

HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

O.S.A.Nos.106 to 108 of 2009
and C.M.P.Nos.6908 to 6913 of 2016

O.S.A.No.106 of 2009:

K.Maiyyan .. Appellant
Vs.

1. Mrs.Vimala Dharmalingam,
2. S.Dharmalingam,
3. Joseph Isaac (dead) .. Respondents

O.S.A.No.107 of 2009:

K.Maiyyan .. Appellant
Vs.

1. Mrs.Vimala Dharmalingam,
2. S.Dharmalingam,
3. Joseph Isaac (dead)
4. A.Irudayaswamy
5. K.Thilagavathy
6. K.Prasad .. Respondents

O.S.A.No.108 of 2009:

K.Maiyyan .. Appellant

Vs.

1. Mrs.Vimala Dharmalingam,
2. S.Dharmalingam,
3. Joseph Isaac (dead)
4. A.Irudayaswamy
5. K.Thilagavathy
6. K.Prasad .. Respondents

Prayer: Original Side Appeal in O.S.A.No.106 of 2016 is filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent against the Order dated 18.2.2016 made in O.A.No.226 of 2002 in C.S.No.209 of 2002 on the file of this Court.

Original Side Appeal in O.S.A.No.107 of 2016 is filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent against the Order dated 18.2.2016 made in O.A.No.769 of 2012 in O.A.No.226 of 2002 in C.S.No.209 of 2002 on the file of this Court.

Original Side Appeal in O.S.A.No.108 of 2016 is filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent against the Order dated 18.2.2016 made in O.A.No.4026 of 2012 in O.A.No.226 of 2002 in C.S.No.209 of 2002 on the file of this Court.

For appellant:: Mr.R.Shanmugam
in all appeals for M/s.Shanmugha Associates
For Respondent:: Mr.P.Mathivanan
No.1 in OSA.No.106
of 2016, for
Respondent No.4
in OSA.No.107 of
2016 and 108 of 2016

For Respondent :: Mrs.Thilagavathi
Nos.5 and 6 in OSA
No.106 of 2016
For Respondent :: Mr.M.Manivasagam
Nos.1 and 2 in O.S.A
No.107 of 2016
and for respondent
Nos.5 and 6 in
O.S.A.No.108 of 2016

COMMON JUDGMENT

(Judgment of the Court was made by M.M.Sundresh,J.)

The suit in C.S.No.209 of 2002 was filed by the appellant seeking the following prayer:

'to pass a decree:

(i) directing the defendants to pay to plaintiff a sum of Rs.16,66,000/- along with interest at 24% p.a. from 1-1-2001 on which date the defendants admittedly collected the said sum from third parties till the date of payment;

(ii) for a permanent injunction restraining the defendants, their men, agents, servants and legal heirs or anyone claiming any right under the defendants from interfering with the plaintiff's possession and right over the five flats viz., A-22, B-33, B-25, B-26 and B-27 in the third floor of Yamuna Homes, Parameswari Nagar, 4th Street, Adyar, Chennai - 20, as described in the Schedule by alienating or

encumbering or attempting to enter into any arrangement/agreement of sale in respect of the said flats with any third parties, either directly or indirectly,

(iii) directing the defendants to pay costs of the suit;

(iv) granting any other further reliefs to the plaintiff as may be deemed just, proper and equitable in the circumstances of the case.'

3. For the sake of convenience, the parties herein are referred to as arrayed in suit. The sum and substance of the case of the plaintiff is that notwithstanding the agreements dated 14.09.2000 and 31.10.2000 entered into with the defendants 1 to 4, an agreement was entered into between them and defendants 5 and 6 for the purchase of Flat A-22 and in pursuant to which a sum of Rs.16,66,000/- has been received. Though the main relief is for recovery of the aforesaid sum, the consequential permanent injunction is sought for as against the above said five flats. Incidentally, court fee was paid under Section 22 of Tamil Nadu Court Fees and Suits Valuation Act only for the amount of Rs.16,66,000/-, despite the fact that it is the specific case of the plaintiff that the agreement was for a sum of Rs.61,00,000/-.

4. Pending the suit, plaintiff filed application in O.A.No.226 of 2002 and obtained an order of interim injunction restraining the original defendants 1 to 3 from alienating or entering into the agreement of sale or by interfering with the possession of the five flats. This Order was obtained on the premise that in pursuant to the agreement between the plaintiff and the original defendants, possession of the flats was duly handed over.

5. Defendant No.4 has been impleaded by order made in an Application in A.No.4992 of 2007 and Defendants No.5 and 6, not being the original defendants, they were impleaded by order made in an application in A.No.2333 of 2008. Two applications were also filed by them in Application Nos.769 and 4026 of 2012 seeking an order to restrain the appellant/plaintiff from in any way interfering with their peaceful possession and enjoyment of flat A-22, Yamuna Home, III Floor, Parameswari Nagar, 4th Floor, Parameswari Nagar, 4th Street, Adyar, Chennai-20 or encumbering or alienating or leasing out or in any other manner dealing with the said flat and to vacate the earlier order granted in O.A.No.226 of 2002. The applications filed by dependants No.5 and 6 were allowed and consequently the application in O.A.No.226 of 2002 filed by the plaintiff was dismissed. Challenging the common order dated 18.2.2016 passed in the three applications, the present appeals are before us.

