

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

Coram

The Hon'ble Mr. Justice S.NAGAMUTHU

and

The Hon'ble Mr. Justice N.AUTHINATHAN

O.S.A.No.302 of 2013

and

M.P.No.1 of 2013

Mrs.Umayal Murugesan ... Appellant

Vs

1.Mr.A.V.S.Shevaraj  
2.Mr.A.N.Dyaneswaran  
3.Mrs.D.Prema

.. Respondents

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w Clause 15 of the Letters Patent against the common order dated 30.03.2012 made in O.A.No.253 of 2012 in C.S.No.605 of 2008.

For Appellant .. Mr.K.Sridhar and Ms.Devi

For Respondents.. Mr.A.K.Sriram for  
M/s.A.S.Kailasam Associates  
for R2 and R3

Mr.J.Narayanasamy for R1

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The first respondent herein claims that he is the absolute owner of the property, which is the subject matter of the suit in C.S.No.605 of 2008, before the learned Single Judge of this Court. According to him, he executed a Power of Attorney in favour of the second respondent herein and without his knowledge, the second respondent in turn has settled the said property in favour of the third respondent. The third respondent is none else then the sister of the first respondent and the wife of the second respondent. According to the first respondent/plaintiff, since the settlement in favour of the

third respondent is executed by the second respondent without his knowledge and without his consent, the same is void. Therefore, he has filed the said suit for declaration that the settlement is void and for other consequential reliefs.

2. During pendency of the suit, the first respondent filed O.A.No.253 of 2012, praying for temporary injunction, pending disposal of the suit, to restrain the defendants, namely, the respondents 2 and 3 herein, from in any way demolishing or altering or modifying the nature of the suit building, as mentioned in the schedule. The learned single Judge, by order, dated 30.03.2012, allowed the said application and granted temporary injunction as prayed for.

3. The appellant herein is a third party to the suit. She claims that she purchased the suit property from the third respondent herein on 31.3.2011 for a valuable consideration and thus, according to the appellant, she is in possession and enjoyment of the suit property. According to her, the impugned order of the learned single Judge was passed behind her back and therefore, the same needs to be set aside. With these allegations, she filed an application before this Court seeking leave to appeal and with the grant of leave, she has filed the present appeal against the interim order of the learned single Judge.

4. We have heard the learned counsel on either side and also perused the records carefully.

5. Admittedly the Civil Suit was pending from the year 2008. The appellant herein allegedly purchased the property only on 31.03.2011. It is nowhere stated that the appellant was not aware of the pendency of the civil suit as on 31.3.2011. From these facts, it is crystal clear that the appellant has purchased the litigation also.

6. The respondents 2 and 3 herein, who are the defendants in the suit, appears to have given undertaking not to demolish the building. The learned counsel for the respondents 2 and 3 would, however, submit that no such undertaking was ever given by respondents 2 and 3 herein.

7. When the respondents 2 and 3 have not filed any appeal, the appellant, who is a purchaser of the property, during pendency of the suit, cannot have any grievance against the

interim order passed by the learned single Judge. Further, the suit has been pending for the past seven years and therefore, it is for the appellant to work out her remedies in the civil suit, where, it appears that she filed a petition for impleading herself as a party. In such view of the matter, we are not inclined to interfere with the impugned order of the learned single Judge. The Original Side Appeal is accordingly dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

msk

To

The Sub Assistant Registrar,  
Original Side, High Court, Madras.

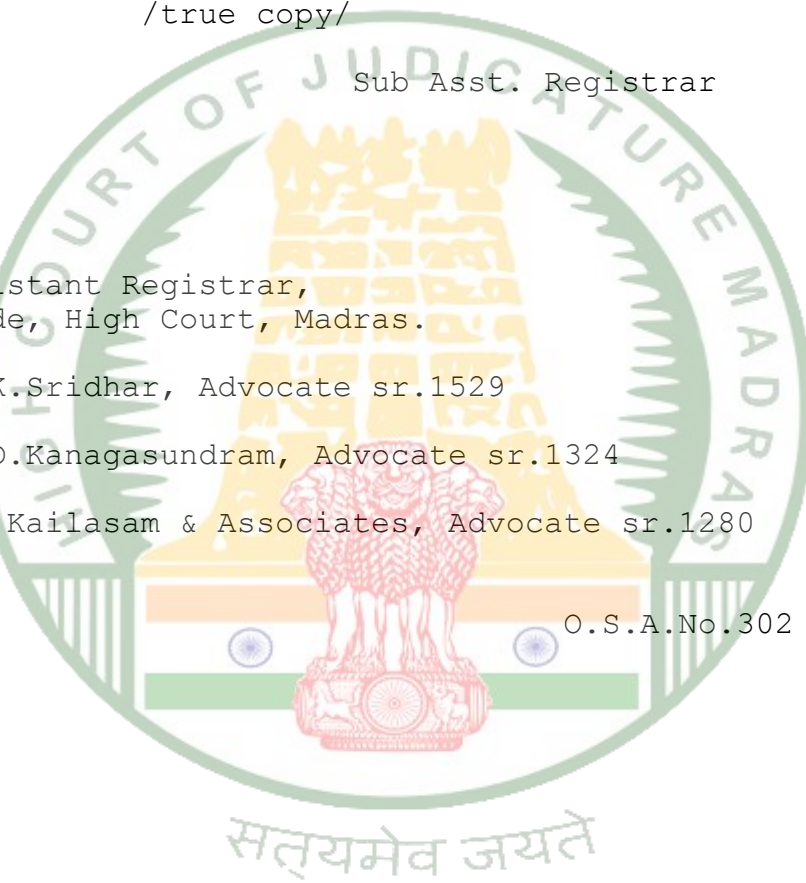
+1cc to Mr.K.Sridhar, Advocate sr.1529

+1cc to Mr.D.Kanagasundram, Advocate sr.1324

+1cc to A.S.Kailasam & Associates, Advocate sr.1280

O.S.A.No.302 of 2013

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