which his share in the properties came to be partitioned. From 1957-1969, a number of transactions mainly in the nature of grant of lease took place in respect of the suit properties. No title came to be created in favour of third parties.

On 20.12.1971 for the first time, the first respondent entered into a partition deed, with the members of his family in which the suit schedule property was set out in the deed. Between 2002-2003, the petitioners called upon the defendants to partition the said properties which was refused by the defendants.

6. Appellants herein filed original suit No. 7039 of 2003 in the City Civil Court, Bangalore in September, 2003 inter alia contending that the partition which had taken place earlier between the parties was only a partial one. They merely prayed for a declaration that the suit schedule properties are the joint family properties of the appellants and respondents herein.

7. They also prayed for a preliminary decree for partition and possession of the property in Schedules A and B according to the shares of parties. A consequential decree for permanent injunction restraining the respondents from alienating or constructing on the said properties was also sought.

8. During pendency of the said suit, original defendants executed a registered deed of lease on 15.12.2004 in favour of respondent No. 12 herein. Possession of the property, in question, was handed over to him. A deed of rectification was also executed on 12.12.2005. Appellants herein, thereafter filed an application (I.A. No. 9) for grant of injunction against the defendant/respondent for restraining them from digging pits, putting up constructions etc. during pendency of the suit. Respondent No. 12 was also impleaded as party therein.

Another application (I.A. No. 12) for injunction was also filed for restraining the defendants and in particular the defendant No. 7 from changing the nature of property or transferring or alienating the right in respect of the properties described in Schedule "A" of the plaint in favour of the third parties.

9. By an order dated 24.4.2006, the learned Trial Judge directed maintenance of status quo. However, by reason of an order dated 12.9.2006, both the I.As. were allowed. The orders of injunction as prayed for were passed therein. On an appeal having been preferred therefrom by the respondents herein before the High Court, the same was allowed by reason of the impugned judgment directing;

"17. For the above said reasons, both the appeals are allowed and setting aside the impugned order, I.As. 9 and 12 filed before the Trial Court are dismissed. However, it is made clear that any construction that is going to be put up in suit properties shall be subject to the decision in the suit and any alienation or creation of interest by the defendants, shall be subject to the decision of the suit. If any alienation is made or any interest is created in the suit property during the pendency of suit, the defendants shall intimate transferees or concerned person about the transaction being subject to the decision of the suit and shall mention in the concerned document that transaction will be subject to the decision in the suit. Any creation of interest shall be intimated by the defendants to the Trial Court."

10. Mr. Arun Jaitley, learned senior counsel appearing on behalf of the appellant submitted;

(i) From a perusal of the deed of adoption dated 13.12.1937, it would

appear that the properties, in question, had not been partitioned fully.

(ii) Possession of a co-owner would be possession of the others and in that view of the matter, the respondents must be held to have been possessing the lands for the benefits of all the co-sharers. The fact that no mutation of the land has been effected is also a pointer to show that there was no final partition between the parties.

(iii) It may be that a lease was created in respect of 1/3rd of the property, but thereby the right of the plaintiffs had not come to an end and in that view of the matter, so long the co-sharers were managing the properties in a manner which was not detrimental to the interest of the appellants, it was not necessary for them to file any suit. Creation of a third party interest, in a situation of this nature, or allowing the parties to carry on constructions would cause irreparable injuries to the appellants.

(iv) Respondents having started constructions despite knowledge of the special leave petition, this Court should direct stoppage of such constructions in view of their conduct.

11. Mr. K.K. Venugopal, Mrs. Nalini Chidambram and Mr. R.F. Nariman, learned senior counsel appearing on behalf of the respondents, on the other hand, submitted:

(i) The partition having been effected as far back in 1924, and the principal respondents having been in possession of the properties from 1956 till 2003 when they granted lease in respect of 1/3rd of the property, the impugned judgment should not be interfered with. Even an advertisement was issued for sale of 1/3rd of the land in the year 1985 and the deed of sale was executed on 25.07.1989.

