

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY THE 19TH DAY OF MARCH 2018

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

C.S. No.98 of 2017

and

A. No.3843 of 2017

1. K.A.Jalaludeen,
S/o.M.A.Abubacker,
3/2, Mustra Begum Street,
Royapettah, Chennai-4.
2. M.M.Ayub Khan,
S/o.M.K.Mohammed Ghouse,
11/6, Old No.6/1, Angamuthu Street,
Royapettah, Chennai-4. ... Plaintiffs

-Versus-

1. K.K.Shameem Meera,
D/o.K.Khaja Nizamuddin,
2. K.K.Siraj Babu,
S/o.K.Khaja Nizamuddin,
1 & 2 are at No.3,
Thirunavukkarasu Street,
Triplicane, Chennai-5. ... Defendants

Civil Suit filed under Order VII Rule 1 CPC read with Order 4 Rule 1 of O.S.Rules praying that this Hon'ble Court be pleased to pass a judgment and decree as follows:-

a) direct the defendants to vacate and deliver vacant possession of "A" schedule being House ground and premises bearing Door No.3, Thirunavukkarasu Street, Triplicane, Chennai-5 comprised in Old Survey No.734, and Re-Survey No.1084/25 and 1084/4 in Block No.24, Triplicane Division vide Patta C.A. No.1161 of 1994-95 dated 13.12.1994 measuring 826 ½ and "B" schedule property being house ground and premises bearing Door No.3, Thirunavukkarasu Street, Triplicane, Chennai-5 comprised in Old Survey No.734 and Re-

Survey No.1084/4 in Block No.24, Triplicane Division vide Patta C.A. No.1161 of 1994-95 dated 13.12.1994 measuring 798 ½ morefully described in schedule 'A' and 'B' to the plaintiffs.

b) direct the defendants to pay damages at the rate of Rs.30,000/- per month from 01.11.2016 till delivery of possession to plaintiffs.

A. No.3483 of 2017:-

1. K.K.Shameem Meera,
D/o.K.Khaja Nizamuddin,
2. K.K.Siraj Babu,
S/o.K.Khaja Nizamuddin,
1 & 2 are at No.3,
Thirunavukkarasu Street,
Triplicane, Chennai-5. ... Applicants/Defendants

-Versus-

1. K.A.Jalaludeen,
S/o.M.A.Abubacker,
3/2, Mustra Begum Street,
Royapettah, Chennai-600 004.
2. M.M.Ayub Khan,
S/o.M.K.Mohammed Ghouse,
No.11/6, Old No.6/1, Angamuthu Street,
Royapettah, Chennai-600 104. ... Respondents/Plaintiffs

Application praying that this Hon'ble Court be pleased to reject the plaint in to with exemplary cost.

This suit along with the application coming on this day before this court for hearing the court made the following order:-

This Application has been filed to reject the plaint in C.S.No. 98 of 2017.

2. C.S.No. 98 of 2017 had been filed by two plaintiffs, namely, K.A.Jalaludeen and M.M.Ayub Khan, against

two defendants, namely, K.K.Shameem Meera and K.K.Siraj Babu. The suit had been filed for a judgement and decree, against the defendants to vacate and deliver vacant possession of 'A' schedule property, namely, house ground and premises, bearing Door No.3, Thirunavukarasu Street, Triplicane, Chennai - 600 005, measuring about 826 $\frac{1}{2}$ sq.ft., and 'B' schedule property, namely, house ground and premises, bearing Door No.3, Thirunavukarasu Street, Triplicane, Chennai - 600 005, measuring 798 $\frac{1}{2}$ and half sq.ft.

3. According to the plaintiffs, the land in O.S.No. 734 Part, New S.No. 1084, C.C.No. 517 Part, measuring 1750 sq.ft., actually measuring, 1759 $\frac{1}{2}$ sq.ft., at Royapettah, Mylapore, belonged to A.T.Desingu Naicker, who had gained title by way of two registered sale deeds, dated 26.06.1950 and 07.08.1951. Subsequently, A.T.Desingu Naicker sold the property to K.A.Abdul Qudus, under a sale deed, dated 27.12.1951. The said Abdul Qudus died on 13.05.1980, leaving behind his son K.Khaja Najumudeen as his legal heir. He mortgaged the property with Park Town Benefit Fund under a registered mortgage deed, dated 03.04.1995. He died on 10.04.1999, leaving behind his widow and children as his legal heirs. Since the mortgage was not discharged, the property was brought for public auction under Section 69 of the Transfer of Property Act.

4. One S.Malarkodi and her nominees were declared

as the highest bidders in the auction held on 20.02.2001. A sale deed was executed in favour of S.Balaji and S.Azhaguraj, minors represented by their mother and guardian, S.Malarkodi, on 05.08.2004. The defendants are the sons of Khaja Najumudeen. S.Malarkodi as guardian of the minors, offered to sell the property to the plaintiffs. She received an advance on 23.07.2007. She assured that the defendants would vacate and hand over possession. She gave Rs.1,50,000/- to the defendants on 05.06.2007 in the presence of the plaintiffs. The defendants require three months time to vacate. S.Malarkodi as guardian of the minors sold the western portion, measuring 826 $\frac{1}{2}$ of land and building with proportionate share in common passage in the Southern side described in the 'A' schedule and the Eastern portion, measuring 798 $\frac{1}{2}$ sq.ft., with proportionate share in common passage in Southern side to the plaintiffs by a sale deed dated 20.08.2007. Since the defendants failed to vacate, the plaintiffs filed O.S.No. 1786 of 2008 on the file of the VI Assistant Judge, City Civil Court, Chennai. The defendants' mother filed O.S.No. 670 of 2002 on the file of the V Assistant Judge, City Civil Court, Chennai, to set aside the sale deed, dated 05.08.2004 in favour of minor children of S.Malarkodi. O.S.No.1786 of 2008 was dismissed on 16.07.2009. O.S.No. 670 of 2002 was dismissed on 29.04.2016. It is claimed that the defendants have not handed over

vacant possession and consequently, the suit had been filed.

