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OSA.Nos.235 & 236/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

OSA.Nos.235 & 236/2024

and

CMP.Nos.28120 & 28141/2024

OSA.No.235/2024

1.The Music Academy

A Society registered under the
Societies Registration Act, rep.
By its Executive Committee,
No.168 [Old No.306]
T.T.Krishnamachari Road
Chennai 600 014.

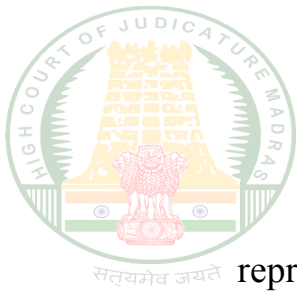
... Appellants

Vs.

1.Mr.V.Shrinivasan

2.THG Publishing Private Limited
represented by its Managing Director,
859 & 860, Anna Salai
Chennai 600 002.

3.The Hindu



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represented by its CEO
859 & 860, Anna Salai
Chennai 600 002.

4.Mr.T.M.Krishna

... Respondents

Prayer : Original Side Appeal filed under Clause 15 of Letters Patent read with Order 36 Rule 9 of OS Rules to set aside the order dated 19.11.2024 passed in A.No.5746/2024 in CS.No.194 of 2024 on the file of this Court.

For Appellant	: Mr.T.Mohan, Senior counsel for Ms.S.Devika
For Respondents	: Mr.V.Ragavachari Senior Counsel for Mr.Sharath Chandran for R1 Mr.P.S.Raman, Senior counsel for RR 2 & 3 Mr.Suhrith Parthasarathy for R4

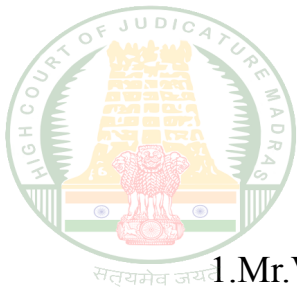
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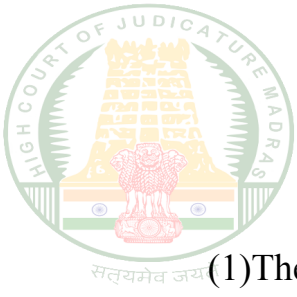
.. Respondents

Prayer : Original Side Appeal filed under Clause 15 of Letters Patent read with Order 36 Rule 9 of OS Rules to set aside the order dated 19.11.2024 passed in OA.No.602/2024 in CS.No.194 of 2024 on the file of this Court.

For Appellants	: Mr.P.S.Raman, Senior counsel for Mr.G.Gokul
For Respondents	: Mr.Sankara Narayanan Senior Counsel for Mr.Sharath Chandran for R1 Mr.T.Mohan, Senior counsel for Ms.S.Devika for R2 Mr.Suhrith Parthasarathy for R3

JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]



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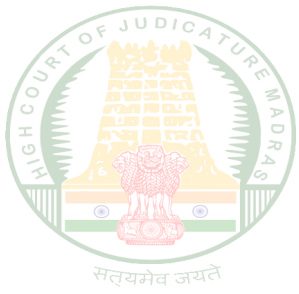
(1)The 1st defendant in the suit in CS.No.194/2024 has filed the original side appeal in OSA.No.235/2024 as against the order of the learned Single Judge dated 19.11.2024 dismissing the application filed by the appellant in Appln.No.5746/2024 in CS.No.194/2024 for rejection of plaint under Order 7 Rule 11 of CPC.

(2)Original Side Appeal in OSA.No.236/2024 is filed by defendants 2 and 3 in the suit in CS.No.197/2024 as against the order in OA.No.602/2024 in CS.No.194/2024 granting ad-interim injunction restraining defendants 1 and 3 in the suit from conferring "Sangita Kalanidhi M.S.Subbulakshmi Award" on the 4th defendant at the 1st defendant's 98th Annual Conference in December 2024 or on any other date or occasion thereafter.

(3)Brief facts that are necessary for the disposal of these two appeals are as follows:

(4)The 1st respondent in both the appeals is the plaintiff in the suit in CS.No.194/2024. The 1st respondent/plaintiff filed the suit in CS.No.194/2024 for the following reliefs:

(a) Granting a decree of perpetual injunction restraining defendants 1 to 3 or those claiming under them from selecting and conferring



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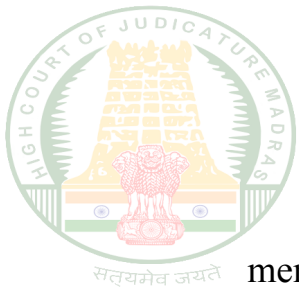
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the "*Sangita Kalanidhi M.S.Subbulakshmi Award*";

(b) Granting a decree of permanent injunction restraining defendants 1 to 3, their men, agents, servants and subordinates from conferring the "*Sangita Kalanidhi M.S.Subbulakshmi Award*" on the 4th defendant at its 98th Annual Conference in December 2024 or on any date or occasion thereafter; and

(c) For other consequential reliefs.

