

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 24TH DAY OF FEBRUARY, 2016

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

C.S.No.493 of 2015

and

O.A.No.626 of 2015

and

A.No.6690 of 2015

Mrs.I.Fathima Nachiyar
W/o.Mr.Kadar Sha,
Residing at No.4
Periyannan Street
Royapuram,
Chennai-600 013.

...Applicant/Plaintiff
(in both applications)

Vs

1 Smt.Sakkubai
W/o.Late Vedanayagam

2 V.Selvarani
W/o.Late Devasahayam

3 V.Gnanasekar
S/o.Late Vedanayagam

4 Abraham Jayakumar
S/o.Late Vedanayagam

5 Rabekkal
W/o.William Rajasekar

6 Edward Raj
S/o.Late Vedanayagam

All are residing at
No.27G, Seeyalam Street
Villivakkam
Chennai-600 049.

...Respondents/Defendants
(in both applications)

Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and decree against the Defendants

(a) Declaring that the alleged Partition Deed dated 20.12.1999 registered as Document No.361 of 2000 registered before the Sub-Registrar Office Konnur executed between the Defendants 1 to 6 as null and void and is not binding on the Plaintiffs in respect of the Suit property morefully described in the 'C' Schedule hereto; and consequently direct the 1st to 6th Defendants to hand over the possession of the suit property morefully described in the 'C' Schedule hereto;

b) Permanent injunction restraining the 1st to 6th Defendants their men, agents or servants or any one claiming from or under the form in any manner putting up any further construction or in any manner alienating or creating any charge over the suit property morefully described in the 'C' Schedule hereto;

c) Cost of the Suit;

O.A.No.626 of 2015:

Original Application praying that this Hon'ble Court be pleased to grant an ad-interim injunction restraining the 1st to 6th Defendants their men, agents or servants or any one claiming from or under the form in any manner putting up any further construction or in any manner

alienating or creating any charge over the suit property morefully described in the 'C' Schedule hereto.

A.No.6690 of 2015:

Application praying that this Hon'ble Court be pleased to pass an order for rejection of the plaint as per legal points averred in the affidavit granted to them be passed.

This civil suit along with the applications coming on this day before this Court for hearing court made the following order:

This is an application to reject the plaint in C.S.No.493 of 2015, primarily on the ground that the present attempt is nothing but re-litigation.

2. Heard the learned counsel for the applicants and the learned counsel for the respondent.

3. The respondent filed the suit in C.S.No.493 of 2015 against the applicants herein praying for a decree, declaring that the Partition Deed, dated 20.12.1999 is null and void and not binding on her.

4. The respondent purchased the property from Smt.Hebsbai Santhakumari by registered Sale Deed dated

17.07.2008 on the file of Sub Registrar, Konoor. According to the respondent, the applicants executed a Partition Deed to grab the property and it was registered before the Sub-Registrar, Konoor vide Document No.361 of 2000. The deed of partition is a sham and nominal document, not intended to be acted upon. It is not binding on the respondent as she is the rightful owner of the property having purchased from Smt.Hebsbai Santhakumari.

5. The applicants filed this application under Order VII Rule 11 of the Code of Civil Procedure to reject the plaint, primarily on the ground that the suit filed by the predecessor-in-interest of the respondent has already been dismissed and as such, the subsequent suit is barred by the principles of *res judicata*.

6. Heard the learned counsel for parties.

7. The documents available on records indicates that a civil suit in O.S.No.3933 of 2002 was filed before the XII Assistant City Civil Court, Chennai by the predecessor-in-interest of the respondent. The suit was filed against the first applicant herein. The suit was dismissed for de-fault. The decree has become final, as there was no attempt made by the plaintiff therein to set aside the order and to restore the suit to file.

8. Subsequently, another suit was filed before this

interest of the respondent. The suit was filed for a declaration that the plaintiff was the rightful owner of the property shown as "C" schedule property in the plaint and for a consequential injunction. The "C" schedule property was shown as the property in T.S.No.127/6 [part], with an extent of 1141 sq.ft. The suit was dismissed for de-fault, by judgment and decree dated 06.07.2009. There was no attempt made by the plaintiff therein to set aside the order dismissing the suit for de-fault. The decree dated 06.07.2009 in C.S.No.494 of 2005 has therefore become final.

9. The learned counsel for the respondent has taken up a contention that Order IX Rule 4 of the Code of Civil Procedure permits the respondent to file a fresh suit, as the dismissal was made under Order IX Rule 3 of C.P.C. There is no merit in the said contention. The suit was not dismissed on the very first day of hearing. The predecessor-in-interest of the respondent appeared before the Court on earlier occasions, but however, failed to appear before the learned Master to give evidence. It was only in the said circumstances, the suit was dismissed for non-prosecution.

10. There is no dispute that attempt was not made by the plaintiff in C.S.No.494 of 2005 to set aside the order dated 6 July 2009. The decree therefore would stand in the way of filing a fresh suit. Even otherwise, the

decree in the earlier suit in O.S.No.3933 of 2002 has become final. In view of the finality of earlier judgments dismissing the suit for default in O.S.No.3933 of 2002 and C.S.No.494 of 2005, it would not be possible either for the plaintiff therein or her assignee to file a fresh suit for the same relief. I am therefore of the view that the applicants are justified in contending that the present suit requires to be axed at the threshold.

11. In view of the judgment dated 16.08.2004 in O.S.No.3933 of 2002 on the file of XII Assistant City Civil Court, Chennai and the decree dated 06.07.2009 in C.S.No.494 of 2005, the present suit is clearly not maintainable. I am therefore of the view that the application deserves to be allowed.

12. The plaint in C.S.No.493 of 2015 is struck off from file.

The application is allowed as indicated above.

sd/.K.K.S.J

24.02.2016

//Certified to be a true copy//

Dated this the day of 2016

S.s/20.07.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified