

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.SUNDAR

O.S.A.No.248 of 2016
and
C.M.P.No.19740 of 2016

Faery Estates Pvt Ltd.,
No.70, Nagindas Master Road,
Fort, Mumbai-400 023,
rep. by Mr.Anand Rao. ... Appellant

vs

- 1.Gautham
- 2.N.Venkatesh
- 3.V.Aravind
- 4.N.Kasi Viswanathan
- 5.N.K.Naresh Kumar
- 6.N.K.Nivetha
- 7.N.Ramesh
- 8.R.Mohanram
- 9.R.Vivek
- 10.N.Natarayan
- 11.M/s.Edison Enterprises Pvt. Ltd.,
rep. by its Director Mr.J.Rajasekar,
No.34, Kakani Towers,
Kader Nawaz Khan Road,
Nungambakkam,
Chennai-600 006.
- 12.M/s.Subhasree Realty Pvt. Ltd.,
rep. by its Director Mr.V.Anbazhagan,
No.86, E.V.R. Periyar High Road,
Chennai-600 007.
- 13.K.Swamiappa Gounder
- 14.M/s.Fal Industries Ltd.,
rep. by Managing Director Mr.M.Singh,
No.40, Anna Nedunchalai,
Perungudi Village, Perungudi,
Chennai-600 091. ... Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 28.09.2016 made in A.No.5427 of 2010 in C.S.No.339 of 2009 on the file of this Court.

For Appellant .. Mr.P.Ranganatha Reddy
for M/s.King and Partridge

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The appellant, purchaser of a share from the original inheritors, seeks to non-suit the original plaintiff in a suit for partition by seeking rejection of the plaint under Order VII, Rule 11 of the Code of Civil Procedure, 1908. This application has been rejected by the impugned order dated 28.9.2016. The learned Single Judge has noticed the grounds on which the application is sought to be filed and crystallised the same in paragraph 3 as under:-

- (a) that the plaintiff has not valued the suit property correctly and paid proper Court fees;
- (b) that item No.1 of the suit schedule property is situated outside the jurisdiction of this Court; and
- (c) that no cause of action is disclosed in the suit.

2. The aforesaid grounds were logically resisted by the plaintiff on the plea that they are not covered by any of the Clauses (a) to (d) of Order VII, Rule 11 of the Code. The learned Single Judge found in favour of the plaintiff that even otherwise on all three counts, holding that the plaintiff having averred to be in deemed possession, the suit being partition of the joint family properties, there could not be a case made out of deficiency of Court Fees. The learned Single Judge has also opined that part of the suit property being situated within the jurisdiction of this Court and leave having been granted to sue, there was no ground made out to reject the plaint under Order VII, Rule 11 of the Code. On the issue of cause of action, it has been found to be a triable issue, the plaintiff being the grandson of the original owner, while the appellant before us is only a purchaser from the power of attorney alleged to have been executed by some of the co-owners, claiming that the sale could not be binding on him.

3. The title of the original owners was not in doubt.

4. We are in complete agreement with the view adopted by the

learned Single Judge for the aforesaid reasons, and recourse to Order VII, Rule 11 of the Code cannot be held in such circumstances to reject the plaint at the threshold, when the plaint has to be read as framed for the said purpose.

5. The appeal is dismissed. No costs. Consequently, C.M.P.No.19740 of 2016 is also dismissed.

6. We must note with regret that the suit of the year 2009 has not been proceeded an inch for seven years on account of the misdirected application of the appellant filed in the year 2010, which remained undecided.

7. We call upon the Master to ensure that pleadings are completed in the shortest time possible and the suit be listed for framing of Issues and thereafter trial.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr

To

1. The Sub Assistant Registrar,
Original Side, High Court, Madras.
2. The Master,
High Court, Madras.

+2cc to Mr.King & Partridge, Advocate, S.R.No.73195

kgk(CO)
md(21/12/2016)

O.S.A.No.248 of 2016

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