(5) It is the case of the plaintiff/1st respondent that he is the grandson of Dr.M.S.Subbulakshmi, a great singer and an icon of carnatic music and Late Thiru T.Sadasivam and he is the son of their daughter Late Dr.Radha Viswanathan and Late Thiru G.Viswanathan. Dr.M.S.Subbulakshmi, the renowned carnatic signer, passed away on 11.12.2004. Every year, the 1st defendant selects and announces the name of a distinguished musician as the recipient of "*Sangita Kalanidhi Award*". Late Dr.M.S.Subbulakshmi herself is the recipient of the Award in the year 1968. After the demise of Dr.M.S.Subbulakshmi, the 3rd defendant, a National Daily run by the 2nd defendant, instituted a cash award of Rs.1 lakh in the year 2005 in the name of "*Sangita Kalanidhi M.S.Subbulakshmi Award*" to perpetuate her

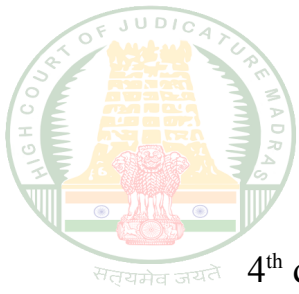


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memory.

(6) It is admitted that defendants 2 and 3 have no role in selecting the awardee as it is the prerogative of respondents 1 and 2 herein to bestow "*Sangita Kalanidhi Award*" to anyone. It is also admitted that "*Sangita Kalanidhi M.S.Subbulakshmi Award*" was instituted by the 3rd respondent in the year 2004 and the said Award is a mirror award given by the 3rd defendant to the recipient of "*Sangita Kalanidhi Award*" given by the 1st defendant every year. The 1st defendant used to give a gold medal and birudu patra to the recipient and the 3rd defendant bestows the "*Sangita Kalanidhi M.S.Subbulakshmi Award*" in the form of a cash price of Rs.1 lakh on the awardee chosen by the 1st defendant on every annual music festival. This has been the practice from the year 2005 and there is no dispute.

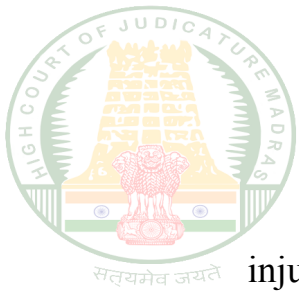
(7) However, the plaintiff filed the suit in CS.No.194/2024 primarily on the ground that conferment of an award in the name of Dr.M.S.Subbulakshmi is against the mandate of the Will dated 03.10.1997 executed by Dr.M.S.Subbulakshmi which was probated by order dated 03.01.2006 in OP.No.466/2005. The plaintiff has made specific allegations against the



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4th defendant, the person who has now been chosen for awarding "*Sangita Kalanidhi M.S.Subbulakshmi Award*". Conferment of the award in the name of Dr.M.S.Subbulakshmi on the 4th defendant was referred to as a surprise to the plaintiff as the 4th defendant had been drawing sharp criticism in respected artistes in the field of Carnatic music. The plaintiff referred to some of the statements of the 4th defendant, which according to the plaintiff, are vituperative, scandalous and made to lower the greatness of the veteran musician. Since the 4th defendant had mischievously made such statements in several articles, in interviews and in other social medias, the plaintiff is aggrieved by the choice of defendants 1 to 3 to confer the "*Sangita Kalanidhi M.S.Subbulakshmi Award*" on the 4th defendant.

(8) Before the suit was filed, the plaintiff sent a lawyer notice on 25.04.2024 to which the 1st defendant gave a reply on 02.05.2024. A reply was also sent by the 3rd defendant on 10.05.2024. Thereafter, a rejoinder was also sent by the plaintiff to his counsel. The said suit came to be filed some time thereafter along with an application for grant of injunction as referred to supra. During the pendency of the suit and the application for



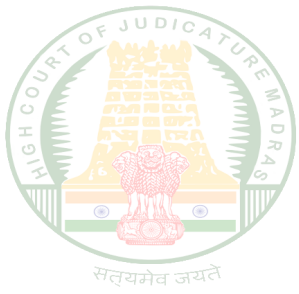
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injunction in OA.No.602/2024, the 1st defendant filed an application in A.No.5746/2024 in CS.No.194/2024 for rejection of plaint under Order 7 Rule 11 of CPC on the ground that the plaint does not disclose cause of action and the suit is barred by law.

(9)The learned Single Judge of this Court allowed OA.No.602/2024 granting injunction and dismissed the application in A.No.5746/2024 filed by the 1st defendant for rejection of plaint. Aggrieved by the common order passed by the learned Single Judge on 19.11.2024, the above appeals are preferred by the respective appellants as indicated in paragraphs No.2 and 3.

(10)Mr.T.Mohan, learned Senior Counsel appearing for the appellants in OSA.No.235/2024 filed against the order dismissing the application filed under Order 7 Rule 11 of CPC, made his submissions in the following lines:-

(a) The plaintiff/1st respondent has no locus standi as he is just one of the beneficiaries of the Will of late Dr.M.S.Subbulakshmi and that he does not derive any enforceable right to sustain the suit as the legal heir of the testatrix.

