

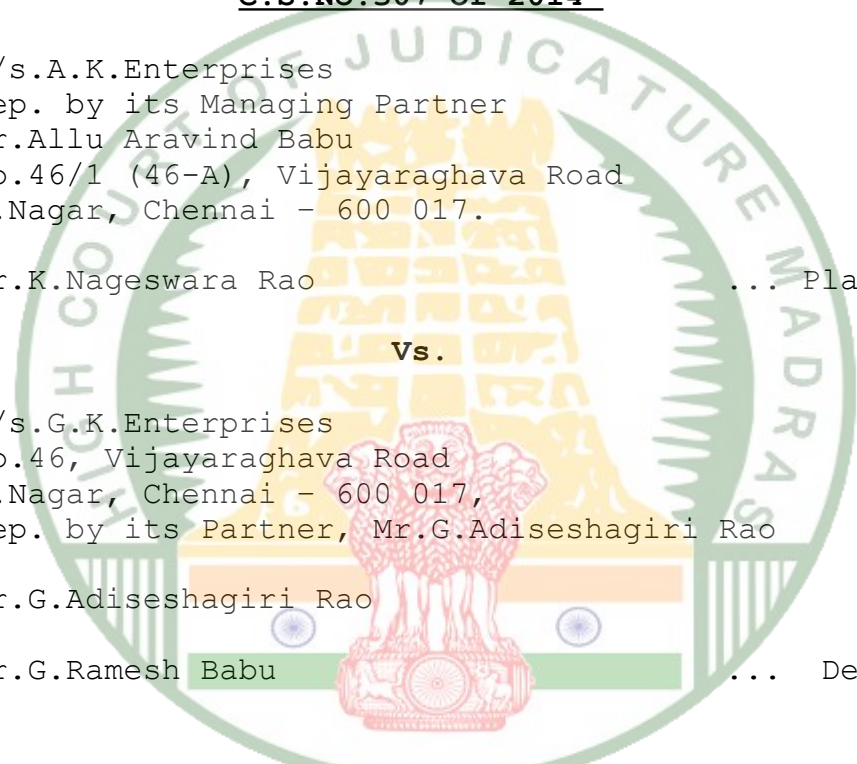
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.12.2015

CORAM

THE HONOURABLE MR. JUSTICE **M. SATHYANARAYANAN**

C.S.No.307 of 2014

- 
1. M/s.A.K.Enterprises
Rep. by its Managing Partner
Mr.Allu Aravind Babu
No.46/1 (46-A), Vijayaraghava Road
T.Nagar, Chennai - 600 017.
2. Mr.K.Nageswara Rao Plaintiffs
- Vs.**
1. M/s.G.K.Enterprises
No.46, Vijayaraghava Road
T.Nagar, Chennai - 600 017,
Rep. by its Partner, Mr.G.Adishesagiri Rao
2. Mr.G.Adishesagiri Rao
3. Mr.G.Ramesh Babu Defendants

PRAYER: This Civil Suit filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of C.P.C., praying for the following reliefs:

(a) for a declaration that the first plaintiff is the owner of the suit property situated at No.46/1 (46-A), Vijayaraghava Road, T.Nagar, Chennai - 600 017 more fully described in the suit schedule;

(b) for costs of the suit.

For Plaintiffs : Mr.T.P.Sankaran
for M/s. T.M.Pappiah

For Defendants : Mr. A.V.Arumugham

JUDGMENT

A perusal of the plaint would disclose the following facts:-

1. (i) In terms of Partnership Deed dated 01.07.1978, the second plaintiff along with the defendants as partners, started a partnership business under the name and style of "M/s. G.K.Enterprises" (first defendant). The first defendant firm participated in the auction sale proceedings during the year 1978 in C.S.No. 85 of 1966 before this court and was successful in purchasing the land admeasuring 15 ½ grounds with a two storied building etc., in T.S.No. 4879/72, Thyagaraya Nagar, Madras (now Chennai) and the same was also confirmed in favour of the first defendant. This Court vide order dated 25.09.1978 in C.S.No. 85 of 1966 directed the first defendant to pay to the Administrator, the balance sale consideration and it was paid and the first defendant was declared as the purchaser of the above said property and it was also duly accepted by the Court vide order dated 10.08.1978 and the sale certificate was directed to be issued in the name of the Managing Partners of the first defendant

erstwhile partner of G.K.Enterprises and the second plaintiff herein) of M/s. G.K.Enterprises by order dated 21.12.1978 and thereby, the said property became the part of the partnership assets of the first defendant.