(ii) Admittedly, as would appear from the photographs appended to the counter-affidavit, huge constructions have come up on the lands in question and as such there was no reason as to why the appellants had kept quiet for so long.

(iii) A large number of documents have been filed before the court below before the courts below not only showing dealings with the properties but also showing execution of the deeds of lease, payment of corporation tax, income tax, capital gains tax, etc. which clearly point out separate possession of the properties by the defendants.

(iv) In view of the fact that they have been collecting rent from the tenants themselves would show that the appellants have no prima facie case. These documents having been filed before the learned Trial Judge, it committed a serious error in not taking the same into consideration and, thus, the High Court has rightly interfered therewith by reason of the impugned judgment.

(v) Respondents, keeping in view the escalation of the costs of the building materials, would suffer irreparable injury, if they are not permitted to carry out the constructions.

(vi) The Trial Court proceeded to consider the matter only from the angle as to whether the appellants would suffer irreparable injury or not without considering the other factors relevant for grant of injunction, viz., prima facie case and balance of convenience.

(vii) In any event, as the respondent No. 7 has spent about three crores of rupees as a developer, the impugned judgment should not be interfered with.

12. The property in question is indisputably a valuable property. It is situated in the heart of the commercial area of the town of Bangalore. The land in question admeasures 1 lakh 70 thousand sq. feet.

13. The principal question which arises for consideration is as to whether the properties in question were the subject matter of partition purported to have taken place in 1924 or subsequently or not?

14. Mr. Jaitley has taken us through various documents filed by the parties to show that the respondents had been taking contradictory stand with regard to the date of oral partition among T.M. Muniswamapa, T.M. Thimmaiah & T.M. Chikkaranganna, sons of Mandi Madalappa. It was pointed out that even in the deed of partition, a stand was taken by Puttathayamma that her husband and his brothers have effected partition on

30.06.1924 and the properties fallen to the respective shares are being enjoyed by the respective owners, but in the purported deed of partition dated 22.02.1954 between M.M. Madalappa and M.M. Thimmaiah, the date of partition is mentioned as 24.06.1924. However, in the sale deed dated 30.09.1987 executed between M.M.T. Muniswamappa @ M.M.T. Navin and Mr. Ziaulla Sheriff, M/s. Alexander Apartment Development Corporation, Bangalore, it was stated that the three brothers entered into an oral partition on 26.04.1924. Whereas, in the synopsis, it was stated that the family properties were partitioned on 30.06.1924 and the properties in question fell into the share of T.M. Thimmaiah which was succeeded by Smt. T. Puttathayamma and T. Ramachandra and thereafter by his family members, in the writ petition filed on behalf of T.M. Ramachandra, T.R. Harish, T.R. Shekar, Smt. Padma, Smt. T.R. Rekha and Smt. T.R. Nadini being W.P. No. 29853 of 2002, it was stated that Mandi Madalappa was said to have been put in possession pursuant to the sale transaction and after his death the same was succeeded by T.M. Thimmaiah who had been in enjoyment of the property during his life time and he had let out the property in favour of Garrison Engineers. In the W.P. No. 31865 of 2002, it was stated that Mandi Madalappa was put in possession and enjoyment of the property pursuant to the said transaction and after his death the property was succeeded by his son Shri T.M. Thimmaiah who had been in possession and enjoyment of the property during his life time and he had let out the property in favour of Garrison Engineers.

15. We have taken note of the aforementioned contentions of Mr. Jaitley only to highlight with issue in regard to the factum of partition but the same by itself, in our opinion, for the purpose of determining the issues herein, would not be conclusive. Prima facie it appears that the respondents had been in possession of the properties in suit for a long time. The heirs of Thimmaiah had admittedly been dealing with the properties exclusively. Appellants never exercised any act of possession. The learned Trial Judge in his judgment itself observed:

"41\005No doubt, there is no reference to the suit properties as belonging to the joint family property. This may be a point in favour of the defendants in support of their contention that the suit property was already divided in the year 1924 and, therefore, these documents do not contain reference to the suit properties\005

42. Similarly, the other documents furnished by the counsel for the defendants 1 to 6 in page No. 75 to 293 may establish their contention about their exclusive possession. But, I am afraid that this fact itself will be sufficient to throw away the suit at the threshold."