5. The defendants entered appearance and filed this application to reject the plaint.

6. In the affidavit filed in support of the said Application, it had been stated that the first plaintiff had filed O.S.No. 1786 of 2008 with the same relief, seeking possession.

7. The suit was contested and the VI Assistant, City Civil Court, by a Judgement and Decree dated 16.07.2009 had dismissed the suit. The Court had held that the plaintiffs were not entitled to the relief. It had been stated that the decree is subsisting as on date. It had been stated that the present suit is therefore barred and is liable to be rejected. It had been further stated that the mother of the defendants had filed O.S.No. 670 of 2002. By Judgement, dated 08.02.2006, the V Assistant, City Civil Court, had decreed the suit and had held that the sale deed registered as Document No. 1035 on 05.08.2004 on the file of the Sub Registrar, Triplicane, had to be set aside. Consequently, the purchase of the schedule property by the plaintiffs was set aside. It had been further stated that the Park Town Benefit Fund Limited, challenged the decree and filed I.A.No. 17678 of 2010 to set aside the order. The said application was allowed.

8. As against the said order, the mother of the

defendants filed C.M.A.No. 100 of 2012. The III Additional City Civil Court, Chennai, by order dated 12.08.2014, allowed the appeal. It had been therefore consequently stated that the plaintiffs have no right to institute the suit and there is no cause of action for filing the suit. It had therefore been stated that the suit is barred and has to be rejected under Order 7 Rule 11 of CPC.

9. Order 7 Rule 11 (d) CPC is as follows:-

"(d) where the suit appears from the statement in the plaint to be barred by any law".

10. The property originally belonged to A.T.Desingu Naicker. He had purchased the property by registered sale deeds dated 26.06.1950 and 07.08.1951. He sold the property to K.A.Abdul Qudus by a registered sale deed, dated 27.12.1951. The said Abdul Qudus died on 13.05.1980 and he left behind his son Kaja Najumudeen. The said Kaja Najumudeen is the father of the defendants. He had mortgaged the property with the Park Town Benefit Fund Limited. He died on 10.04.1999.

11. According to the plaintiffs, since the mortgage debt was not discharged, the property was brought for public auction under Section 69 of the Transfer of Property Act. Malarkodi and her nominees were declared as the highest bidders in the auction held on 20.02.2001. A sale deed was also executed by Park Town Benefit Fund Limited on 05.08.2004 in favour of S.Balaji and S.Azhaguraj, minors

represented by their mother and guardian Malarkodi. It had been stated that the said Malarkodi had sold the property to the plaintiffs. She sold the Western portion described in the schedule 'A' measuring 826 and half sq.ft., of land to the first plaintiff and the Eastern portion, measuring 798 and half sq.ft., to the second plaintiff. Two registered sale deeds, both dated 20.08.2007, bearing Document Nos. 1057 of 2007 and 1058 of 2007. Since the defendants did not hand over possession, it has been stated that the first plaintiff had filed O.S.No. 1786 of 2008 on the file of the VI Assistant City Civil Court, Chennai. In the said suit, the defendants herein and their mother were shown as the defendants. The suit went to trial. Issues were also framed.

12. The first issue was whether the plaintiffs were entitled to possession. During trial, the first plaintiff was examined as PW.1 and he marked Exs. A-1 to A-17. The mother of the defendants was examined as DW.1 and she marked Exs. B-1 to B-6. The plaintiffs relied on Exs. A-10 and A-11, which were the two sale deeds dated 20.08.2007, by which they purchased the Western portion and Eastern portion from Malarkodi in Document Nos. 1057 of 2007 and 1058 of 2007. The defendants relied on the decree, dated 08.02.2006 in O.S.No. 670 of 2008. That suit had been filed by the mother of the defendants against Malarkodi and the Park Town Benefit

Fund Limited and the minors S.Balaji and S.Azhaguraj, who were represented by their mother S.Malarkodi.

13. The Court had examined the evidence on record and had decreed the suit, which had been filed to set aside the sale deed registered as Document No. 1035 of 2004 dated 05.08.2004 by the Park Town Benefit Fund Ltd., in favour of the minors S.Balaji and S.Azhaguraj. On the basis of the available evidence, the VI Assistant City Civil Court, who had examined the evidence in O.S.No. 1786 of 2008, had dismissed the said suit. Thereafter, the Park Town Benefit Fund Ltd., had filed I.A.No. 17678 of 2010, which was allowed by the V Assistant City Civil Court, Chennai, by order dated 18.03.2011. That application was to set aside the decree dated 08.02.2006 in O.S.No. 670 of 2002. However, the Appeal against the said order was filed in CMA.No.100 of 2012 and by order dated 12.08.2004, the III Additional District Judge, had allowed the Appeal and effectively confirmed the decree in O.S.No.670 of 2008.

14. These facts clearly establish that there is a strong cloud over the title of the plaintiffs. In fact, a perusal of the documents reveal that they have no title at all. When they have no title, they cannot seek the reliefs sought in the plaint. The plaintiffs had purchased the property from S.Malarkodi. A competent Court had set aside the sale deed in favour of Malarkodi, who represented minors

"11. The rule of res judicata does not strike at the root of the jurisdiction of the Court trying the subsequent suit. It is a rule of estoppel by Judgement based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause."

17. In view of the reasons stated above, This Application is allowed and the plaint in C.S.No. 98 of 2017 is rejected. No costs.

//Certified to be a true copy//
Dated this the day of 2018

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