

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

DATED, THE 28TH DAY OF NOVEMBER 2016

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

A.No.4775 of 2016

&

O.A.Nos.721 & 722 of 2016

in

C.S.No.592 of 2016

V.S.Shankar
S/o.V.N.Seshagiri,
93/2, Jabashri IV Main Road,
Gandhi Nagar,
Adyar,
Chennai - 600 020

..Applicant/Plaintiff
(in both original applications)

-Versus-

1.V.N.Seshagiri
S/o.S.V.Nagan,
No.7, Sarathi Street,
T.Nagar,
Chennai - 600 017

2.V.S.Rajendra Prasad,
S/o.V.N.Seshagiri,
No.1, Sai Illam,
1st Street, E.C.R.,
Akkarai, Chennai -600 118

3.V.S.Ravikumar,
S/o.V.N.Seshagiri,
No.7, Sarathi Street,
T.Nagar,
Chennai - 600 017

.. Respondents/Defendants
(in both original applications)

O.A.No.721 of 2016:

Original Application praying that this Hon'ble Court

be pleased to grant interim injunction restraining the respondents/defendants or their men, legal representatives, agents, or servants or any other person or persons authorized by them or claiming through them from alienating, or encumbering or in any manner dealing with the suit property pending disposal of the suit.

O.A.No.722 of 2016:

Original Application praying that this Hon'ble Court be pleased to grant interim injunction restraining the respondents/defendants or their men, legal representatives, agents, or servants or any other person or persons authorized by them or claiming through them from in any manner interfering with the plaintiff's peaceful possession and enjoyment over the suit property till pending disposal of the above suit.

A.No.4775 of 2016:

1.V.N.Seshagiri
S/o.S.V.Nagan,
No.7, Sarathi Street,
T.Nagar,
Chennai - 600 017

2.V.S.Rajendra Prasad,
S/o.V.N.Seshagiri,
No.1, Sai Illam,
1st Street, E.C.R.,
Akkarai, Chennai -600 118

..Petitioners 1 and 2/
Defendants 1 and 2

vs

1.V.S.Shankar
S/o.V.N.Seshagiri,
93/2, Jabashri IV Main Road,
Gandhi Nagar,
Adyar,
Chennai - 600 020

..1st Respondent/Plaintiff

2.V.S.Ravikumar,
S/o.V.N.Seshagiri,
No.7, Sarathi Street,
T.Nagar,
Chennai - 600 017

..2nd Respondent/3rd Defendant

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.No.592 of 2016 as it is not maintainable with exemplary costs.

SCHEDULE

All that piece and parcel of Flat No.2, Ground floor having constructed area of 1215 sq.ft. Including common area of the apartment known as "JAPASRI APARTMENTS" together with 7.61% of undivided share of land (707 sqft) in 9294 sqft and situated at Plot No.230, old Door No.39, New Door No.93, IV Main Road, Gandhi Nagar, Adyar, Chennai 600 020 and comprised in R.S.No.4, Block No.32, T.S.No.9 of Kottur Village and bounded on the

North by : Open space and Setback area:

South by: Open space and Setback area:

East by : Open space and Setback area:

West by: Flat No.1

and situated within the Registration District of South Chennai and Sub Registration District of Adyar.

Within the Sub Registration of Joint Sub -Registrar-1, Chennai Central and in the Registration District of

Chennai.

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

This suit is filed for partition and separate possession.

2. Seeking to invoke the power of this Court under Order VII Rule 11 CPC, the applicants, who are the defendants 1 and 2/ father and brother of the first respondent/plaintiff, have come up with the application viz., A.No.4775 of 2016, to reject the plaint.

3. Learned counsel for the applicants submitted that the suit property, though stands in the name of the first applicant, has been acquired, pursuant to the settlement deed said to have been executed by his father in favour of the first applicant on 20.10.1967. The property, which is the subject matter of the settlement deed was sold at that time when the suit property was purchased. The sale of the property, which was the subject matter of the settlement deed dated 20.10.1967 made on 20.06.2001 was also acknowledged by the first respondent/plaintiff. Hence, it is not probable that the letter dated 03.06.2016 could have been executed by the second applicant.

4. It is submission of the learned counsel for the

first respondent/plaintiff that at the time of execution of the settlement deed in the year 1967, the plaintiff was a minor.

5. The question as to whether the suit schedule property is a joint family property or self acquired property, can be determined only at the time of trial. Similarly, the question as to whether the second applicant has executed the said letter as relied upon by the first respondent/plaintiff, is also a matter for trial. Therefore, no interference is required at this stage.

6. The law is quite settled that if the suit schedule property is a joint family property, then the onus is upon the Kartha of the family to prove that the property is self acquired property, despite the fact that it stands in his name. Admittedly, at the time of settlement made by the father in favour of the first applicant, the first respondent/plaintiff was minor.

7. While deciding this application under Order VII Rule 11 CPC, the pleadings averred in the plaint will have to be taken into consideration. Therefore, the question as to whether the suit schedule property is a joint family property or self acquired property, is a matter for trial and it can be determined only after analysing the oral and

documentary evidence adduced by the parties. At this stage, a mere attestation cannot be a ground to come to a conclusion with regard to the relief sought for herein. Similarly, the validity of the documents filed by the first respondent/plaintiff is also a matter for trial.

8. Order VII Rule 11 CPC can be exercised invoking the original jurisdiction of this Court on two grounds: (i) when there is no cause of action; and (ii) when the suit is barred by any law. Unfortunately, both these grounds are not available in the case on hand. In such view of the matter, the application viz., A.No.4775/2016 stands dismissed.

9. Coming to the application viz., A.No.722 of 2016, both the parties claim that they are in possession of the suit schedule property. Considering the fact that the dispute is between the son on the one hand and father on the other hand, this Court is of the view that it would be appropriate to direct the parties to maintain status quo as on today. Accordingly, A.No.722 of 2016 is closed by directing the parties to maintain status quo.

10. Insofar as A.No.721 of 2016 filed to grant an order of interim injunction restraining the defendants from alienating or encumbering or in any manner dealing with the

suit property, is concerned, this Court is of the view that any proposed alienation in respect of the suit schedule property would create third party interest. Therefore, A.No.721 of 2016 is ordered as prayed for. However, it is left open to the parties to raise all the issues in the suit.

11. Post after four weeks for filing written statement and draft issues.

12. At this stage, it is submitted by the learned counsel for the plaintiff that yet another suit in O.S.No.4229 of 2016 is pending before the 14th City Civil Court, Chennai in respect of the same property and he is not pressing the said suit. In view of the same, the 14th City Civil Court is directed to pass appropriate orders in the suit pending on its file.

sd/.M.M.S.J

28.11.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/03.01.2017

COURT OFFICER

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