

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 13TH DAY OF MARCH 2018

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

O.A.No.348 of 2017

in

C.S. No.244 of 2017

1. N.Vani
D/o.T.Nallamuthu

2. N.Prabhu
S/o.T.Nallamuthu

3. T.Nallamuthu
S/o.M.Thangavel

4.N.Idayavani,
D/o.Nallamuthu
All of them residing at
New No.139, Old No.60,
Still Old No.56, earlier No.66,
Sanjeevarayan Koil Street,
Old Washermenpet, Chennai-600 021 ..Applicants/Plaintiffs

-Versus-

1.T.Arumuga Aachari,
S/o.Duraisamy Aachari
No.39/94, Pillaiyar Koil Street,
Arumbakkam, Chennai- 600 106

2.I.Hemant Kumar,
S/o.Late Poongavanam

3.I.Jayakumar,
S/o.Late Poongavanam,

4.I.Selvakumar,
S/o.Late Poongavanam,

5.S.Manohari,
D/o.Late Poongavanam,

6.R.Shanthakumari,

D/o.Late Poongavanam,

7.I.Udayakumar,
S/o.Late Poongavanam

All residing at
No.65/26,
Sanjeevarayan Koil Street,
Old Washermenpet,
Chennai-21.

..... Respondents/Defendants

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the first respondent herein from in any manner interfering with the possession of the suit property, either personally or by proceeding with E.P.6 of 2016 in Ejectment Suit 61 of 2007 on the file of the Hon'ble Registrar Court of Small Causes, Chennai pending the suit.

This Original Application coming on this day before this court for hearing the court made the following order:-

O.A.No.348 of 2017 has been filed by the applicants/plaintiffs in C.S.No.244 of 2017 seeking an order of interim injunction restraining the first respondent from interfering with the possession of the suit property, either personally or by proceedings with E.P.No.6 of 2016 in Ejectment Suit No.61 of 2007 which is now pending on the file of the Registrar, Small Causes Court, Chennai.

2. The suit in C.S.No.244 of 2017 had been filed by the plaintiffs, as against the first defendant T.Arumuga Aachari and six others, seeking a Judgment and decree that they are the absolute owners of the suit property and for a declaration that the decree dated 02.09.2010 in Ejectment Suit No.61 of 2007 on the file of the III Court Small Causes, Chennai, is null and void and not binding on

the plaintiffs and for a permanent injunction, restraining the 1st defendant from executing the said decree, dated 02.09.2010 and for costs.

3. The property involved in the litigation is land and building at Door No.139, Old Door No.56, Present Door No.60, Sanjeevarayan Koil Street, Old Washermenpet, Chennai-600 021, measuring an extent of 3045 sq.ft.

4. In the plaint, it had been stated that the suit schedule property was originally owned by Duraisamy Aachari. By a registered deed of partition document No.948/1949 dated 12.11.1949 registered as Document No.948/1949 in the Sub-Registrar Office, Triplicane, entered among the legal heirs of Duraisamy Aachari, the property fell to the share of his sons are D.Natesa Aachari, D.Thiyagaraja Aachari and D.Arumuga Aachari, who is the first defendant. D.Arumuga Aachari had filed O.S.No.806 of 1971 for partition of the suit property. A preliminary decree dated 20.12.1971 was passed and it was declared that each one of the three sons were entitled to the 1/3 share in the suit property. An application in I.A.No.22709 of 1976 was then filed to pass a final decree. The learned Advocate Commissioner reported that the property cannot be divided into three equal shares. Thereafter, an application was filed by D.Thiyagaraja Aachari to sell the property in public auction. A fresh Advocate Commissioner was appointed. In the public auction conducted on 13.11.1982, Poongavanam Ammal W/o.Indira Aachari became the successful bidder for a sale price of Rs.1,30,000/-. The trial Court confirmed the sale in her favour on 29.06.1983 and sale

certificate was also granted on 04.08.1983. Poongavanam Ammal was put in possession of the property. Subsequently, the sons of Indira Aachari and Arumuga Aachari filed a second suit for partition in O.S.No.1049 of 1984 as against D.Thyagaraja Aachari, D.Natesa Aachari and D.Arumuga Aachari and also against Poongavanam Ammal. The suit in O.S.No.1049 of 1984 was dismissed on 17.07.1987 and the appeal in A.S.No.320 of 1988 filed as against the same was also dismissed on 14.03.1981.

