

property belonging to Plaintiff. This was an *ex parte* order obtained on 25.6.2018 and these orders were extended till final determination on 4.7.2018. First Defendant had filed statement of defence but never sought to remove the injunctive orders.

[3] Plaintiff now through *ex parte* summons seeking to vacate *ex parte* injunctive orders obtained by Magistrate's Court exercising Family Law jurisdiction restraining dealings of CT 4517 and CT 4518 .

[4] The above two certificates of title are the subject matter where this court had granted injunctive orders. Plaintiff was not a party to matrimonial action and it is a charitable foundation. First Defendant was one of the parties to matrimonial action. Plaintiff seeks to vacate *ex parte* orders granted by Magistrate's Court on 23.11.2018.

[5] Any *ex parte* order granted without hearing a party, can be canvassed *inter partes* in the same court. Plaintiff being not a party to matrimonial action should not preclude them seeking vacation of *ex parte* injunctive orders granted by Magistrate's court as an aggrieved/interested party.

[6] Higher court will not interfere with such *ex parte* decision until such an application is made to the court below even in an appeal.

[7] In any event, this application is not an appeal, and made through *ex parte* summons. So it is struck off *in limine*.

[8] Plaintiff had also sought restraining order against first Defendant from interfering with the sale of the properties in issue (i.e CT 4518 and CT4517) . This cannot be granted due to two reasons, one being that already there is a caveats lodged by first Defendant regarding the said properties, it needs to be removed before such an order is to be considered. Next issue is the Magistrate's Court orders made on 23.11.2018 which

conflict with such order. Plaintiff needs to make appropriate application to relevant court for either removal of caveat and or variation of ex parte orders.

Orders

- a. *Ex parte* summons filed on 6/11/2020 struck off.
- b. No costs.




Deepthi Amaratunga
Judge