

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 12TH DAY OF DECEMBER 2017

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

A.No.3913 of 2017

in

EP.No.48 of 1997

in

C.S.No.43 of 1962

C.S.No.43 of 1962 :

1.S.V.Ramakrishna Mudaliar

2.S.V.Matha Prasad

Both plaintiff residing at
No.471, Poonamallee High Road,
Kilpauk, Madras.

..Plaintiffs

Vs.

1.Mrs.Rajabu Fathima Buhari

2.A.M.B.Buhari

both Defendants residing at
No.57, Second Main Road,
Gandhi Nagar,
Adyar, Madras.

..Defendants

E.P.No.48 of 1997 :

S.V.Mathaprasad,
No.20, Bajanaikoil Street,
Rajakilpakkam,
East Tambaram,
Chennai 73

..Petitioner/Decree Holder/2nd Plaintiff

Vs.

1.Mrs.Rajaby Fathima Buharai (dead) by LRS

2.A.M.Buhari (dead) by LRS

3.Mohammed Basheer Buhari (Dead) by LRS

- 4.Mrs.Zubeida Hamid
- 5.Mr.Mohammed Farook
- 6.Mrs.Maimeena Jamal
- 7.Haja Mohideen Buhari
- 8.Abdul Coder Buhari
- 9.Mrs.Mumtaj Buhari
- (2 to 9 are legal heirs of 1st J.D
residing at "Imperial Hotel",
No.5, Gandhi Irvin Road,
Egmore, Madras-8
- 10.Mrs.Shahira Bahseer
W/o Deceased Mohammed Bahseer Buhari
- 11.Mrs.Fazeelath Siraj,
D/o Mohammed Bahseer Buhari
- 12.Mrs.Mahajubdeen Ibrahim
D/o Mohammed Basheer Buhari
- 13.Haja Abdul Nazeer
S/o Mohammed Bahseer Buhari
- 14.Mrs.Farzaa Malik
D/o Mohammed Bahseer Buhari
- 15.Haja Anwar Murad
S/o Mohammed Bahseer Buhari
- 16.Mrs.Zeenath Yusuf
S/o Mohammed Bahseer Buhari
- 17.Haja Amed Imitaz
S/o Mohammed Bahseer Buhari
- 18.Haja Mohammed Sameer
S/o Mohammed Bahseer Buhari
- 19.Miss.Roshanara Begam
D/o Mohammed Bahseer Buhari
- (10 to 19 are legal heirs of 3rd J.D
residing at No.L-15, 27th Cross Street
Besant Nagar, Madras 600 090)

20.A.M.D.Buhari

..Respondents/Lrs of the
Def.No.1&2/Judgment Debtors

A.No.3913 of 2014 :

- 1.S.V.R.Saroja
- 2.S.V.R.Vijaya
- 3.S.V.R.Ramprasad

4.S.V.R.Renuka Devi
all are residing at No.L-17/71,
24th Street, Anna Nagar East,
Chennai 600 102

..Applicants/Respondents

Vs.

1.S.V.Mathaprasad
No.20, Bajanaikoil St.,
Rajakilpakkam,
East Tambaram, Chennai-73