5. It was claimed in the plaint that Poongavanam Ammal became the owner of the suit property. Subsequently, on 14.07.2006 the said Poongavanam Ammal sold the property to N.Vani, N.Prabhu and N.Idayavani who are all daughters and son of T.Nallamuthu. They purchased the property by a sale deed dated 14.07.2006, which was registered as document No.2049 of 2006. They are the plaintiffs in the present suit in C.S.No.244 of 2017. The plaintiffs stated that they have been in absolute possession of the suit property. They have been paying corporation taxes and statutory taxes. At this juncture, it came to the knowledge of the plaintiffs that the first defendant D.Arumuga Aachari, suppressing all the above facts filed an Ejectment Suit No.61 of 2007, under Section 41 of the Presidency Small Causes Court Act 1982 as against Poongavanam Ammal. The said Poongavanam Ammal had filed a detailed written statement. She had also stated that she had sold the property to the plaintiffs in the present suit in C.S.No.244 of 2017. She also gave evidence as D.W.1 and marked Ex.B.1, which is certified copy of the sale deed dated 14.07.2006 and Ex.B.2, the encumbrance certificate. However, the

Ejectment suit was decreed by the Court of Small Causes by Judgment, dated 02.09.2010. Subsequently, Poongavanam Ammal also filed CRP (NPD) No.2079 of 2011 and had obtained interim stay of the execution of the decree. However, Arumugam Aachari filed E.P.No.6 of 2016 as against the legal heirs of Poongavanam Ammal. The plaintiffs are not the parties to either Ejectment suit or to the Execution Petition. They claimed that the decree in Ejectment suit does not grant any title to the suit immovable property. Under these circumstances, the present suit in C.S.No.244 of 2017 had been filed seeking the reliefs mentioned above.

6. In the present suit, the plaintiffs have filed the present application in O.A.No.348 of 2017, seeking an order of interim injunction from dispossession and also from proceeding with the Execution Petition, which is now pending before the Registrar, Small Causes Court, Chennai.

7. The first defendant, D.Arumuga Aachari alone contested the application. The other defendants, who are the legal representatives of Poongavanam Ammal have not joined in the proceedings.

8. In the counter filed by Arumuga Aachari, he had stated that the Ejectment suit had been filed as against Poongavanam Ammal and she had filed CRP (NPD) No.2079 of 2011. This Court had dismissed the said Civil Revision Petition by order dated 11.10.2017. Further, it has also been stated during the arguments that the Special Leave Petition was also dismissed by the Supreme Court. It had been stated that the first defendant was executing a

decree of the Court and consequently, the Court cannot grant any injunction. It had been further stated that the plaintiffs deliberately did not participate in the earlier proceedings. It had been further stated that the Poongavanam Ammal was granted only a sale certificate which does not confer any title. It has not been registered. Consequently, she cannot claim ownership. It has been specifically stated that the sale by Poongavanam Ammal in favour of the plaintiffs was not a bona fide transaction. It had been stated that the Civil Revision Petition was filed on 14.06.2011 and the present suit had been filed on 10.03.2017 by the same Counsel. It had been stated that all the points had been discussed in the Civil Revision Petition and consequently, it has been stated that the application has to be dismissed.

