

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 23RD DAY OF NOVEMBER 2017

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No. 2359 of 2017
IN
C.S. No. 132 OF 2013

Mr.K. Ravi
S/o. Kasthuri Mudaliar,
Old No.11/A, New No.27
VGP Salai, Saidapet,
Chennai - 15

.. Applicant/Plaintiff

-Versus-

1. Mrs. K. Indiraniammal
W/o. Late Kasthuri Mudaliar
2. Mr. K. Vadivelu
S/o. Late Kasthuri Mudaliar
3. Mr. K. Kumar
S/o. Late Kasthuri Mudaliar
4. Mrs. D. Nirmala
W/o. J. Durai

1 to 4 residing at
Old No.11 A, New No.27,
V.G.P. Salai,
Saidapet, Chennai 600 015

5. G. Ravi
S/o. Gopal
No.1/194, Theruveedhi Amman Koil street
Ambedkar Nagar,
Karasangal Village,
Sriperumbudur Taluk,
Kanchipuram District.
6. Mrs. S. vathsala
W/o. Mr. R. Sampath
No.1/148, Kakkanji Street
Karasangal Village,
Sriperumbudur Taluk
Kanchipuram District

7. Mrs. S. Vijaya
 W/o. R. Shankar
 Old No.72/A, New No.30
 Hospital Road,
 Saidapet,
 Chennai 600 015

... Defendants

A.No.2359 of 2017:

K. Ravi
 S/o. Kasthuri Mudaliar,
 Old No.11/A, New No.27
 VGP Salai, Saidapet,
 Chennai - 600 015

..Applicant/Plaintiff

vs

1. K. Indraniammal
 W/o.late Kasthuri Mudaliar

2. K. Vadivelu
 S/o.Late.Kasthuri Mudaliar

3. K. Kumar
 S/o.Late.Kasthuri Mudaliar

4. D. Nirmala
 W/o.J.Durai,

1 to 4 residing at
 Old No.11, New No.27,
 VGP Salai,
 Saidapet,
 Chennai - 600 015

5. S. Vijaya
 W/o. R. Shankar,
 Old No.72, NewNo.30,
 Hospital Road,
 Chennai - 600 015

6.S.Vathsala,
 W/o.R.Sampath,
 No.1/148, Kakkanji Street,
 Karasangal Village,
 Sriperumbudur Taluk,
 Kanchipuram District,

7.S.Vijaya,
 W/o.R.shankar,
 Old No.72/A, New No.30
 Hospital Road, Saidapet,
 Chennai- 600 015

..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to permit the applicant/plaintiff to amend the plaint by including the prayer "to declare (i) Sale deed vide document No.426 of 2004 dated 05.02.2004, on the file of SRO Sriperumpudur, executed by the Defendant 1 to 3 infavour of the 5th defendant (ii) Sale deed vide document No.5224 of 2001 dated 01.11.2001 on the file of SRO Sriperumpudur, executed by the 1st Defendant infavour of the 6th defendant (iii) Sale deed vide document No.1068 of 2003 dated 26.05.2003 on the file of SRO Padapai, executed by the Defendant 1 to 3 infavour of the 7th defendant will not bind the Plaintiff and 1/5th share in the suit schedule of properties, as para 17(b) after para 17(a) and renumber para 17(b) & (c) as 17(c) & (d) respectively.

This application coming on this day before this court for hearing the court made the following order.:

This application has been filed seeking amendment of the plaint to include the prayer to declare the sale deed dated 05.02.2004 registered as document No.429 of 2004, the sale deed dated 01.11.2001 registered as document No.5224 of 2001, and the sale deed dated 26.05.2003 registered as document No.1068 of 2003 on the file of the Sub Registrar Office, Sriperumpudur executed by the defendants 1 to 3 infavour of the defendants 5, 6 and 7 has not binding on the plaintiff.

2.The claim of the plaintiff in the suit is that the property which is the subject matter of the suit originally belonged to one Kasthuri Mudaliar, and upon his death, it devolved on his wife - the 1st defendant, the plaintiff and defendants 2 to 4. Since plaintiff and the

defendants 2 to 4 are the sons and daughter, the plaintiff is claiming 1/5th share in the suit property. It will be germane to point out here itself that the plaintiff is not a party to any of the sale deeds stated above. The plea taken by the defendants is that the suit for partition simpliciter without a prayer to set aside the sale deed is not maintainable. An issue has also been framed in the suit which reads as follows.

1. Whether the suit is maintainable without praying for the declaratory prayer regarding the earlier sale deed dated 26.05.2003?

3. There are other issues also framed in the suit. Evidence was recorded when the suit was posted for arguments, at that time, the present application has been filed seeking amendment.

4. Mr. M. Chinnasamy, learned counsel for the defendants 1 to 4 & 7 would contend that the application for amendment is belated and once the trial had commenced, an application for amendment will not lie, in view of the amended provisions of the order 6 Rule 17.

5. I have considered the rival submissions. At the outset it should be pointed out that the plaintiff need not seek to set aside the sale deeds referred to above or seek a declaration that the sale deed is not binding on him, since, it is a fundamental proposition of law that any document to which a person is not a party is not

binding on him, unless it is shown that such document has been executed by a person who is authorised by any law to deal with the property of the person whom he represents. In all the sale deeds it is seen that only the defendants 1 to 4 alone are parties and the plaintiff is not a party. Therefore I conclude that the plaintiff need not seek the relief of declaration that the sale deed is not binding on him or seek to have the said documents set aside before he could project his rights as a sharer. He is at liberty to ignore the documents and seek partition. In this view of the matter, the issues relating to the validity or binding nature of the sale deeds on the plaintiff does not arise for consideration at all in the suit. I further conclude that the amendment is unnecessary and the plaintiff's suit for partition without prayer for declaration could be maintained and if the plaintiff establishes, he is entitled to a share, he would be entitled to a decree. Hence, the A.No.2359 of 2017 is dismissed with the above observation.

6.Post the suit for arguments on 11.12.2017.

Sd/.R.S.M.J.

23.11.2017

//Certified to be a true copy//

Dated this the day of 2017.

DL/13.12.2017

COURT OFFICER

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