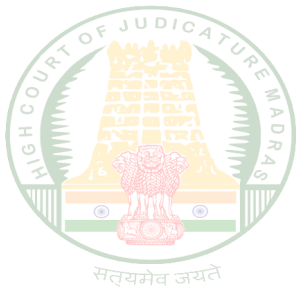


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- (b) The suit is barred under Section 41[j] of the Specific Relief Act.
- (c) The learned Single Judge, while dismissing the application, failed to note Sections 211 and 216 of the Indian Succession Act which expressly excludes all persons other than the executor / administrator from acting as the legal representatives of the testatrix.
- (d) The interpretation of the Will by the learned Single Judge is quite contrary to the plain language employed in the Will and there is absolutely no bar to confer any award or a cash prize by defendants 1 to 3 who are independent Organizations, in favour of anyone either in the name of Dr.M.S.Subbulakshmi or in her memory.
- (e) The learned Single Judge erred in holding that the plaintiff has not proved the cause of action as well as the locus standi quite contrary to the basic principles and ignoring the specific objections raised by the appellant.
- (f) In support of the application for rejection of plaint, the contention of the appellant is that the plaintiff/1st respondent who is one of the beneficiaries of the Will has no locus standi as the testatrix herself



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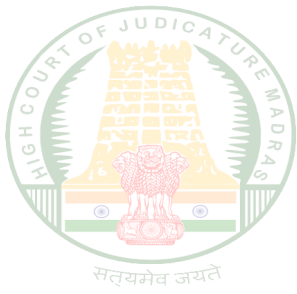
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had appointed an executor thereby making him the sole legal representative. Since the plaintiff/1st respondent was never entrusted with any responsibility to implement the wishes of late Dr.M.S.Subbulakshmi, it is contended by the learned Senior Counsel that there is no cause of action for the plaintiff/1st respondent to institute the suit. [Therefore, the points focused is that the suit if at all can be filed only by the executor relying upon Sections 211 and 216 of Indian Succession Act].

(g) The suit seeking perpetual injunction is barred under Section 41[j] of Specific Relief Act. It is also contended that without locus standi, the plaintiff has preferred the suit and therefore, the cause of action pleaded is illusory.

(11) Mr.P.S.Raman, learned Senior counsel appearing for the appellants / defendants 2 and 3 in OSA.No.236/2024 filed by defendants 2 and 3 in the suit in CS/No.194/2024, canvassed the following points:-

a) The findings of the learned Single Judge that conferment of any award in the name of Dr.M.S.Subbulakshmi is forbidden in the Will executed by her in the year 1997, is erroneous and quite



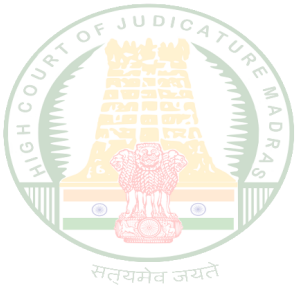
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contrary to the specific clauses relied upon by the plaintiff and defendants.

- b) The plaintiff has no enforceable right to file a suit and that he is not personally affected even as per the plaint averments and as such, the suit itself is barred under Section 41[j] of Specific Relief Act.
- c) The learned Judge erroneously held that the plaintiff has *prima facie* case not only on the basis of erroneous interpretation of the recitals of the Will but also on the wrong understanding of law and principles.
- d) Late Dr.M.S.Subbulakshmi herself appointed one Mr.Athmanathan to take possession of all the awards and prizes etc., awarded to her and to hand over in his discretion to an Institution or Body for being kept by them in her memory. Therefore, it could never be a wish of the testatrix that there shall not be any award of any kind in her memory.
- e) The plaintiff himself has admitted institution of several awards in her name by different Organizations. Since the plaintiff was silent all along and has come forward with the present suit only against



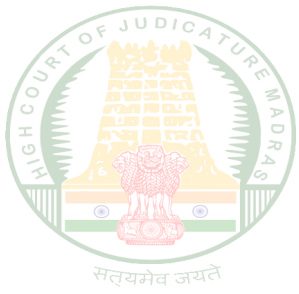
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defendants 1 to 4, there is neither *bona fides* nor a *prima facie* case for grant of interim injunction because of her acquiescence.

- f) In view of the fact that Dr.M.S.Subbulakshmi during her lifetime, has recognized several awards or work in her name as a mark of respect, the conclusion reached by the learned Single Judge that the plea of acquiescence cannot be accepted as it is not the case of appellants that Dr.M.S.Subbulakshmi herself had acknowledged any award or memorial in her name is wrong.
- g) When Dr.M.S.Subbulakshmi herself has received multiple awards in her lifetime including Ramon Magsaysay Award in 1974 and several other National and Regional awards particularly, Bharat Ratna award in the year 1998 after executing her Will in the year 1997, the findings of the learned Judge as regards *prima facie* case is not only erroneous but also without considering the material facts which are admitted.
- h) The vital fact that the plaintiff and his family had acknowledged several awards continuously from 2005 for over 19 years had been totally ignored by the learned Judge. The appellants have



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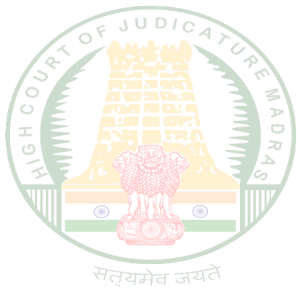


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instituted the award from 2005 and that the family members of Dr.M.S.Subbulakshmi had also participated in several functions while conferring awards in the name or memorial of Dr.M.S.Subbulakshmi. Hence, the learned Judge ought to have held that absolutely there is no *bona fides* in the litigation.