(ii) The second plaintiff was originally a partner of the first defendant firm expressed his intention to retire from the said business and accordingly retired from the partnership firm vide Deed of Retirement dated 14.06.1980. Since the partnership business of the first defendant was "at Will", the remaining partners continued the partnership business in terms of the Partnership Deed dated 01.07.1978.

(iii) It is further averred in the plaint that in terms of Clauses 3 and 4 of Deed of Retirement dated 14.06.1980, the continuing partners agreed to give to the retiring partner, namely, the second plaintiff, one and half grounds of vacant land situated in the South East corner of the property bearing New No.46, Vijayaraghava Road, Chennai -17 on T.S.No. 4879/72 in lieu of his share capital and share of profit and the assets of the first defendant firm and it was also accepted and acted upon by the first defendant firm.

(iv) The second plaintiff after his retirement from the partnership firm of the first defendant, vide Deed of Partnership dated 04.04.1981 entered into a partnership along with Mr.K.Sathyanarayana, Mr.Allu Aravind Babu,

and Master K.V.Ramarao, minor represented by his father Mr.K.Sathyanarayana under the name and style of "M/s. A.K. Enterprises" (the first plaintiff). The second plaintiff has also brought into the first defendant firm, the vacant land measuring 1.5 grounds at No. 46/1(46-A), Viajayaraghava Road, T.Nagar, Chennai -17 towards his share capital and later on, the super structure to the extent 4032 sq. feet was also put up on the said land and it was also confirmed by the continuing partners of the first defendant firm under a Registered Sale Deed dated 29.03.1990 as well as in the sale deed dated 23.03.1992 executed by the first defendant firm in favour of S.Parvathy Devi.

(v) In the sale deed dated 23.03.1990 the fact of the retirement of the second plaintiff from the first defendant firm and allotment of one and half grounds out of 15 ½ grounds have also been stated. It is further averred in the plaint, vide Deed of Retirement dated 01.04.1998, some of the partners, viz., Smt. Allu Kanakarathinam and Ms.Allu Bharathi retired from the first plaintiff firm with effect from 1.04.1998 and Mrs.allu Nirmala w/o Mr.Allu Aravind Babu was admitted as a new partner and the present partners of the first plaintiff firm are (1) Mr.Allu Aravind Babu, (2) Mrs. Allu Nirmala, (3) Mr.K.Nageswara Road, (4) Mr.K.V.Rama Road, (5) Mr.K.Lakshmi Narayana and (6) Mr.K.Satyanarayana.

than three years have been lapsed after retirement of the second plaintiff and the first defendant firm and he approached the Tahsildar, Egmore - Nungambakkam Taluk, Spur Tank Road, Chennai - 31 for issuance of patta in respect of 1 ½ ground in Door No. 46/1(46-A), Vijayaraghava Road, T.Nagar, Chennai - 17. He was informed by the Tahsildar, since the original parent document viz., the retirement deed dated 14.06.1980 was misplaced, patta cannot be issued and insisted that he should obtain a necessary decree from a Court of law. The second plaintiff on account of non traceability of the original Deed of Retirement dated 14.06.1980 has also lodged a police complaint dated 21.04.2014 to E-3, Teynampet Police Station (Crimes), Chennai - 6 and he was given CSR by the said Police Station bearing No. 49/E3 X/2014. The second plaintiff in order to substantiate the fact that he is the owner of the above said property, he has also paid water tax, property tax and other statutory levies and hence, came forward to file the present suit.

2. The defendants had filed the written statement admitting the retirement of the second plaintiff through a Deed of Retirement dated 14.06.1980 and the allotment of 1 ½ grounds in T.S.No. 4879/72, Thiyagaraya Nagar, bearing New No. 46, Vijayaraghavachari Road, Chennai - 17 in lieu of his retirement towards his share capital and the profit of the

3. Therefore, the plaintiffs had filed Form No. 11 under Order 12 Rule 5 of CPC, as to the admission of facts and it is relevant to extract the same:-

"1. The immovable property measuring 15 $\frac{1}{2}$ grounds with two storied building comprised in T.S.No. 4879/72 (Thiyagaraya Nagar) bearing New No.46, Vijayaraghavachari, Chennai - 600 017 was originally an asset of the First defendant firm in 1978, the same having been purchased through an auction pursuant to the Court order in C.S.No. 85 of 1966 on the file of this Hon'ble Court.

2. The second plaintiff herein retired as partner from the partnership of the first defendant firm under the Retirement Deed dated 14.06.1980 and in lieu of settlement of his share of capital and profit from the partnership asset of the first defendant firm, the property which is the subject matter of this suit was allotted to the second plaintiff.

