

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11TH DAY OF JANUARY 2017

THE HON'BLE MR.JUSTICE P.VELMURUGAN

A.No.70 of 2017

in

C.S.No.63 of 2007

1.Meenakshi

Old Door No.43,
New Door No.101,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

2.Parvathy

Door No.38,
[present new door No.91]
Adam Sahib Street,
Royapuram,
Chennai- 600 013

3.Andal (since died) *

(*Amended as per the order dated 11.8.2015 in Application
Nos.1277 and 1278 of 2014)

4.Seethalakshmi

Door No.43,
[present new door No.101]
Adam Sahib Street,
Royapuram,
Chennai- 600 013

...Plaintiff

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Vs

1.Thangavel Pillai (since deceased)

2.S.Kumudha

Door No.58,
[present new No.135]
Adam Sahib Street,
Royapuram,
Chennai- 600 013

**3.Meenakshi Sundaram
No.101/43,
Adam Sahib Street,
Royapuram,
Chennai-13

**4.D.Suguna
No.101/43,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

**5.G.Kamatchi
No.140/142,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

**6.G.Meganathan
No.15/6, Venkatachala Naicker Street,
Royapuram, Chennai- 13
(*Defendants 3 to 6 brought on record as L.Rs of deceased 1st defendant, as per order dated 9.7.07 in Appln.No.4678/07 and order dated 2.1.08 in Appln.No.7914/07)

***7.Mr.Gopinath
S/o.M.Paneer Selvam,
179/80, Adam Sahib Street,
Royapuram
Chennai-13

(***The 7th defendant brought on record as per order dated 21.7.2010 in Application No.5596/2009 and delay condoned as per order dated 25.8.2010 passed in Appl.No.4657/10)

...Defendants

A.No.70 of 2017:

P.Gopinath
S/o.M.Paneer Selvam,
No.179/80, Adam Sahib Street,
Royapuram, Chennai- 600 013

...Applicant/7th Defendant

VERSUS

1.Meenakshi
D/o.Late R.Gopal Pillai,
Old Door No.43,
New Door No.101,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

2.Parvathy,
D/o.Late Gopal Pillai,
No.38, (Present Door No.91)
Adam Sahib Street,
Royapuram,
Chennai- 600 013

3.Andal (Deceased)
D/o.Late Gopal Pillai,
No.38, (Present Door No.91)
Adam Sahib Street,
Royapuram,
Chennai- 600 013

4.Seetha Lakshmi,
W/o.M.Ekambaram,
Old Door No.43, New Door No.101,
Adam Sahib Street,
Royapuram,
Chennai- 600 013

..Respondents 1 to 4/Plaintiffs

5.Thangavel Pillai (Deceased)
S/o.M.Kuppuswamy Pillai,
No.142, (Present New Door No.140)
Adam Sahib Street,
Royapuram, Chennai- 600 013

..5th Respondent/1st Defendant

6.S.Kumudha
D/o.G.Srinivasan,
No.58, (Present Door No.135),
Adam Sahib Street,
Royapuram,
Chennai- 600 013

7.Meenakshi Sundaram
S/o.R.Gopal Pillai
No.101/43, Adam Sahib Street,
Royapuram,
Chennai-600 013

8.D.Suguna,
D/o.R.Gopala Pillai,
No.101/42, Adam Sahib Street,
Royapuram,
Chennai- 600 013

9.G.Kamatchi,
D/o.R.Gopal Pillai,
No.140/142, Adam Sahib Street,
Royapuram, Chennai- 600 013

10.G.Meganathan
S/o.R.Gopal Pillai,
No.15/6, Venkatachala Naicker Street,
Royapuram,
Chennai- 600 013

...Respondents 6 to 10/Defendants 3 to 6

Application praying that this Hon'ble Court be pleased to set aside the order date 19.12.2016 setting the Applicant/7th Defendant exparte in the above C.S.No.63 of 2007.

सत्यमेव जयते

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

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This application is filed by the applicant/plaintiff to set aside the order dated 19.12.2016 passed in Application No.6670 of 2011 in C.S.No.63 of 2007, wherein the applicant/7th defendant was set exparte.

2. The averments made in A.No.70 of 2016 are that the applicant is the seventh defendant in the suit. Respondents 1 to 3 filed the suit for declaration and recovery of possession of suit property and for recovery of a sum of Rs.8,00,000/- as compensation from the applicant/7th defendant. Respondents 1 to 4 impleaded the applicant as the seventh defendant in the suit.

3.The applicant/7th defendant is a bona-fide purchaser of the suit property from the deceased first defendant by a sale deed dated 20.12.2006, in which the second defendant also signed. Originally, the suit was filed against defendants 1 and 2 only. After the demise of the first defendant, the legal representatives of the first defendant were impleaded in the suit as defendants 3 to 6 in the year 2007. The applicant was impleaded as seventh defendant as per order dated 20.07.2010. Thereafter, the plaint was amended by an order dated 11.08.2015 passed in A.Nos.1277 and 1278 of 2014.