(12)***Per contra***, Mr.V.Raghavachari and Mr.Sankara Narayanan, learned Senior counsels appearing for the 1st respondent in the respective appeals made the following submissions:-

- a) The learned Judge has found prima facie case in favour of plaintiff/1st respondent on a proper appreciation of the Will of late Dr.M.S.Subbulakshmi.
- b) The plaintiff who is not only a legatee under the Will but also a legal heir of late Dr.M.S.Subbulakshmi, is entitled to file the suit against the institution or conferment of any award either in the name of or in the memory of late Dr.M.S.Subbulakshmi.
- c) The plaintiff can institute a suit for perpetual injunction regarding conferment of awards as the same was forbidden in the Will.
- d) Late Dr.M.S.Subbulakshmi, being a celebrity, has a right to prevent



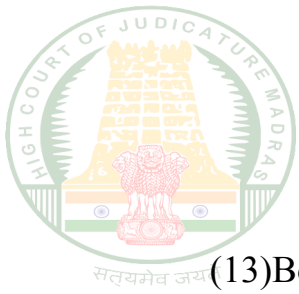
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anyone from using her identity or personality. The plaintiff, being one of the legal heirs, has right by succession and therefore, the plaintiff has locus standi.

- e) The right of publicity vests in an individual and he alone is entitled to profit from it. Infringement of right of publicity requires no proof or falsity, confusion or deception especially when the celebrity is identifiable as held by the Delhi High Court in ***Titan Industries Vs. M/s.Ramkumar Jewellers [2012 SCC Online Del 2382]*** and by this Court in ***Shiwaji Rao Gaikwad Vs. Varsha Productions, Mumbai [2015 [1] LW 701]***.
- f) Right of publicity and right of personality survives death of its owner. Since right of publicity is assignable and it survives after the death of any celebrity, the objection regarding locus standi and cause of action cannot be sustained.
- g) The Court cannot turn a blind eye to such misuse of a personality's name and other elements of his persona. Dilution, tarnishment, blurring are all actionable torts which the plaintiff would have to be protected against.



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(13) Both the learned Senior Counsels made extensive submissions reiterating very same reasoning of the learned Single Judge while dismissing the application under Order 7 Rule 11 of CPC and allowing the application granting the order of injunction.

(14) This Court carefully considered the submissions made on either side and also perused the materials placed.

(15) Upon hearing the submissions made on either side and on perusal of the materials, the following points arise for consideration:-

- (1) Whether the plaint is liable to be rejected under Order 7 Rule 11 of CPC ? and
- (2) Whether the order granting interim injunction on the admitted facts, is sustainable?

POINT [1]:-Whether the plaint is liable to be rejected under Order 7 Rule 11 of CPC:-

(16) On the question of rejection of plaint, this Court cannot decide the same on the basis of *prima facie* case or balance of convenience. Since



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application under Order 7 Rule 11 of CPC has been filed only on the ground that the plaint does not disclose a cause of action and that the suit is barred by law, this Court going by the averments in the affidavit, finds that the plaintiff has disclosed a cause of action in the plaint.

(17)The question whether the plaintiff/1st respondent has locus standi or whether any award conferred on anyone in the name of Dr.M.S.Subbulakshmi is forbidden, cannot be concluded on the basis of a *prima facie* view.

(18)Few legal issues which are incidental and crucial in deciding the suit in one way or the other conclusively, depends upon few facts and on the interpretation of Will by external evidence. Both sides shall be given opportunity to lead evidence. There must be a fair trial. Similarly, the objection as to locus standi either under Section 41[j] of Specific Relief Act or under Sections 211 or 216 of Indian Succession Act, cannot be on the basis of the statements of the defendants.

(19)The scope of Order 47 Rule 1 of CPC is limited to grounds. It is well settled that an application under Order 47 Rule 1 of CPC has to be decided only on the plaint averments and not on the basis of written



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statement or the evidence that may be adduced by the other. Since several judgments on the doctrine of acquiescence, publicity, personality have been cited and evidence to support the arguments is necessary, this Court though finds no *prima facie* case or balance of convenience in favour of plaintiff, is unable to entertain the application to reject the plaint under Order 7 Rule 11 of CPC.

