

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 29TH DAY OF NOVEMBER 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.A.No.438 of 2017
and
A.No. 3608 of 2017
in
C.S.No.320 of 2017

P.Durai
S/o. Pachaiyappan
No.215/146 Sydenhams Road
Periamet, Chennai 600 003

...Plaintiff

Vs

1. T.M.Oosman Hajee & Co
Rep by its Partners Defendants 2 to 4

2. T.M.Kunchalumma (deceased)
W/o.C.O.K.Ali

3. Faizal Mohammed
S/o. Late T.M.Moidoo

4. A.R.Imthiaz Ahamed
S/o. Late T.M.Moosa

2nd to 4th defendants are having office at
No.237, Linghi Chetty Street,
Chennai 600 001

5. Khemka Galleria
Unit of Khemka Timbers & Plywoods
Proprietor Sathiya Narayanan
No.237, Linghi Chetty Street,
Chennai 600 001.

★ 6.Mr.Noushad T.M.
S/o.T.M.Kunchalumma
Old No.237, Linghi Chetty Street,
Chennai-600 001.

★ 7.Mrs.T.M.Nazeema
Daughter of Mrs.T.M.Kunchalumma
Residing at "Maymona"
Oop Tanur Railway Station,
Tanur Malapuram District
Kerala.

* 8.Mr.Moor Mohammed T.M.
 S/o.Mrs.T.M.Kunchalumma
 aged 48 years
 residing at
 Nest, Kayyath Road,
 Thalassury, Kannur District,
 Kerala-670 101.

*(Defendants 6 to 8 were brought on record as legal heirs
 of Deceased 2, Defendant as per order dated 10.07.2017 in
 A.No.3607 of 2017 and time extended order dt 28.07.2017)
 ... Defendants

O.A.No.438 of 2017

P.Durai
 S/o. Pachaiyappan
 No.215/146 Sydenhams Road
 Periamet, Chennai 600 003 ...Applicant/Plaintiff

Vs

1. T.M.Oosman Hajee & Co
 Rep by its Partners Defendants 2 to 4

2. T.M.Kunchalumma (deceased)
 W/o.C.O.K.Ali

3. Faizal Mohammed
 S/o. Late T.M.Moidoo

4. A.R.Imthiaz Ahamed
 S/o. Late T.M.Moosa

2nd to 4th defendants are having office at
 No.237, Linghi Chetty Street,
 Chennai 600 001

5. Khemka Galleria
 Unit of Khemka Timbers & Plywoods
 Proprietor Sathiya Narayanan
 No.237, Linghi Chetty Street,
 Chennai 600 001.

Original Application praying that this Hon'ble Court be
 pleased to grant an interim injunction restraining the
 respondents, their agents, assigns, agents, representative
 servants men or other person claiming through or under them
 from in any manner interfering with the peaceful possession

and enjoyment of the schedule mentioned property pending disposal of the suit.

A.No. 3608 of 2017

A.R.ImthiazAhamed
S/o. Late T.M.Moosa
No.237, Linghichetty Street,
Chennai 600 001. : Applicant/4th Respondent/
4th Defendant

-Vs.-

1. P.Durai
S/o. Pachaiyappan
No.215/146, Sydenhams Road,
Periamet, Chennai - 600 003. : 1st Respondent/Applicant/
Plaintiff

2. T.M.Oosman Hajee & Co
Rep.by its Partners Respondents 3 & 4

3. T.M.Kunchalumma
W/o. C.O.K.Ali

4. Aizal Mohammed
S/o. Late T.M.Moidoo

2nd to 4th respondents are having office at
No.237, Linghichetty Street,
Chennai 600 001.

5. Khemka Galleria
Unit of Khemka Timbers & Plywoods
Proprietor Sathiya Narayanan
No.237, Linghichetty Street,
Chennai 600 001. : Respondents/Respondents/
Defendants 1 to 3 & 5th

Application praying that this Hon'ble Court be pleased to vacate the order of injunction granted on 24.04.2017 in O.A.No.438 of 2017 in C.S.No.320 of 2017.

These Applications coming on this day before this court for hearing the court made the following order:-

CS.No.320 of 2017 has been filed, seeking permanent injunction, restraining the Defendants or anybody

acting under them, from interfering with the peaceful possession and enjoyment of the suit properties and for costs.

2. The property as described in the plaint is the building with country tile and wooden wall at No.58L, Sydenhams Road, Periamet, Chennai, in S.No.1264/7, measuring 2 grounds 1147 sq.ft. or 5947 sq.ft.