16. A large number of documents were produced by the respondents to substantiate that the property in question was in exclusive enjoyment of T.M. Thimmaiah being the adopted father of T. Ramachandra from 1924 to 1936. The properties were in possession of T. Puttathayamma, widow of Thimmaiah from 1937 to 1955 and thereafter the other respondents.

17. Respondents contend that the adoption deed must be read as a whole. The translation of the deed of adoption does not appear to be correct. The deed of adoption categorically establishes that the properties were to belong to T. Puttathayamma during her life time, and thereafter the same was to vest in the adoptive son T. Ramachandra. Although no reference to the suit properties might have been made in the deed of adoption but they had all along been in possession of T. Puttathayamma. Apart therefrom evidently the deed of lease was executed in the year 1963 in respect of 1/3rd of the suit schedule property. It was renewed in the year 1969. The property was developed and the nature and character thereof was changed from time to time. A registered deed of lease was executed in the year 1968 between Killik Nixon and T. Ramachandra. A deed of partition was also executed on 20.12.1971. A deed of lease was executed in the year 1977 between Respondent No. 6 and Classic Automobiles. A public notice was also issued

in the year 1985 whereafter a deed of sale was executed on 25.07.1989.

18. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.

19. This Court in *M. Gurudas and Others v. Rasaranjan and Others* [(2006) 8 SCC 367] noticed:

"19. A finding on "prima facie case" would be a finding of fact. However, while arriving at such a finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhavan that the decision of the House of Lords in *American Cyanamid Co. v. Ethicon Ltd.* would have no application in a case of this nature as was opined by this Court in *Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.* and *S.M. Dyechem Ltd. v. Cadbury (India) Ltd.* but we are not persuaded to delve thereinto."

20. Therein, however, the question in regard to valid adoption of a daughter was in issue. This Court held that *Nirmala* was not a validly adopted daughter. This Court wondered:

"34. The properties may be valuable but would it be proper to issue an order of injunction restraining the appellants herein from dealing with the properties in any manner whatsoever is the core question. They have not been able to enjoy the fruits of the development agreements. The properties have not been sold for a long time. The commercial property has not been put to any use. The condition of the properties remaining wholly unused could deteriorate. These issues are relevant. The courts below did not pose these questions unto themselves and, thus, misdirected themselves in law."

21. Emphasis was also laid on the conduct of the parties while granting an order of injunction.

22. In *Seema Arshad Zaheer and Others v. Municipal Corpn. Of Greater Mumbai and Others* [(2006) 5 SCC 282], this Court held:

"30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff;

and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."

[See also Transmission Corpn. of A.P. Ltd. v. Lanco Kondapalli Power (P) Ltd. (2006) 1 SCC 540]

23. Rightly or wrongly constructions have come up. They cannot be directed to be demolished, at least at this stage. Respondent No. 7 is said to have spent three crores of rupees. If that be so, in our opinion, it would not be proper to stop further constructions.

24. We, therefore, are of the opinion that the interest of justice would be subserved if while allowing the respondents to carry out constructions of the buildings, the same is made subject to the ultimate decision of the suit. The Trial Court is requested to hear out and dispose of the suit as early as possible. If any third party interest is created upon completion of the constructions, the deeds in question shall clearly stipulate that the matter is subjudice and all sales shall be subject to the ultimate decision of the suit. All parties must cooperate in the early hearing and disposal of the suit. Respondents must also furnish sufficient security before the learned Trial Judge within four weeks from the date which, for the time being, is assessed at Rupees One Crore.

25. For the reasons aforementioned, the appeals are dismissed subject to the observations and directions made hereinbefore. However, in the facts and circumstances of the case, there shall be no order as to costs.