POINT [2]:-Whether the order granting interim injunction on the admitted facts, is sustainable:

(20)Even though serious allegations are raised by the plaintiff/1st respondent against the 4th defendant about how he had made disparaging remarks and adverse comments against late Dr.M.S.Subbulakshmi questioning his qualification for getting the award, the learned Judge has held in paragraph No.37 of the order impugned, as follows:-

"37.For conferring "Sangita Kalanidhi" title to the 4th defendant by the 1st defendant none of the above comments about M.S.Subbulakshmi by T.M.Krishna matters. His opinion about M.S.Subbulakshmi whether



good, bad or ugly will not disqualify him from getting the Title "Sangita Kalanidhi". Conferring this title is the prerogative of the Executive Committee of the Music Academy the 1st defendant. The suitability has to be decided by them and not by the plaintiff/petitioner. Receive the title is again the option of the 4th defendant."

(21)Mr.V.Raghavachari, learned Senior counsel appearing for the plaintiff/1st respondent relied upon the pleadings where there is reference to all embarrassing statements uttered by the 4th defendant in different contexts about the performance of Dr.M.S.Subbulakshmi as a singer. However, the learned counsel appearing for the 4th defendant has referred to the affidavit filed by the 4th defendant to show how the plaintiff/1st respondent has given a distorted and truncated version to mislead the Court. The learned Single Judge refused to go into the qualification of the recipient of the award, namely, the 4th defendant for valid reasons.

(22)This Court may add further that it is the discretion of defendants 1 to 3 to choose the recipient of the award in their wisdom and the Court



normally will not judge the assessment.

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(23) Since both sides relied upon the recitals of the Will dated 03.10.1997, it is necessary to consider at least to express our *prima facie* view on the intention of the testatrix. The relevant clauses in the Will is extracted hereunder:-

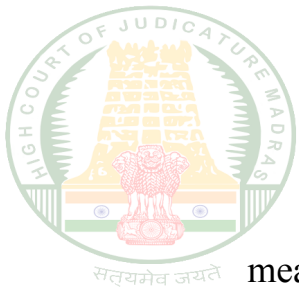
"Regarding the mementos, souvenirs and other Awards and Prizes etc., awarded to me, they may be taken possession of and cared for, by Sri K.R.Athmanathan and handed over in his discretion to an institution or body for being kept in my memory.

....

....

It is my earnest desire and mandate that after my demise, no Trust, Foundation or Memorial of any kind including erecting of any statue or bust shall be formed or created or made in my name and memory or any fund or donation or contributions collected for any of the aforementioned purposes using my name, except to the extent of what I have stated above regarding the mementos, souvenirs etc., awarded to me since I consider these are not conducive to our culture."

(24) A Will has been defined under Section 2[h] of Indian Succession Act to

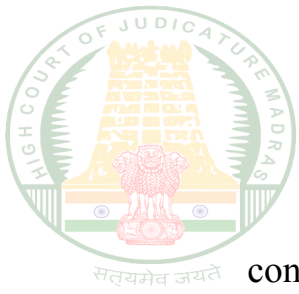


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mean, the legal declaration of the intention of testator with respect of his property which he desires to be carried in effect after his death.

Declaration with respect to property should be in respect of something that is owned or possessed. A bequeath is nothing but a gift of personal property by Will or a legacy. Under the Will the testatrix had not bequeathed any right in relation to her personality or publicity. The wish even assuming for a moment that any award in the name of testatrix is forbidden, there was no bequeath in favour of any of the beneficiaries in respect of anything which is capable of being owned. Therefore, the plaintiff has no right under the Will in relation to the personality or publicity of late Dr.M.S.Subbulakshmi.

(25)From the recitals, this Court is unable to conclude that the legitimate intention of late Dr.M.S.Subbulakshmi was that no award should be conferred in her name or in her memory as if she has some personal aversion for being celebrated. When she had expressed her desire that all the awards conferred to her should be kept by an institution or body for being kept in her memory, the conclusion of the learned Single Judge that the testatrix had desired and mandated that no such award should be



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conferred on anyone in her name, is erroneous.

(26) From the plain reading of the contents of the Will, the testatrix did not want anybody to form or create or make any Trust, Foundation or Memorial of any kind including erecting of any statue or bust in her name or in her memory. The testatrix expressed her further desire that no fund or donation or contribution shall be collected for the purpose of forming or creating or making any Trust, Foundation or Memorial. The findings of the learned Judge that conferment of award in her name or in memory of her is forbidden, cannot be accepted. Had it been the intention of testatrix that no award shall be conferred on anyone in her name, that could have been expressed in simple language. An interpretation contrary to the plain language of the instrument is not permissible in law. Therefore, the view expressed by learned Judge on the interpretation of Will is against well settled principles.

(27) While placing reliance on the recitals of the Will, the learned Judge came to the correct conclusion that the award in the name of late Dr.M.S.Subbulakshmi is to cherish her legacy and commemorate her. Since award is in the nature of reminding people about



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Dr.M.S.Subbulakshmi, the learned Judge held that the award falls within the meaning of the word "memorial" and therefore, it is forbidden by the Will executed by late Dr.M.S.Subbulakshmi. This Court is unable to accept the logic or reasoning of the learned Single Judge in the later part.