3. The Plaintiff, P.Durai, son of Pachaiyappan, claimed that he was the present owner of the suit property. He stated that G.Ramakrishnan, son of late Rao Bahadur Chetty Venkatapathy Naidu, was the original owner of the said property. He had obtained title by a partition deed dated 29.3.1996 registered as Document No.120 of 1966. It was further stated that Dr.G.Ramakrishnan was in possession and continuous enjoyment of the suit property. It was subsequently stated that since the said G.Ramakrishnan was in need of money, he mortgaged the suit property in favour of the Plaintiff on 6.12.1968 and a xerox copy of the mortgage deed was filed as Document No.1 along with the plaint.

4. It has been further stated that subsequently on 27.11.1969, G.Ramakrishnan sold the property to the Plaintiff through a sale deed and a xerox copy of the said sale deed was marked as Document No.2. It was stated that while handing over possession of the property, G.Ramakrishnan had also handed over all the relevant original document/title deeds in respect of the suit

property. It has been further stated that there is no encroachment in the property and a xerox copy of the encumbrance certificate was produced as Document No.3. The Plaintiff further claimed that he is in possession and was also paying property tax and a xerox copy of the property tax receipt was produced as Document No.4 and a xerox copy of the patta was produced as Document No.5 and the electricity card and fee receipt for April 2017 were produced as Document No.6.

5. It was further stated that on 9.1.2001, the Plaintiff had rented out the suit property to S.Balakrishnan, son of C.Samikannu on lease for a period of 30 years. It has been further stated that the Defendants in the suit had created fake documents in collusion with the revenue authorities and obtained forgery patta on 24.2.1974 fraudulently in favour of T.M.Oosman Hajee & Co. The Plaintiff further claimed that he verified with the authorities and found that the Defendants had created patta using counterfeit seal of the office of the revenue authority and by forging the signature of the Tahsildar and a xerox copy of the said patta was produced as Document No.7.

6. It is further stated that the Defendants are claiming right over the suit property and had threatened the tenant with dire consequences to vacate the premises. The tenant had therefore lodged a police complaint on 7.3.2015 against the Defendants before the Inspector of

Police, Periamet and obtained CSR and a xerox copy of the complaint was produced as Document No.8 and a xerox copy of the CSR was produced as Document No.9. The Plaintiff also filed a complaint before the Commissioner of Police, Chennai and a xerox copy of the same was produced as Document No.10.

7. Along with the said suit, the Plaintiff filed OA.No.438 of 2017, seeking an order of interim injunction, restraining the Defendants from interfering with his possession and enjoyment. It must be mentioned that in the Plaint, the 1st Defendant, T.M.Oosman Hajee & Co. is represented by its partners, who are shown as the Defendants 2 to 4. Khemka Galleria, Unit of Khemka Timbers and Plywoods, represented by Proprietor Sathiya Narayanan was shown as the 5th Defendant. It is not known in what capacity the 5th Defendant was impleaded as a Defendant in the suit.

8. In OA.No.438 of 2017, in his affidavit, the Plaintiff has made the very same averments made in the plaint and claimed that he was the owner of the property and that he had leased out the property for thirty years, but the Respondents/ Defendants were attempting to interfere with his possession and enjoyment and consequently, the suit was filed and the original application was filed, seeking interim injunction.

9. This court, by order dated 24.4.2017 had granted an order of interim injunction till 12.6.2017 and

the said order of interim injunction has been extended from time to time. In the mean while, A.No.3607 of 2017 came to be filed by the legal representatives of the deceased 2nd Defendant and this court had allowed the said application by order dated 10.07.2017 and accordingly, the Plaintiff also carried out amendments impleading the Defendants 6 to 8 as the legal representatives of the deceased 2nd Defendant.

10. The 4th Defendant in the suit, A.R.Imthiaz Ahamed had filed A.No.3608 of 2017, seeking an order to vacate the order of interim injunction granted on 24.4.2017 in OA.No.438 of 2017. In the affidavit filed in support of the said application, the Applicant, who is actually the 4th Defendant in the suit, had stated that the Plaintiff had come to court on the basis of fraudulent documents and that the Plaintiff had not filed the original documents into the court. It was also stated that the Plaintiff had filed an earlier suit, which was dismissed and which fact had not been disclosed to the court. He further stated that the Plaintiff had traced his title by Document No.2, which is the sale deed dated 27.11.1969. The said sale deed is an unregistered document and cannot confer any right, title or interest over the suit property.