3. The first defendant firm also handed over to the second plaintiff the said original deed of retirement of partnership dated 14.06.1980 along with vacant

possession of the said property.

4. After some time, M/s. G.K.Enterprises, the first defendant partnership firm herein sold a portion of its remaining property at No.46, Vijayaraghava Road, T.Nagar, Chennai to a third party under the sale deed dated 29.03.1990. The first defendant has referred to in the said sale deed admitting the fact that the second plaintiff on his retirement as a partner of M/s. G.K.Enterprises, the first defendant herein on 14.06.1980 had been allotted one and half grounds (the suit property) out of fifteen and half grounds of the first defendant in lieu of the second plaintiff's share capital from the first defendant partnership firm.

5. The first defendant firm is not in existence now, the second and third defendants are the erswhile partners of the first defendant firm."

4. Mr.T.P.Sankaran, learned counsel appearing for the plaintiffs would submit that in pursuant to the order dated 26.11.2015 passed by this Court, the second plaintiff as PW-1

has filed his proof affidavit and through him Exs. P-1 to P-21

came to be marked. It is the further submissions of the learned counsel appearing for the plaintiffs that the learned counsel appearing for the plaintiffs did not choose to cross examine PW-1 and also made an endorsement that on behalf of the defendants, no oral evidence is let in. Therefore, the learned Additional Master No.IV, vide order dated 07.12.2015 has directed the Registry to list the suit before this Court to hear the arguments of both sides and to pass Judgments on admission under Order 12 Rule 6 of CPC.

5. The learned counsel appearing for the plaintiffs has drawn the attention to this Court to the pleadings, proof affidavit as well as Exs. P-1 to P-21 and would submit that since the facts pleaded in the plaint have not been disputed at all on behalf of the plaintiffs in the written statement, the plaintiffs are entitled to a Judgment and Decree under Order 12 Rule 6 of CPC and prays for appropriate orders.

6. The learned counsel appearing for the defendants would submit that the facts pleaded in the plaint are not at all under dispute and hence, this Court may pass appropriate orders in the light of the admitted facts.

7. This Court has carefully considered the rival submissions and perused the pleadings, proof affidavit of PW-1 as well as documents marked as Exs. P-1 to P-21.

8. The issue arises for consideration is whether the plaintiffs are entitled to a decree on admitted facts under

Order 12 Rule 6 of CPC?

9. As rightly contended by the learned counsel appearing for the plaintiffs that the retirement of the second plaintiff from the first defendant firm is not under serious dispute, so also the allotment of 1 ½ grounds of land in T.S.No. 4972/72 at Door No. 46-A, Vijayaraghava Road, T.Nagar, Chennai -17.

10. The allotment of said land has also been reflected in the certified copy of the sale deeds Exs. P-6 and P-7 and the second plaintiff after his retirement, along with others started the first defendant firm and it is also evidenced from Ex. P-9 Photocopy of the Partnership Deed.

11. In respect of the suit property, the second plaintiff has also paid statutory levies and the same is evidenced under Ex. P-12 to P-15. When the second plaintiff has approached the jurisdictional Tahsildar for issuance of patta, he was asked Court orders by the concerned Official issued due to the reason that he was unable to produce the original Deed of Retirement and the photocopy of the same is marked as Ex.P-3 and therefore, the second plaintiff has lodged a police complaint under Ex. P-18 and to acknowledge the receipt of the complaint and given CSR number under Ex. P19.

12. In the light of the overwhelming documentary

entitled to the decree as prayed for.

13. As already pointed out, the defendants not at all disputed the facts pleaded in the plaint and in fact, they have not objected to marking of Exs. P-1 to P-21 before the learned Additional Master No.III and also not cross examined PW-1 and further no witnesses on their side has also gone into the facts to dispute the said fact.

14. In the result, there shall be a Judgement and Decree declaring that the first plaintiff is the owner of the property more fully described in the suit schedule. In the circumstances of the case, there shall be no order as to costs.

List of witnesses:-

PW-1 K.Nageswara Rao

List of Exhibits - Plaintiffs:-

Ex.P-1 - Photo copy of Partnership deed dated 01.07.1978 of M/s. G.K.Enterprises.

Ex.P-2 - Photo copy of sale certificate dated 21.12.1978 in favour of M/s. G.K.Enterprises.

Ex.P-3 - Photo copy of Retirement of Partnership deed dated 14.06.1980 - second plaintiff.

Ex.P-4 - Photo copy of Partnership deed dated 14.06.1980 of M/s.G.K.Enterprises - second plaintiff.

Ex.P-5 - Original Partnership deed dated 4.4.1981 of M/s. G.K.Enterprises Plaintiffs.