6. Learned counsel appearing for the plaintiff submitted that arrangement agreements dated 14.9.2000 and 31.10.2000 between the parties viz., the plaintiff on the one hand and the original defendants on the other hand have not been looked into in its proper perspective. The subsequent agreement ought not to have been entered into by the original defendants with the impleaded ones. The possession has been handed over to the plaintiff in lieu of the payment due. The learned single Judge ought not to have vacated the interim order in respect of all the flats. Therefore, the order requires interference.

7. Learned counsel appearing for defendants No.5 and 6 submitted that there is a decree obtained by them on 14.6.2006 in O.S.No.2674 of 2001 on the file of II Assistant Judge, City Civil Court, Chennai based upon possession for the flat No.A-22. For the reasons known, the plaintiff has not impleaded defendants No.5 and 6 at the time of getting the interim order in the suit at the time of filing, though he was aware of the payment made for a sum of Rs.16.66 lakhs. The plaintiff cannot be allowed to contend on his entitlement to keep possession in a suit for recovery of money. Therefore, no interference is required.

8. The prayer for permanent injunction is incidental to the main relief. The plaintiff has sought for recovery of money for a sum of Rs.16,66,000/- alone. The Court fee was paid only for the said amount. Though it was averred in the plaint about the transfer of money from the defendants 5 and 6 to the 1st defendant, curiously, they were not arrayed as party defendants initially. The plaintiff cannot seek possession of five flats for the purpose of recovering the sum of Rs.16,66,000/-. Conspicuously, he has not sought for recovery of the remaining amount out of the total amount of Rs.61,00,000/-. The suit filed by defendants No.5 and 6 was earlier in point of time. As on today, they have been armed with a decree in their favour. Thus, taking into consideration of these facts, the learned single Judge was pleased to dismiss the application filed by the plaintiff, while allowing the applications filed by defendants No.5 and 6. Therefore, we do not find any merit in these appeals.

9. Accordingly, the Original Side Appeals stand dismissed. No costs. Consequently, the connected civil miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

usk

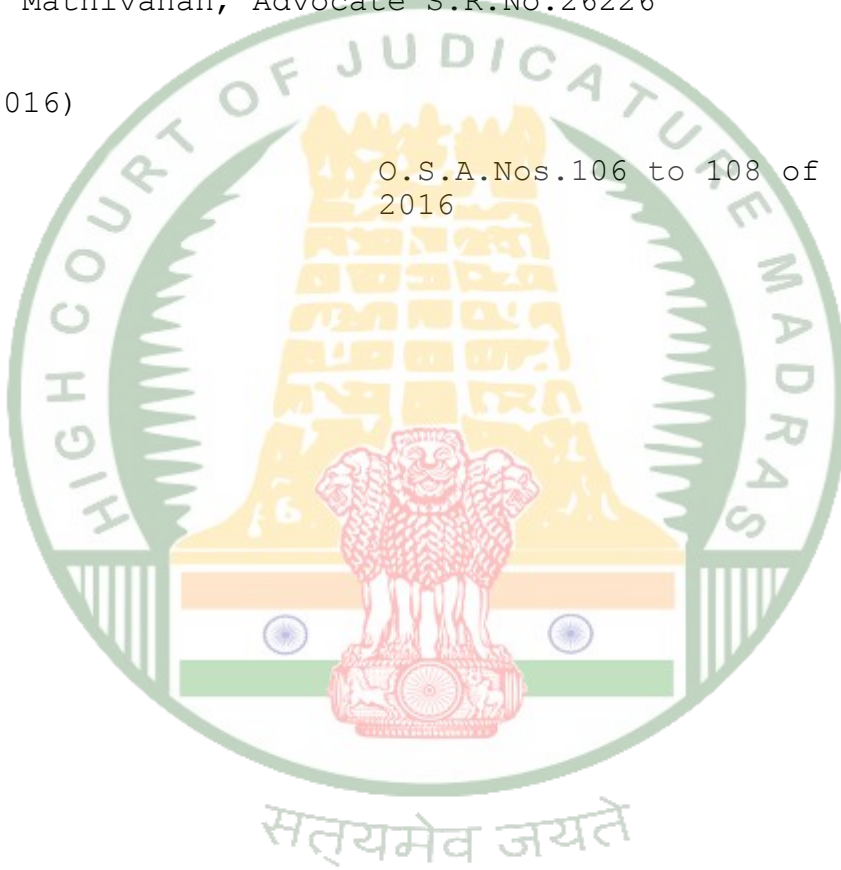
TO

The Sub.Asst.Registrar
Original Side
High Court
Madras.

+1cc to M/s. Shanmuga Asso., Advocate, S.R.No.25760
+3ccs to Mr. M. Manivasagam, Advocate, S.R.No.26000, 26002,
26001
+1cc to P. Mathivanan, Advocate S.R.No.26226

RSY(CO)
EU(17/05/2016)

O.S.A.Nos.106 to 108 of
2016



WEB COPY