..Respondent-1/Petitioner/
Decree Holder/2nd Plaintiff

2.Mrs.Rajaby Fathima Buhari (dead) by LRS

3.A.M.Buhari (dead) by LRS

4.Mohammed Basheer Buhari (Dead) by LRS

5.Mrs.Zubeida Hamid

6.Mr.Mohammed Farook

7.Mrs.Maimeena Jamal

8.Haja Mohideen Buhari

9.Abdul Coder Buhari

10.Mrs.Mumtaj Buhari

(2 to 9 are legal heirs of 1st J.D

residing at "Imperial Hotel",

No.5, Gandhi Irvin Road,

Egmore, Madras-8

11.Mrs.Shahira Bahseer

W/o Deceased Mohammed Bahseer Buhari

12.Mrs.Fazeelath Siraj,

D/o Mohammed Bahseer Buhari

13.Mrs.Mahajubdeen Ibrahim

D/o Mohammed Basheer Buhari

14.Haja Abdul Nazeer

S/o Mohammed Bahseer Buhari

15.Mrs.Farzaa Malik

D/o Mohammed Bahseer Buhari

16.Haja Anwar Murad

S/o Mohammed Bahseer Buhari

17.Mrs.Zeenath Yusuf

S/o Mohammed Bahseer Buhari

18.Haja Amed Imitaz

S/o Mohammed Bahseer Buhari

19.Haja Mohammed Sameer

S/o Mohammed Bahseer Buhari

20.Miss.Roshanara Begam

D/o Mohammed Bahseer Buhari

(10 to 19 are legal heirs of 3rd J.D
residing at No.L-15, 27th Cross Street
Besant Nagar, Madras 600 090)

21.A.M.D.Buhari

..Respondents 2-21/Lrs of the
Def.No.1&2/Judgment Debtors

Application praying that this Hon'ble Court be pleased to pass an order withdrawing the proceedings in EP.No.48 of 1997 on the file of the Learned Master, Original Side, High Court, Madras and transfer the same to the file of this Hon'ble Court for adjudication in accordance with law.

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

This application has been filed, seeking to withdraw the proceedings in EP.No.48 of 1997 on the file of the Master, Original Side, High Court, Madras and transfer the same to the file of this Court for adjudication in accordance with law.

2. It is seen that the Applicants are on record as co-petitioners in EP.No.48 of 1997 along with the 1st Respondent. Originally, S.V.Ramakrishnan and S.V.Mathaprasad had filed CS.No.43 of 1962 against Mrs.Rajabu Fathima Buhari and A.M.B.Buhari. This Court, by judgement dated 10.11.1965, had decreed the suit. The matter went up to the Honourable Supreme Court, wherein in Civil

Appeal No.224 of 1974, by judgement dated 17.4.1995, the Honourable Supreme Court had modified the decree passed by the learned Single Judge of this Court in CS.No.43 of 1962 and directed the learned Single Judge of this Court to execute the required documents.

3. Since the Court has to re-examine the issues, it would be highly inappropriate on the part of this Court to go into the merits of this case, but it would be fruitful to extract the judgement of the Honourable Supreme Court as follows:-

"1. That the judgement and order dated 10th May, 1972 of the Division Bench of the High Court of Judicature at Madras in OSA.Nos.8 and 9 of 1966, be and is hereby set aside and the judgement and decree for specific performance dated 10th November 1965 passed by the Single Judge of the said High Court in Original Suit No.43 of 1962 be and is hereby restored.

2. It is hereby directed that the Respondents herein or their successors in interest would re-convey the property mentioned in Schedule A of the plaint within a period of one month from this the 17th April 1995, failing which it would be to the trail Judge (Single Judge) of the aforesaid High Court to execute the required documents. "

4. It is under these circumstances that this application has been filed to withdraw EP.No.48 of 1997, which is now pending on the file of the Master, and to transfer to the file of this Court.

5. The learned counsel for the Respondent has raised objections that the application has been filed nearly after 20 years. However, it is seen that the EP can be proceeded only after the judgement of this Court delivered in TOS.No.2 of 2009, in which also, the same parties have been litigating over the same properties.

6. The order of the Honourable Supreme Court is to be followed in letter and spirit and when the Honourable Supreme Court had directed that the learned Single Judge of this Court has to adjudicate the issues raised in the execution petition, it is only just and proper that the matter is transferred as prayed for. Even the High Court has every power to transfer the execution petition to the file of this case. In the instant case, when there being specific directions of the Honourable Supreme Court that it is only the learned Single Judge of this Court who should examine the issues, it is only natural that the Court is bound by such direction.

7. Consequently, this application is allowed and EP.No.48 of 1997 is withdrawn from the file of the Master and transferred to the file of this Court. The Registry is directed to make necessary steps for such withdrawal of the EP.No.48 of 1997 from the file of the Master and transfer of the same to the Original Side of this Court. No costs.

Sd/.C.V.K.J

12.12.2017

//Certified to be a true copy//

Dated this the day of 2018.

TR/8.5.2018

COURT OFFICER(OS)

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