

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2016

CORAM:

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

C.S.No.971 of 2007
and
A.No.8277 of 2015

1.N.Prabhu Raj

2.N.Swarnalatha

3.S.Vidhyalakshmi

4.R.Nithyanandan (deceased)

5.R.Sivanandan

6.R.Yogarani

7.R.Sugunavathi

[plaintiffs 1 & 2 are recorded as legal
representatives of the deceased
4th plaintiff as per order dated 06.02.2012
on memo.D.2975/2012 dated 30.01.2012]

... Plaintiffs

Vs

1.S.Moses

2.C.Saravanan

... Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of O.S. Rules praying for (a) declaring that the judgment and decree passed by this Court in C.S.No.573 of 2006 dated 24.01.2007 and the

subsequent sale deed executed by B.Bala Raju, the Assistant Registrar, Original Side, High Court, Chennai in favour of the first defendant vide sale deed dated 29.03.2007 at the Registrar Office, Adyar in pursuance of this Court's order in C.S.No.573 of 2006 as null and void; (b)consequential permanent injunction restraining the first defendant or their men, agents, assigns or any other person claiming through them from alienating the suit property in favour of any third parties by means of any transfer whatsoever and (c)granting the costs of the suit.

For Plaintiffs : Mr.R.Subramanian

For Defendant-1 : Mr.S.Meenakshisundaram

For Defendant-2 : Mr.G.B.Sabaridas

J U D G M E N T

This Civil Suit has been filed by the plaintiffs for the relief of declaration and prays that the judgment and decree passed by this Court in C.S.No.573 of 2006 dated 24.01.2007 and the subsequent sale deed executed by B.Bala Raju, the Assistant Registrar, Original Side, High Court, Chennai in favour of the first defendant, vide Sale Deed dated 29.03.2007 at the Registrar Office, Adyar in pursuance of this Court's order in C.S.No.573 of 2006 is to be declared as null and void and consequently, restraining the first defendant namely, S.Moses or his

men, agents, assignees or any other person claiming through him from alienating the suit property in favour of any third parties by means of any transfer whatsoever.

2.The present application in A.No.8277 of 2015 is taken out by the first defendant stating that the suit in C.S.No.163 of 2010 has been filed by one M/s.Pioneer Software Park Pvt. Ltd., against the plaintiffs (1 to 7) herein namely, N.Prabhu Raj, N.Swarnalatha, S.Vidhyalakshmi, R.Nithyanandan (deceased), R.Sivanandan, R.Yogarani & R.Sugunavathi and against the defendants 1 & 2 herein namely, S.Moses and C.Saravanan and also against one Vs.Al.Sinna Alagappan praying for the relief of declaration and that the consent decree passed by this Court in C.S.No.573 of 2006 dated 24.01.2007 in respect of the suit schedule property in favour of the ninth defendant is vitiated by fraud, coercion and not binding on the plaintiff and to declare the sale deed dated 29.03.2007 executed in favour of the ninth defendant based on the decree passed in C.S.No.573 of 2006 dated 24.01.2007 as null and void and consequently, to grant the relief of permanent injunction.

3.Memo of undertaking dated 10.03.2016 has been filed by the first defendant. In the memo of undertaking, it is

stated that the suit in C.S.No.163 of 2010 has ended in compromise on 10.03.2015 and in the light of the said decree, prayer (a) sought for by the plaintiffs in the present suit, cannot be adjudicated. It is further stated that since there is a decree for permanent injunction in terms of Clause (3) of the above said compromise, prayer (b) is also not capable for adjudication and hence, prays for dismissal of the suit.

4.Objections have been filed by the plaintiffs to the memo of undertaking of the first defendant stating that neither compromise memo was served on the defendants 4 to 7, who are the plaintiffs in C.S.No.971 of 2007 nor they are parties to it and no decree had been passed against them and therefore, the compromise decree passed in C.S.No.163 of 2010 dated 10.03.2015 is not binding on them. Further, it is stated by the plaintiffs that the prayers in C.S.No.163 of 2010 and C.S.No.971 of 2007 are not one and the same and therefore, prays for granting the relief sought for by the plaintiffs.

5.The learned counsel for the plaintiffs submitted that in pursuant to the order of this Court in

Tr.A.No.458 of 2012 dated 06.02.2012, O.S.No.467 of 2009 which has been transferred from the Sub Court, Tambaram, has been renumbered as Tr.C.S.No.247 of 2012, in which the plaintiffs have sought for declaration of title and the said Tr.C.S.No.247 of 2012 has to be tried along with C.S.No.163 of 2010, which is pending before the Sub Court, Tambaram.

6.In the application listed today, the first defendant has filed a memo of undertaking stating that in view of the decree dated 10.03.2015 made in C.S.No.163 of 2010, he is not having any title whatsoever in the suit property and as per the instructions of the plaintiffs, the first defendant undertakes not to alienate the property in pursuant to the prayer (b) in the present suit.

7.Heard the learned counsel for the plaintiffs as well as the learned counsel for the defendants.

8.Mr.R.Subramanian, learned counsel for the plaintiffs/respondents 1 to 7 would contend that in the light of the compromise decree dated 10.03.2015 made in

C.S.No.163 of 2010, prayer (a) no longer survives for adjudication. So far as the prayer (b) is concerned, in the light of the memo of undertaking of the first defendant dated 10.03.2016 in D.No.10307 of 2016, it is to be decreed as prayed for.

9.This Court has considered the rival submissions and also perused the materials placed on record.

10.Since C.S.No.163 of 2010 has ended in a compromise, vide decree dated 10.03.2015, nothing survives for adjudication insofar as prayer (a) is concerned. Therefore, the suit is dismissed insofar as prayer (a) is concerned. As regards prayer (b), in the light of the undertaking of the first defendant in D.No.10307 of 2016, there shall be a judgment and decree for permanent injunction restraining the first defendant namely, S.Moses or his men, agents, assignees or any other person claiming through him from alienating the suit property in favour of any third parties by means of any transfer whatsoever. In view of the order passed in C.S.No.917 of 2007, the Application in A.No.8277 of 2015 is disposed of. In the light of the facts and

circumstances of the case, there shall be no order as to costs.

sd/.M.S.N.J

24.03.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/02.06.2016

COURT OFFICER

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



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