

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 3RD DAY OF AUGUST 2016

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.A.Nos.113 and 114 of 2014
in
C.S.No.86 of 2014

Srinivasan P.Kannan
S/o.Late P.S.Kannan,
Block 419, # 07-211
Woodlands Street 41
Singapore-730 419.

..Applicant/Plaintiff
(in both original applications)

-Versus-

1.P.S.Varadan
S/o.Late P.Srinivasan
No.5/28, Royapettah High Road,
Chennai-14.

2.Mr.Murali,
No.5/28, Royapettah High Road,
Chennai-600 014.

3.Mrs.K.Jalaja
W/o.Late P.S.Kannan,
Plot No.66, Door No.9,
Mahalakshmi Nagar,
1st Main Road,
Adambakkam, Chennai-88.

4.Ms.K.Jayanthi
D/o.Late P.S.Kannan
Plot No.66, Door No.9,
Mahalakshmi Nagar,
1st Main Road,
Adambakkam, Chennai-88.

..Respondents/Defendants
(in both original applications)

O.A.No.113 of 2014:

Original Application praying that this Hon'ble Court
be pleased to pass an order of interim injunction

restraining the first and second respondents/defendants herein, their men, agents, and everyone claiming under them or acting on their behalf from in any way alienating or encumbering the suit schedule properties to the Plaintiff, more fully described in the Schedule to the accompanying judges summons, by way of Sale, Lease, Mortgage and Gift or in any manner whatsoever pending disposal of the above suit. O.A.No.114 of 2014:

Original Application praying that this Hon'ble Court be pleased to appoint an advocate receiver to take charge of the suit schedule properties to the Plaintiff, more fully described in the schedule to the accompanying judges summons and the collection of income derived therefrom the same and pay the statutory dues and deposit the balance in the bank account and file his report periodically to this Hon'ble Court pending disposal of the above suit.

These Original Applications coming on this day before this court for hearing Court made the following order:

Pending the suit for partition and separate possession, these two applications have been filed. O.A.No.113 of 2014 has been filed seeking *inter alia* against the proposed alienation by the respondents/ defendants. O.A.No.114 of 2014 has been filed seeking an order for appointment of Advocate Receiver to take charge of the suit schedule properties.

2.The suit properties originally stood in the name of Late P.Srinivasan, who incidentally is the grandfather of the applicant / plaintiff. He died on 20.12.1969 leaving behind his widow and four children. The applicant is one of

the sons of the deceased P.Srinivasan. Thereafter, a release deed was executed in respect of Schedule 'A' of the suit properties in favour of respondent No.1. Respondent No.2 is said to be the adopted son of Respondent No.1. The registered document has been signed by all the legal heirs of the deceased P.Srinivasan. A notice was issued by the respondents 3 and 4 to Defendant No.1 on 10.07.2013 claiming partition in the 'A' Schedule property. It appears that the bone of contention is with respect to 'A' Schedule property. It is not in dispute that the plaintiff and defendants 3 and 4 are on the one side. It is also not in dispute that Defendant No.4 was born at the time of execution of the release deed dated 15.06.1970. A reply was sent by the first defendant through his counsel on 13.07.2013 placing reliance upon the aforesaid release deed. Conspicuously, the defendants 3 and 4 kept silent which in turn created cause of action for the plaintiff / applicant to file the suit. These are all the background facts governing the case.

3.The learned counsel for the applicant submits that the applicant was in the womb at the relevant point of time. The suit 'A' Schedule property is a joint family property and therefore, the application has to be allowed.

4.Addressing the similar submissions, the counsel appearing for the respondents 3 and 4 submits that on a perusal of the recital of the release deed, it is clear

that it was preceded by a oral partition and therefore it should be construed as a joint family property. Hence, in any event, not only the applicant but also the respondents 3 and 4 are entitled for their respective shares.

5.The learned counsel for the respondents 1 and 2 submits that the suit is hopelessly barred by limitation. A stale claim has been made after 43 years and neither the applicant nor the respondents 3 and 4 can feign ignorance of the registered settlement deed. The suit has been laid after the exchange of notices between the respondents 3 and 4 on the one hand and Respondent No.1 on the other. Respondent No.1 is 87 years old. The actual reason for filing the suit is to prevent the Respondent No.1 from developing the suit property which is a old house. The release deed has also not been put into challenge. Therefore, according to the learned counsel for the respondents 1 and 2, both the applications deserve to be dismissed.

6.The facts as narrated, are not in dispute. Admittedly, there was a registered settlement deed executed between the parties. There is no semblance of challenge to the said document either in the legal notice issued on behalf of the respondents 3 and 4 or in the plaint. Though the father of the applicant is stated to have died on 14.04.1978, there has been a continued silence. The father being the signatory has not questioned it during his life

time. It is curious to note that despite the fact that the respondents 3 and 4 received a reply notice from Respondent No.1, particularly with reference to the availability of the release deed, they have kept quiet. If we go by the document, by applying the presumption available under Section 90 of the Indian Evidence Act, then, its execution *per se*, cannot be questioned, though the said rationale may not apply to the relevancy of the said document. A mere recital in the document that there was an earlier oral partition, could not be a conclusive proof to hold that the suit properties are ancestral, especially when no reliance has been made on it by the applicant and respondents 3 and 4. Now, the applicant has come forward to file this suit after a period of 43 years. Even assuming it is a joint family property, at best the legal heirs can have their respective shares along with others. Now, admittedly the deceased Srinivasan left behind five legal heirs. The applicant and the respondents 3 and 4 are the legal heirs of one of the five. It is curious that the alleged signatories being the sisters and brother of Respondent No.1 have not chosen to question the release deed. It is also strange that they have also not been made as parties in the suit. Therefore, even if the argument of the applicant and the respondents 3 and 4 are accepted, then the relief sought for, cannot be granted.

7.The fact that the first respondent has become old is not in dispute. The house is also very old. There is no contra material to doubt the genuineness of Respondent No.1 to develop the property. Similarly, there is no material to come to the conclusion that the applicant and the respondents 3 and 4 are residing in the 'A' Schedule property. Admittedly, the applicant is residing abroad. On the contrary, the release deed *prima facie* shows that Respondent No.1 has been in possession and enjoyment of the 'A' Schedule property.

8.Considering the above, this Court is not inclined to allow these applications and accordingly, these applications stand dismissed. However, it is made clear that any alienation or encumbrance would be subject to the result of the suit, meaning thereby the equities can also be worked out. Considering the pendency of the suit, the defendants are directed to file written statement within a period of four weeks from today. Registry is directed to post the suit for framing issues, after four weeks.

sd/.M.M.S.J

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03.08.2016

//Certified to be a true copy//

Dated this the day of 2016.

S.s/19.10.2016

COURT OFFICER

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