(28)Applying the principles on the interpretation of Will, particularly by sitting in the armchair of testatrix, the intention of the testatrix was to tell the beneficiaries and her legal heirs that there shall be no formation, creation or marking of Trust or Foundation in her name or in memory of her. It is only in that context, she expressed her desire and intention not to collect funds or donations or contributions for the purpose of forming or creating or making any Trust in her name or in memory of her.

(29)During her lifetime, it was pointed out that Dr.M.S.Subbulakshmi has acknowledged several works in her name or in memory of her. The fact that several awards have been instituted in the name of Dr.M.S.Subbulakshmi and few statutes or structures have been constructed / erected for her or in her name, is not in dispute. The following table will give the names of awards and the institutions by whom such award is conferred:



Sl.No.	Name of the Award	Conferred by
1	Bharat Ratna Smt.M.S.Subbulakshmi National Award	The Bhramara Trust
2	M.S.Subbulakshmi Sangeetha Prathibha Puraskar	M.S.Subbulakshmi Foundation and the Varkala based Sree Krishna Natya Sangeetha Academy
3	M.S.Subbulakshmi Yuva Puraskar	Prasar Bharti & Spic Macay
4	M.S.Subbulakshmi Puraskar	Visakha Music Academy
5	M.S.Subbulakshmi Award	Narada Gana Sabha
6	M.S.Subbulakshmi Fellowship	Shanmukhananda Sabha
7	Dr.M.S.Subbulakshmi Centenary Awards	Shanmukhananda Sabha
8	Bharata Ratna Dr.M.S.Subbulakshmi Sangeetha Pracharya Award	Shanmukhananda Sabha
9	The Hindu & Saregama M.S.Subbulakshmi Award	The Hindu & Saregama
10	M.S.Subbulakshmi Award	Tamil Nadu Government's Act and Culture Department
11	MS Memorial Award	Department of Language and Culture at the Ghantasala Government Music College
12	MS Subbulakshmi Award of distinguished service	Sankara Nethralaya

(30) Similarly, the fact that several auditoriums have been constructed in the name of Dr.M.S.Subbulakshmi at several locations including the Asian College of Journalism, Chennai ; Shanmukhanand Sabha, Mumbai ; the Velammal International School, Ponneri. There are endowment concerts being held in memory of Late Dr.M.S.Subbulakshmi by Visakha Music

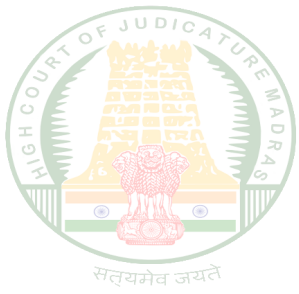


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Academy, Visakhapatnam and Powai Fine Arts, Mumbai. Statues of late Dr.M.S.Subbulakshmi have also been erected by Tumkur University, Tumkur ; Shanmukhanand Sabha, Mumbai ; Tirumala Urban Development Authority, Tirupati ; Sri Rama Lalitha Kala Mandira, Bengaluru ; and Sri Kanchi Mahaswami Vidya Mandir, Tambaram, Chennai. None of the above awards or fellowships, auditorius and statues erected in the honour of late Dr.M.S.Subbulakshmi are questioned by the plaintiff. The above list is not exhaustive. We find no explanation from the plaintiff/1st respondent to know what prevented him from impleading several other institutions questioning their right to institute and confer awards in the name of late Dr.M.S.Subbulakshmi.

(31)On the question of acquiescence, the learned Judge held in paragraphs No.23 to 25 as follows:-

"23. 'Acquiescence' in legal parlance means a passive acceptance or implied consent to an action or situation. In this case, M.S.Subbulakshmi after executing the Will in the year 1997, till her death in the year 2004, she never allowed anyone to institute any



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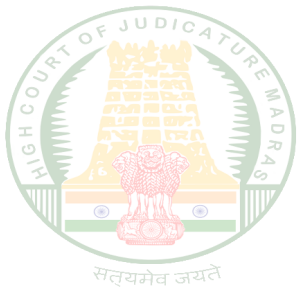


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Trust, Foundation or Memorial in her name. While she had not allowed anyone to do so, contrarily when the Government proposed to rename the Road in which her residence located as M.S.Subbulakshmi Road, she declined to give consent.

24.The principle of acquiescence can be applied only if M.S.Subbulakshmi after expressing her desire and mandate in her Will not to establish any Trust or Foundation or Memorial, but had allowed someone to institute or form or create a Trust, Foundation or Memorial in her name during her life time. If after her demise any act done disregard of her wish and desire, the passive acceptance or implicit consent, even if any, it cannot be construed as acquiescence.

25.The conduct of M.S.Subbulakshmi refuse to give consent for the Government proposal to rename the road in which her house situated as 'M.S.Subbulakshmi Road' is a proof that she meant what she had said in her Will and she disliked creating Memorial in her name. The said dislike is not illegal or against public policy or unenforceable. In such a factual circumstances, the wish of the death person cannot be violated and the violators cannot have the advantage of their own violation to plead acquiescence.

