

A.No.4528 of 2016
in C.S.No.650 of 2015

M.M.SUNDRESH, J.

Originally, the applicants, being the plaintiffs, have filed the suit for declaration claiming title to the properties said to have been purchased from defendants 2 and 3. Pending the suit, the present application has been filed for amendment for an additional relief by way of prayer (e) to declare the exparte decree and judgment in Ejectment Suit No. 5 of 1999 dated 04.11.2013 by the learned IV Judge, Court of Small Causes, Chennai is not binding. This amendment is sought for on the premise that the property which is the subject matter of the said decree is not the same property, which is the subject matter of the present suit.

2.The learned counsel for the applicants submits that there is a specific averment in para 10 of the plaint to the effect that the property which is the subject matter of both proceedings are different. It is further submitted that the character of the suit will not be changed and the relief sought for is only incidental to the amended relief of declaration.

3.Learned counsel for the first respondent submits that the applicants have filed an application under Section 47 C.P.C. in the execution petition in Ejectment Suit No. 5 of 1999. The subject matter of the property governing both cases is one and the same. The applicants being the subsequent purchasers cannot maintain an application under Section 47 C.P.C. as held by the Apex Court in **Usha Sinha Vs. Dina Ram ((2008) 7 SCC 144)**.

4.The present suit has been filed by the applicants seeking the relief of declaration of title to the schedule mentioned property. It is the case of the applicants that they are the absolute owners of the property pursuant to the sale effected by defendants 2 and 3. It is also their case that the first respondent does not have a title and therefore, the suit decreed in Ejectment Suit No. 5 of 1999 is not binding on him as the subject matter of the property mentioned therein is different. Thus, it is a matter for trial. In fact, the additional prayer is not even necessary since already a comprehensive prayer has been sought for by way of declaration. However, by allowing this application, no prejudice would be caused. The issues raised are matters to be decided by the executing Court in the application filed under Section 47 C.P.C. Suffice it to state that allowing this

application will not stand in the way of the executing Court to decide the application filed under Section 47 C.P.C. on merits.

5. For the aforesaid reasons, this Court does not find that the nature of the suit being changed. Accordingly, the present application stands allowed with a clarification that the executing Court shall dispose of the application filed under Section 47 C.P.C. by the applicants on its own merits and in accordance with law without being influenced by this order.

17.10.2016

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