11. According to the Applicant/ 4th Defendant, the suit property was part of a larger extent of land owned by Dr.V.Varadappa Naidu and after his life time, his only son Rao Bahadur, G.Venkatakapthy Naidu inherited the same.

Rao Bahadur G.Venkatapathy Naidu and his three sons, namely, Dr.G.Ramakrishnan, G.Nandagopal and G.Varadappa constituted a joint Hindu family and were enjoying the suit property. Dr.V.Varadappa Naidu died on 6.3.1948, leaving behind him his wife and three sons. Thereafter, a partition deed was executed on 23.7.1954, registered as Document No.1605 of 1954 in the office of the Sub Registrar, West Madras. The suit property, among other properties, was allotted to G.Ramakrishnan. G.Ramakrishnan effected a partition with his minor son G.Sunil Ramakrishnan under the partition deed dated 29.3.1966 registered as Document No.1270 of 1966 on the file of the Sub Registrar, West Madras. Thereafter, another partition deed was effected by Dr.G.Ramakrishnan with another son G.Laxman Ramakrishnan on 29.3.1971 under a registered Document No.1131 of 1971 on the file of the Sub Registrar, West Madras. In view of the said partition deeds, the suit property vested with Dr.G.Ramakrishnan. He sold the above property to T.M.Oosman Hajee & Co., a registered partnership firm, which was shown as the 1st Defendant in the suit. From the date of purchase, the said partnership firm has been in possession and it had let out to three tenants, namely, K.V.Timbers, Khempa Galleria and Dave Roadways.

12. It has been further stated that there were rent control proceedings filed against Dave Roadways, in which, when possession attempted to be taken through the

bailiff, a new entity called C.S.Riches Transport obstructed execution of the court decree. In this case, it was stated that Contempt Petition No.14 of 2012 is also pending. It has been stated that S.Balakrishnan, Proprietor of C.S.Riches Transport had filed OS.No.1679 of 2017, seeking injunction and the same was dismissed for non Prosecution on 13.2.2017 by the 5th Assistant City Civil Court, Chennai. Suppressing that fact, the present suit had been filed. It has been specifically stated that the suit property is the absolute property of T.M.Oosman Hajee & Co. which is a registered partnership firm.

13. Along with the application, the Applicant in A.No.3608 of 2017 has filed a typed set of papers, including the sale deed, registered as Document No.791 of 1972 dated 28.6.1972 executed by Dr.G.Ramakrishnan in favour of the T.M.Oosman Hajee & Co. and another sale deed registered as Document No.7630 of 1973 dated 13.12.1973 executed by Dr.G.Ramakrishnan in favour of T.M.Oosman Hajee & Co. Payment vouchers for rental advance and certificates issued by the Commercial Tax Department were also filed. The plaint and related documents of OS.No.1697 of 2015 have also been filed. Encumbrance certificate from 1.1.1983 to 21.8.2013 was also filed as a document.

14. A counter has been filed in OA.No.438 of 2017 substantially raising the same averments as made in the affidavit filed in support of the application in A.No.3608 of 2017.

15. This court heard the arguments advanced by the learned counsel for the Applicant/ Plaintiff in OA.No.438 of 2017 and also by the learned counsel for the Applicant in A.No.3608 of 2017. The parties herein after shall be referred to as the Plaintiff and the Defendants for the sake of convenience.

16. This court had called upon the Registry to forward the original documents filed along with the plaint. It was shocking to note that the Plaintiff had come to court by filing xerox copies and there was also no undertaking given that the originals shall be produced at the time of hearing of the case or at the time of trial. In fact, there was no commitment at all to produce the originals.

17. A perusal of the documents relied on by the Plaintiff shows that the Document No.1, which is the xerox copy of the mortgage deed dated 6.2.1968, is an unregistered document. In the said mortgage deed, it has been stated that R.Ramakrishnan, aged 46 years, son of late Rao Bahadur Chetty Venkatapathy Naidu had mortgaged the suit property for a sum of Rs.30,000/- in favour of the P.Durai, son of Pachaiyappan, aged 30 years. The xerox copy has been attested by an Advocate and Notary Public on 10.3.2015 and the xerox copy of that has been filed in the court.