9. The plaintiffs had filed a reply affidavit. In the said reply affidavit, it had been stated that the plaintiffs had no knowledge about the Ejectment suit. It had been also stated that the said Court could not examine the title of the property. It had been further stated that they were bona fide purchasers and the revenue records are also in their name. It had been stated that Poongavanam Ammal was granted sale certificate dated 29.06.1983 and she had also filed an Execution Petition in O.S.No.806 of 1971 and obtained possession. It had been further stated that the first defendant had deliberately not impleaded the plaintiffs herein in the Execution Petition. It had been stated that the injunction has to be granted as prayed for.

10. I have carefully considered the arguments of

Mr.K.P.Santhosh for Mr.T.Viswanatha Rao, the learned Counsel for the applicants/plaintiffs and Mr. Shah for R.Sathiyamurthy, the learned Counsel for the 1st defendant. The other defendants did not participate in the proceedings. For the sake of the convenience, the parties shall be referred as they were arrayed in the suit, namely, Plaintiffs and Defendants.

11. The property namely; land and building at Door No.139, Old Door No.56, Present Door No.60, Sanjeevarayan Koil Street, Old Washermenpet, Chennai-600 021, measuring an extent of 3045 sq.ft.

12. As per the history of the litigation, the property was originally owned by Duraisamy Aachari. He also had other properties. After his death, his legal heirs entered into a registered partition deed, which was registered as document No.948/1949 dated 12.11.1949 in the Office of the Sub-Registrar, Triplicane. The property had fell to the share of his three sons, D.Natesa Aachari, D.Thiyagaraja Aachari and D.Arumuga Aachari. These three sons were subsequently involved in a suit in O.S.No.806 of 1971 for partition of the suit property. This suit was actually filed by one D.Thiyagaraja Aachari. A preliminary decree was passed on 20.12.1971. It was held that each one of them are entitled to undivided $\frac{1}{3}^{\text{rd}}$ undivided share. Subsequently, I.A. No.22709 of 1976 was filed to pass final decree and also to appoint an Advocate Commissioner. The Advocate Commissioner was also appointed. The Advocate Commissioner had inspected the property and filed his report dated 26.07.1977 and stated that the property cannot be divided into means and bounds.

13. Thereafter, D.Thiyagaraja Aachari had filed an application in I.A.No.13779 of 1981 for direction to the Advocate Commissioner to sell the property by public auction. Another Advocate Commissioner was appointed by the Court. He sold the property through public auction and the successful bidder was Poongavanam Ammal. She had purchased the property for a sum of Rs.1,30,000/-. The Court had also confirmed the sale in her favour and a sale certificate dated 04.08.1983 was also granted in her favour.

14. In the meanwhile, litigations around the property continued and Sundar, Suresh and Ramesh, the sons of D.Natesa Aachari and Sukumar S/o.D.Arumuga Aachari, had filed a suit in O.S.No.1049 of 1984 as against D.Thiagaraja Aachari, D.Natesa Aachari and D.Arumugam Aachari. The said suit was filed for partition. The said suit was dismissed by judgment, dated 17.07.1987 on merits with costs payable to Poongavanam Ammal. The appeal in A.S.No.320 of 1988 was also dismissed on 14.03.1989. Poongavanam Ammal became the absolute owner of the suit property. Poongavanam Ammal, thereafter, sold the suit property by a registered sale deed, dated 14.07.2006, which was registered as Document No.2049 of 2006 to N.Vani, N.Prabhu, N.Nisha Vani and N.Idhaya Vani, who are all daughters and son of T.Nallamuthu. N.Nisha Vani sold her undivided 1/4th share to her father T.Nallamuthu. Consequently, the plaintiffs in the present suit in C.S.No.244 of 2017, N.Vani, N.Prabhu, N.Idhaya Vani and T.Nallamuthu

became absolute owner of the suit property, consequent to the purchase from Poongavanam Ammal.

