

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER  
and  
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.S.A.Nos.114 & 115 of 2014  
and M.P.Nos.1 and 1 of 2014

Mr.K.Rajasekaran

.... Appellant in  
both O.S.As'

vs.

1.Mr.Mufaddal Ebrahim

... 1<sup>st</sup> respondent  
in O.S.A.No.114/2014

1.Mr.Huzaifa Zoeb

... 1<sup>st</sup> respondent  
in O.S.A.No.115/2014

2.Selvi.K.Sakunthala

3.Mrs.K.Kannammal

4.Mrs.K.Neelawathy

5.Mr.K.Palani @ K.Palanivel (Deceased)

6.Mr.K.Duraiaraj

7.Mr.Radhakrishnan

8.Mr.Sakthivel

9.Mr.Karthikeyan

10.Ms.Geethalakshmi

11.Ms.Senthil Kumari

12.Mrs.P.Gomathy,

13.Miss.P.Subhashini

14.Master P.Prabhakaran (Minor)

Represented by his mother and  
natural guardian Mrs.P.Gomathy.

15.Master P.Udhaya Kumar (minor)

Represented by his mother and  
natural guardian Mrs.P.Gomathy.

... Respondents 2 to 15  
in both O.S.As'

Appeals filed under Order XXXVI Rule 1 of O.S.Rules read with Clause 15 of the Letters Patent against the judgment and decretal order dated 15.07.2013 in A.Nos.496 and 497 of 2011 respectively in C.S.No.488 of 2008.

Prayer in A. 498 and 497/2011: Applications praying that this Hon'ble Court be pleased to impugn the applicant as 16<sup>th</sup> and 17<sup>th</sup> defendant in C.S. No 488/08.

Prayer in C.S. 488/2008:

The Appellants and defendants in C.S. 488/2008 filed at the instance of the sole respondent seeking Judgment and decree against the defendants for specific performance of contract of agreement of sale dated 06.02.2008 directing them to execute the sale deed conveying the plaint A and B Schedule properties to plaintiff by receiving the balance sale consideration of Rs. 67,04,000/- of the giving credit of Rs. 20,00,000/- received as advance failing no execute the sale deed, the sale deed may be executed by the court or any officer nominated or appointed by the court and in the event the decree for specific performance not being granted, directing the defendants to pay a sum of Rs.20,00,000/- received by the defendants on 06.02.2008 with interest at 18 % per annum from the date of suit till date of payment and also pay a further sum of Rs. 50,00,000/- as damages for deceit and fraud.

#### Schedule of the Property

##### Schedule A

All that place and parcel of vacant land viz., 1) Survey No 915 measuring 59 cents(24.0 Ares)bounded on the North by S. No 916 & 917 South by S. No 925 East by S. No 913 and West by S. No 919(2) survey No 919/2 measuring 78 Cents(31.5 Ares) bounded on the North by S. No 918 & 921 South by S. No 925 East by S. No 915 and West by S. No 919/2(3) Survey No 932/2 measuring 37 cents(15.0 Ares)bounded on the North by S. No 918 & 921 South by S. No 925 East by S. No 919/2 and West by S. No 919/1 and(4) Survey No 933 measuring 40 Cents(16.0 Ares) bounded on the North by S. No 935/1 South by S. No 917 East by S. No 934 and West by S. No 932 asmeasuring 2 Acres and 14 Cents(86.5 Ares) in Vadakkupattu Village, Kuntathur Panchayat, Sriperumputhur Taluk, Previously Chengalpet Taluk now in Kanchipuram District , situate within the Sub Registration District of Walajabad and Registration District of Chengalpattu.

##### Schedule B

All that place and parcel of Vacant land in Survey No 554/2 measuring 42 cents(18.67 Ares) bounded on the North by Road South by S. No 554/1 East by S. No 551 and West by S. No 552 situate in Vadakkapattu Village, Kuntathur Panchayat, Sriperumputhur Taluk, Previously Chengalpet Taluk now in Kanchipuram District, situate within the Sub Registration District of Walajabad and Registartion District of Chengalpet.

For Appellant : Mr.D.N.George Graham  
(In both O.S.As') for M/s.Devadason & Sagar

For Respondents : Mr.A.Ilaya Perumal for R1  
(In both O.S.As')

COMMON JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. These appeals are arising out of a common order dated 15.07.2013 passed in A.Nos.496 and 497 of 2011.

1.1. By virtue of the impugned judgment and order, the learned single Judge impleaded the party arrayed as respondent No.1 in each of the captioned appeals i.e., Mr.Mufaddal Ebrahim (A.No.496 of 2011) and Mr. Huzaifa Zoeb (A.No.497 of 2011) as defendant Nos.16 and 17, respectively in the pending suit i.e., C.S.No.488 of 2008.

2. Counsel for the appellant says that since the original defendants had violated the interim injunction granted via order dated 29.08.2008, by selling the suit property to defendant Nos. 16 and 17, applications under Order XXXIX Rule 3A of the Code of Civil Procedure, 1908, (in short "CPC"), were filed, in which order dated 09.12.2011 was passed.

3. Learned counsel for the appellant draws our attention to the fact that, while disposing of the applications filed under Order XXXIX Rule 3A of CPC, an undertaking was taken from defendant Nos.16 and 17 to the effect that they would be bound by the decree, that may be passed against defendant Nos.1 to 11. Counsel for the appellant concedes that the aforementioned applications, i.e., A.Nos.496 & 497 of 2011 were filed by defendant Nos.16 and 17 in the background of the aforementioned order dated 09.12.2011.

3.1. We are informed that because of the pendency of the captioned appeals, there has been no progress in the suit.

4. According to us, no interference is called for vis-a-vis the impugned judgment and order.

4.1. Having regard to the fact that the suit has not progressed, we are inclined to issue the following directions:

(i) The appellant will carry out an amendment in the cause title of the suit within one (1) week from the date of receipt of a certified copy of the order.

(ii) Respondent No.1, in each of the captioned appeals i.e., Mr.Mufaddal Ebrahim and Mr. Huzaifa Zoeb, will file their written statements within two (2) weeks from today.

(iii) Replication, if any, will be filed by the appellant within two (2) weeks from the date of receipt of a copies of written statements, that may be filed by respondent No.1 in the captioned appeals, i.e., defendant Nos.16 and 17.

(iv) in case, written statements are not filed, no further opportunity will be given to defendant Nos.16 and 17 to file written statements.

(v) Upon pleadings being completed, in the time schedule indicated above, the matter will be placed before the learned single Judge on 29.08.2017 for framing of issues.

(vi) Learned single Judge will be at liberty to direct that, evidence in this case, be recorded by the learned Master.

5. These appeals are disposed of in terms of the aforesaid directions. Consequently, the connected pending applications are closed. There shall, however, be no order as to costs.

s/d-  
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vsm

To

1. The sub Assistant Registrar  
High Court, Madras.

+1 CC to Mr. Devadoson & Sagar, Advocate sr 55115.

+2 Ccs to Mr.A. Ilaya Perumal, Advocate sr 55426.

सत्यमेव जयते

O.S.A.Nos.114 & 115 of 2014

RSY(CO)  
SP(08/11/2017)

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