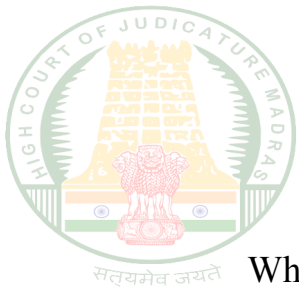


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(32)The learned Judge observed that the testatrix had expressly recorded her desire and mandated that there shall not be any award instituted in her name and hence, defendants 2 and 3 cannot institute an award by her name against her wish. The learned Judge held that even if the entire world wish to cherish the memory of late Dr.M.S.Subbulakshmi by conferring awards, the wish and mandate of late Dr.M.S.Subbulakshmi should prevail and that the best way to honour her is to respect her wish.

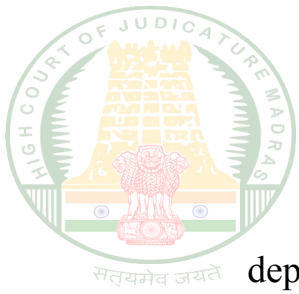
(33)For the above reasons, the learned Single Judge held that a *prima facie* case is made out and balance of convenience is in favour of the plaintiff to grant injunction. Even though the 1st defendant was not restrained to confer "Sangita Kalanidhi" title to the 4th defendant, the learned Judge held that "Sangita Kalanidhi M.S.Subbulakshmi Award" cannot be conferred on the 4th defendant. However, the learned Judge permitted the 3rd defendant to give cash prize of Rs.1 lakh to 4th defendant in recognition of his achievement in the field of Carnatic music. Injunction was granted only against defendants 2 and 3 restraining them to confer "Sangita Kalanidhi M.S.Subbulakshmi Award" to 4th defendant or any other person.



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When several works had been done in her name or in memory of her even during the lifetime of the testatrix, as pointed out by the learned Senior Counsels for the appellants, the plea of acquiescence cannot be discarded. When the doctrine of acquiescence is pleaded as a defence in a suit for perpetual injunction filed by the plaintiff, the conclusions reached by the learned Single Judge rejecting the plea of acquiescence on the ground that the plea of estoppel or acquiescence has not been established against the testatrix, is erroneous. On the admitted facts, the plaintiff who had ample time to implead all other Organizations who had instituted awards in the name of late Dr.M.S.Subbulakshmi, in the present suit, has not done so, this Court is unable to reject the contention or stand taken by appellants that the suit and the interlocutory application is not for a *bona fide* cause, but with an oblique motive against the 4th defendant. The pre-suit notice was issued in March 2024 and a reply was also given by defendants immediately. By the time when the plaint was presented, the plaintiff cannot plead ignorance of several awards conferred or instituted in the name of late Dr.M.S.Subbulakshmi.

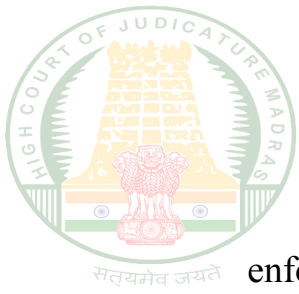
(34)A 'Wrong' in the legal parlance may be held to be committed by



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depriving somebody's right or causing injury to others. In other words, an act is wrongful only if it infringes the legal right of another. Actionable wrong should have a legal backing. A 'Right' is an interest recognised and protected by law only when there is a legal right vested in a person, he can complain infringement for a legal action. Without a person suffering a legal injury, there is no right of action before a Court of law. A right may accrue to a person from a contract or a statute. Similarly, a wrong is said to be committed only if the act is forbidden by a contract or statute. Without a wrong, there is no remedy. Unless a person suffers a legal injury any act which is not forbidden cannot give rise to a cause of action for any relief.

(35) Conferment of an award by an Organization or a Trust in memory of a legend to an individual is a recognition of his achievement and is not prohibited in law. In this case, except the recitals of the Will expressing her desire, no other source is alleged. Even though we are not agreeing, assuming that the desire of Dr.M.S.Subbulakshmi was that no award shall be conferred on anyone in her name or in memory of her, how this is



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enforceable if conferment of award is not by way of exploiting her personality but by way of honouring or recognizing her achievements in the field of music.

(36)The plaintiff/1st respondent on the basis of a mere wish of late Dr.M.S.Subbulakshmi, cannot plead a legal injury. Unless there is wrong which is forbidden by law, the plaintiff/1st respondent cannot have a cause of action to injunct another person from doing an act. In the instant case, conferment of award to a person by defendants 1 to 3 is a right which is not forbidden or prohibited in law. Such a right cannot be deprived by referring to some imperfect or inchoate right pleaded by plaintiff. Even though the plaintiff at best can plead a moral right, assuming that the interpretation of the plaintiff to the Will is correct, this Court has no material to conclude that such a right is enforceable.