18. The 2nd document relied on by the Plaintiff is the xerox copy of the sale deed dated 27.11.1969 and this

is also an unregistered document. By this document, Dr.G.Ramakrishnan, son of late Rao Bahadur Chetty Venkatapathy Naidu, aged 46 years sold the property to P.Durai, son of Pachaiyappan, aged 25 years. The sale deed, as stated above, was unregistered. The total consideration was Rs.45,100/- which was paid by cash. This is also attested by an Advocate and Notary and the document filed in the court is the xerox copy of such attested copy.

19. It is needless to point out that both the documents are worthless documents being unregistered and cannot be used in any court of law and cannot convey any title to any person, much less, the mortgagee or the purchaser therein.

20. With the help of these documents, the Plaintiff had obtained an order of interim injunction. On the other hand, the Defendants have produced the sale deed in favour of the 1st Defendant, which is a registered document. There are two sale deeds in favour of the 1st Defendant and the 1st sale deed is dated 28.6.1972, registered as Document No.791 of 1971 and the 2nd sale deed is dated 13.12.1973, registered as Document No.763 of 1973.

21. The Plaintiff has also suppressed the fact in his plaint that the tenant whom he mentions as Balakrishnan had filed OS.No.1697 of 2015 on the file of the City Civil Court, Chennai and in the said suit, the Defendants had also filed a written statement. The Defendants have produced a copy of the plaint and the

written statement for consideration of this court in the typed set of papers filed by them. A comparison of the signatures of G.Ramakrishnan, who was said to have executed the mortgage deed on 6.12.1968 and the sale deed in favour of the Plaintiff on 27.11.1969 and also two registered sale deeds in favour of the 1st Defendant on 28.6.1972 and 13.12.1973 clearly show that two different persons have signed the two sets of documents relied on by the Plaintiff and the Defendants. More particularly, the documents produced by the Plaintiff are xerox copies and are also unregistered. It is also seen that the Plaintiff had suppressed the fact that his tenant had filed earlier suit, which suffered an order of dismissal.

22. In **1998-3-SCC-573 (K.K.Modi Vs. K.N.Modi)**, the Honourable Supreme Court had stated as follows:-

" 44. One of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The re agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a

jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

23. In the decision of the Honourable Supreme Court reported in **AIR 1977 SC 2421 1 (T.Arivanandam Vs. T.V.Satyapal)**, the father had contested the eviction proceedings, lost it, appealed against it, lost again, moved a revision, suffered rejection of the revision petition and after that, his son re-litigated by filing a suit seeking that the eviction order has been obtained by fraud and collusion. In the said decision, the Honourable Supreme Court had stated as follows:-

"2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. ..

..... We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one

we are disposing of."

24. In the Registration Act, 1908, the documents of which registration is compulsory, have been given. It has been provided as follows:-

17. Documents of which registration is compulsory:-

1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, (20 of 1866) or the Indian Registration Act, 1871, (7 of 1871) or the Indian Registration Act, 1877, (3 of 1877) or this Act came or comes into force, namely:-

a) instruments of gift of immovable property

(b) other non-testamentary instruments which purport or operate, to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property."

25. It is clearly seen that the documents relied on by the Plaintiff can confer no right, title or interest over the suit property to the Plaintiff. The Plaintiff is involved in a very vexatious litigation and this court had no other option except to vacate the order of interim injunction already granted.

26. In the result, A.No.3608 of 2017 is allowed with costs. OA.No.438 of 2017 is dismissed with costs. The cost payable by the Plaintiff to the Defendants is quantified at Rs.25,000/- (Rupees twenty five thousand only) together in both the applications.

27. The Plaintiff is directed to produce into the court the originals of the Document Nos. 1 and 2 filed along with the plaint and also all other title deeds of the suit property into the court, which are in possession of the Plaintiff and this court shall forward the same for necessary further proceedings under Section 340 Cr.PC to hold an enquiry with respect to determining whether the Plaintiff had obtained orders of injunction by producing false and fabricated documents. It is also made clear that the Plaintiff shall produce all the original documents before this court on or before 12.12.2017.

28. The Joint Registrar (Original Side), Madras High Court, is directed to call for explanation from the concerned Passing Officer of the suit and to determine how xerox copies of the unregistered sale deed and unregistered mortgage deed were accepted before the suit had been numbered, without comparing the originals with the xerox copies and without any commitment to produce the originals.

sd/.C.V.K.J

29.11.2017

//Certified to be a true copy//

Dated this the day of 2017

jj 06.12.2017

COURT OFFICER

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