15. However, the first defendant D.Arumugam Aachari filed a Ejectment Suit No.61 of 2007. He had filed the said suit under Section 41 of the Presidency Small Causes Court Act 1982 as against the Poongavanam Ammal. In the said suit, he had stated that the said property had been vested from his father Duraisami Aachari. He had stated that the property was vested with him and his two elder brothers D.Natesa Aachari and D.Thiyagaraja Aachari. He further stated that D.Thiyagaraja Aachari left the family and has not returned home and he was also not married. He further claimed that D.Natesa Aachari had died leaving behind his legal heirs, who are residing separately. He further claimed that the defendant, along with her husband Indira Aachari was residing in the abutting portion of the suit property. Taking advantage of the plaintiff old age, the defendant had entered into the suit property. It had been stated in the plaint that D.Natesa Aachari's wife had accommodated the defendant on humanitarian grounds. According to the plaintiff, the defendant voluntarily promised to hand over the property. The plaintiff claimed that he was the owner of the entire extent of the suit land. He issued a legal notice. Under these circumstances, he filed the suit seeking an Ejectment of the defendant.

16. Poongavanam Ammal, the defendant had filed a written statement. In the written statement, she had specifically stated that, she had sold the properties to the plaintiffs herein. She claimed that the plaintiff does not have any title in the suit

property. It had been stated that in such circumstances, the suit has to be dismissed. Judgment was passed on 02.09.2010 and the suit was decreed.

17. Subsequently, she had filed CRP (MPD) No.2079 of 2011 and this Court also dismissed the same, by Order dated 11.10.2017. It is also stated that the Special Leave Petition comment to the said Order, it has also been dismissed by the Supreme Court.

18. It is an admitted fact that the plaintiffs have a title deed in their names. The first defendant does not have any such title deed. Further the plaintiffs are in possession.

19. I have carefully perused the plaint in Ejectment Suit No.61 of 2007. In the said suit, the first defendant who is the plaintiff had not disclosed about the earlier litigations surrounding the suit property. Very strangely, he had implicated only Poongavanam Ammal had claimed that, she is in permissive occupation. Actually, in O.S.No.1049 of 1984 which has been filed for partition and separate possession, the first defendant herein was the 3rd defendant and Poongavanam Ammal was the 4th defendant. The suit had been filed by Sunder, Suresh and Ramesh, who are sons of Natesa Aachari who was shown as the first defendant. The Court had examined the issues and had stated that the 4th defendant Poongavanam Ammal is an auction purchaser and consequently, dismissed the suit with costs. This was by Judgment dated 17.07.1987. The first defendant had completely suppressed all these facts in the pleadings in Ejectment Suit No.61 of 2007. In the said suit, he did not file any document to show his ownership. The

pleadings are very weak with respect to the title. The defendant's title had not even been spoken about. Eventhough, the said suit had been contested in CRP (MPD) and also by the Supreme Court, while examining the issue of fraud, this Court has to examine only the pleadings and whether there has been deliberate suppression of material facts. Numerous Judgments had been cited by either side.

20. The first defendant had stated that the sale certificate cannot conferred any title on Poongavanam Ammal. However, in the same manner, the first defendant also has to establish his title. Both the parties have to establish their respective titles, for which evidence has to be taken. Section 41 of the Presidency Small Causes Court Act 1982 does not give a duty to the Court to determine title.

21. The Civil Revision Petition also did not examined the issue of title. The plaintiffs are in possession. All the issues surrounding the rival claims of the title will have to be decided only during the trial. The plaintiffs who are in possession cannot be dispossessed pending the suit. The issues will have to be settled only on analysis of oral and documentary evidence. Without going any further on merits, I would allow the application and permit the plaintiffs possession to continue till the first defendant conclusion of the trial proceedings.

22. I have not adjudicated the rival claims, since on a essence of the parties have to let in evidence on the said aspect. It is claimed that the plaintiffs are in possession. Possession has

to be protected till trial has to be completed. Viewed from that angle, this application is allowed as prayed for. No costs.

Sd/.C.V.K.J

13.03.2018

//Certified to be a true copy//

Dated this the day of 2018.

JJ 14.03.2018

COURT OFFICER

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