(37)Though the learned Senior counsels appearing for the 1st respondent/plaintiff referred to several judgments of this Court and other Courts, this Court is unable to get anything on principles as the decisions are all about the right of an individual to his personality and publicity. When a third party tries to commercially exploit the personality or



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publicity right of any celebrity, that gives rise to a cause of action. If a person is able to convince the Court for a relief of perpetual injunction that a third party makes a gain by exploiting plaintiff's personality or publicity rights, Court will grant relief as there is wrong and legal injury. That is not the situation here. Therefore, the judgments relied upon by the learned Senior counsels appearing for the 1st respondent/plaintiff do not support the stand of the plaintiff/1st respondent.

(38) This Court is also mindful of the legal consequences of decreeing suit or granting interim injunction. This Court has already seen that conferment of award in the name of late Dr.M.S.Subbulakshmi or in her memory, is not an actionable wrong. As a matter of fact, every award in the name of Dr.M.S.Subbulakshmi or in memory of her is only to remember the great singer who is one of the icons of carnatic music. From the Will itself, late Dr.M.S.Subbulakshmi, has referred to her relations who have succeeded to her estate. The present suit is not a representative suit. Other legal heirs of late Dr.M.S.Subbulakshmi have not joined in filing the suit. It is quite unnatural for any other legatees or legal heirs of the great singer to wish that she should not be remembered or revered as she is being now.

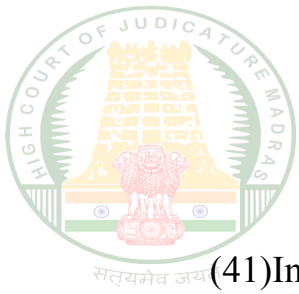


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A case of this nature will be shocking to several lakhs of singers and musicians. Except some personal reasons against 4th defendant, the plaintiff has no *bona fide* cause in this litigation.

(39) From the above discussions, this Court finds no *prima facie* case in favour of plaintiff/1st respondent. This Court has held that the plaintiff/1st respondent has no legal or enforceable right. This Court is unable to see any legal injury to the plaintiff/1st respondent. It is admitted that the plaintiff/1st respondent has participated in several functions acknowledging conferment of awards in the name of late Dr.M.S.Subbulakshmi or in her memory.

(40) This Court for sure, feels that no other legal heir of late Dr.M.S.Subbulakshmi will agree that there shall be no conferment of any award in the name of late Dr.M.S.Subbulakshmi or in her memory. The testatrix has created a legacy. Every family members of late Dr.M.S.Subbulakshmi and her legal representatives enjoys certain respect in the society for being her relative. In such circumstances, it is difficult to accept that everyone in the family of late Dr.M.S.Subbulakshmi will sail with the plaintiff/1st respondent.

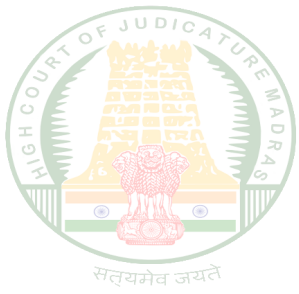


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(41) In the result, **OSA.No.235/2024** filed by the appellant/1st defendant against the dismissal of the application to reject the plaint in A.No.5746/2024 in CS.No.194/2024 vide order dated 19.11.2024, **stands dismissed.**

(42) **OSA.No.236/2024** filed by the appellants/defendants 2 and 3 against the order in OA.No.602/2024 in CS.No.194/2024 for grant of ad-interim injunction vide order dated 19.11.2024, **stands allowed and the order granting interim injunction in OA.No.602/2024 is set aside. No costs.**

(43) It is open to the defendants in the suit to raise all the objections and contentions on merits before the Trial Court. The conclusions which we have reached on the interpretation of the Will and the right and locus standi of plaintiff are only for the purpose of deciding the Interlocutory Applications or for expressing our *prima facie* view. Hence, the Trial Court, while disposing of the suit based on evidence, is directed to deal with every issue and dispose of the suit purely on merits uninfluenced by any of the observations and conclusions which we have expressed in this judgment. Consequently, connected miscellaneous petitions are closed.



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[S.S.S.R., J.] [P.D.B., J.]
13.12.2024

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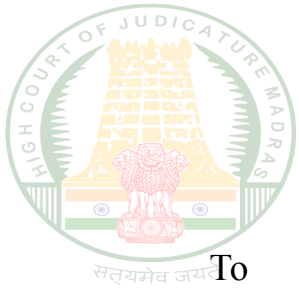
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Internet : Yes

Neutral Citation : Yes

Index :Yes

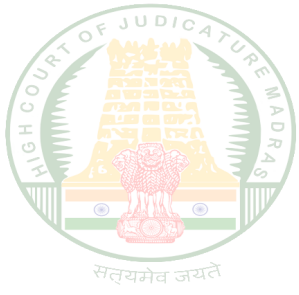
NOTE:Issue order copy today [13.12.2024]



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To
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- 2.The Managing Director
THG Publishing Private Limited
859 & 860, Anna Salai
Chennai 600 002.
- 3.The Chief Executive Officer
The Hindu,
859 & 860, Anna Salai
Chennai 600 002.



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OSA.Nos.235 & 236/2024

S.S. SUNDAR, J.,
and
P.DHANABAL, J.,

AP

OSA.Nos.235 & 236/2024

13.12.2024