- Ex.P-6 - Certified copy of the sale deed dated 29.03.1990 executed by M/s. G.K.Enterprises in favour of T.Sriramul Reddy.
- Ex.P-7 - Certified copy of the sale deed dated 23.3.1992 executed by M/s.G.K.Enterprises in favour of S.Parvathy Devi.
- Ex.P-8- Original Retirement of Partnership deed dated 01.04.1998 of first plaintiff.
- Ex.P-9 - Photo copy of Partnership deed dated 01.04.1998 of M/s.A.K.Enterprises (reconstituted) plaintiffs.
- Ex.P-10- Original Encumbrance certificate from 01.01.1978 to 28.08.2013.
- Ex.P-11- Original registration of first plaintiff firm certificate No. 439/2014 dated 04.03.2014.
- Ex.P-12- Original Income tax returns of first plaintiff for the year 1985-1986 & 2013-2014.
- Ex.P-13- Original property tax receipts of first plaintiff for the year 1987- 1988 & 2013-2014.
- Ex.P-14 - Original Water tax receipts of first plaintiff for the year 1985-1986 & 2013-2014.
- Ex.P-15- Original Electricity charges receipt for 2013-2014 of first plaintiff.
- Ex.P-16- Original Letter dated 07.04.2014 for issue of patta in favour of first plaintiff to Tahsildar, Egmore - Nungambakkam Taluk.
- Ex.P-17- Original Authorisation Letter dated 19.04.2014 for first plaintiff.
- Ex.P-18- Original complaint dated 21.04.2014 regarding loss of original parent document first plaintiff to E-3, Teynampet police station.
- Ex.P-19- Original CSR No.49/E3 X/2014 E-3 dated 22.04.2014 Tyenampet police Station to the first plaintiff.

Ex.P-20 - Original notice dated 23.03.2015 to admit facts.

Ex.P-21 - Original reply dated 27.03.2015 in Form No. 11
admitting facts.

sd/.M.S.N.J

09.12.2015

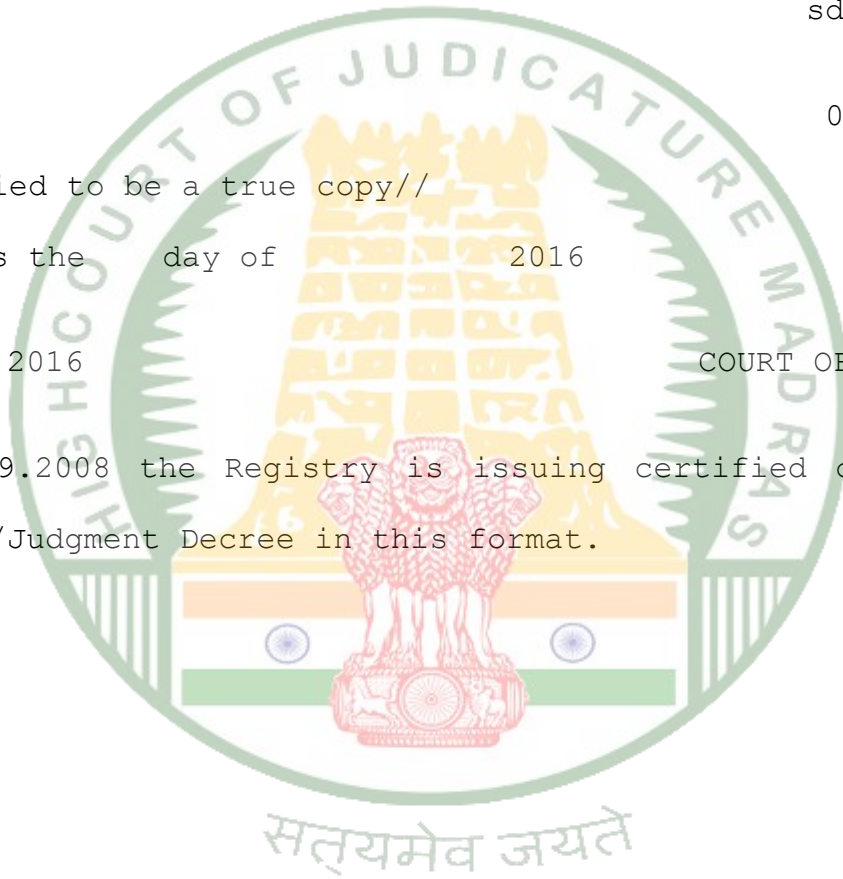
//Certified to be a true copy//

Dated this the day of 2016

R.s/05.02.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.



WEB COPY