4.Meanwhile, the plaintiffs filed O.A.Nos.684 to 686 of 2008 against the second defendant for interim relief and the same were ordered. Thereafter, the plaintiffs filed A.No.592 of 2011 for disobedience of the order dated 18.11.2010 passed in O.A.Nos.684 to 686 of 2008 and to punish the applicant and to get the suit property without

undergoing trial and the same is pending. By the said application, the applicant entered appearance in the suit and contested the case.

5. During the above said proceedings, the learned counsel for the plaintiffs served summons on the applicant and a copy of the second amended plaint was also served on 27.07.2011 to the learned counsel for the applicant. On 01.06.2011, summons were served on the applicant to file written statement on or before 13.06.2011. But, the written statement was filed only on 02.01.2017. Hence, there was a delay of 2001 days in filing the written statement. Due to the death of the third plaintiff, the plaint was once again amended by order dated 11.08.2015 passed in A.Nos.1277 and 1278 of 2015 and the third amended plaint was served to the applicant on 18.08.2015.

6. Further, it is averred that the applicant is engaged in civil contracts and he has to face the labour and monetary problems. In spite of these difficulties, he has to watch the court proceedings also. Hence, delay of 2001 days has occurred in filing the written statement. Therefore, the delay is neither wilful nor wanton.

7. Moreover it is stated that though the plaintiffs alleged that they had possession of the property, their prayer for recovery of possession as against the first

defendant is without necessary details and the contention with respect to the first defendant's possession of suit property viz., 'permissive occupation', 'on leave and licence' and 'permissive occupier' are self contradictory and the same have to be verified with the sale deed dated 20.12.2016 coupled with the fact. The plaintiffs/respondents have not chosen to seek any relief against the sale deed in favour the applicant about the claim of Rs.8,00,000/- as compensation for the demolished building. These are all vital issues to be decided only at the time of trial. If the exparte decree is passed in the suit, the applicant, as a bonafide purchaser of the plot, will be put to an irredeemable and irreparable loss and therefore, opportunity may be given to conduct the trial. Hence, the applicant requested this Court to set aside the order dated 19.12.2016 passed in Application No.6670 of 2016 in C.S.No.63 of 2007.

8.The second respondent/second plaintiff filed counter affidavit wherein it is stated that on 19.12.2016, this Court set the applicant exparte and not suo motu in the suit proceedings. Though the applicant filed an application to set aside the exparte order dated 19.12.2016, he failed to file the counter affidavit in Application No.6670 of 2016. Hence, the applicant is not

entitled to set aside the exparte order and there is no bona fide reason and sufficient cause shown in the affidavit to set aside the exparte order.

9. Moreover, the applicant has been impleaded as 7th defendant in the suit as he has purchased the suit property but, not as the bona fide purchaser for consideration and the alleged sale deed dated 20.12.2016 vide Document No.3746 of 2007 executed by the applicant is a sham and nominal document. The applicant had colluded with the second defendant and created documents, such as, deed of cancellation and settlement deed in favour of the second defendant and sale deed in favour of the applicant. The first and second defendants had no right to execute the alleged sale deed or other deeds and therefore, the applicant is not a bona fide purchaser.

10. On 3.3.2011, the suit came up before the Second Assistant Registrar and private notice was ordered to the applicant on 09.04.2011. On 12.04.2011, the applicant received the suit summons. Therefore, the applicant ought to have filed the written statement within a period of six weeks from 12.4.2011. But, he had not filed the written statement and the applicant ought to have explained the delay in filing the written statement. Hence, Application No.6670 of 2016 was filed to set the applicant

and the second defendant exparte wherein the applicant did not file counter affidavit and hence, they were set exparte. Therefore, the application has to be dismissed.

11. Heard the learned counsel for the applicant and the learned counsel for the respondents and perused the materials available on record.

12. The learned counsel for the applicant would submit that the applicant has got a good defence in this case, however an opportunity may be given for him to defend the case.

13. Considering the arguments advanced by the learned counsel on either side, the averments made in the affidavit filed in support of the application and also considering the facts and circumstances of the case that trial has not yet been commenced, in the interest of justice in order to give one more opportunity to the applicant to defend the case, at the same time the respondents/plaintiffs have to be compensated with costs for inconvenience caused to them, this Court is inclined to allow this application on the sole ground that no prejudice would be caused to the respondents in allowing the application on payment of costs.

14. Accordingly, to give an opportunity to the applicant to contest the suit and to meet the ends of justice, this

application is allowed on condition that the applicant shall pay a sum of Rs.25,000/- (Rupees Twenty five thousand only) to the contesting respondents 1 to 4/plaintiffs proportionately on or before 15.02.2017 and on payment of the same, the applicant is directed to file a Memo before the Registry. The Registry is directed to post this application along with the civil suit on 16.02.2016.

15. Post the other applications along with the civil suit on 17.2.2017.

sd/.P.V.M.J
11.01.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/10.02.2017

COURT OFFICER

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

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