

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY THE 09TH DAY OF FEBRUARY 2018

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A. No.5015 of 2017
in
C.S. No.1170 of 2008

S.Jamal Mohideen,
S/o.Shahul Hameed,
No.1, Raja Annamalai Road,
II Floor, Purasawalkam,
Chennai-600 084.

... Plaintiff

-Versus-

K.T.J.Prakash,
No.154, I Floor,
Purasawalkam High Road,
(Next to Abirami Theatre),
Kellys, Chennai-600 010.

... Defendant

A. No.5015 of 2017:-

S.Jamal Mohideen,
S/o.Shahul Hameed,
No.1, Raja Annamalai Road,
II Floor, Purasawalkam,
Chennai-600 084.

... Applicant/Plaintiff

-Versus-

1. K.T.J.Prakash,
No.154, I Floor,
Purasawalkam High Road,
(Next to Abirami Theatre),
Kellys, Chennai-600 010. ... Respondent/Defendant
2. Kalanther Naina Mohamed,
S/o.M.Mohideen Abdul Khader,
74, M.C.Road, Chennai-600 021.
3. Mohamed Jabarulla,
S/o.M.Mohideen Abdul Khader,
19, GA Road, Chennai-600 021.

4. Mrs.Umsul Maharifa,
W/o.Kalanther Naina Mohamed,
74, M.C.Road, Chennai-600 021.
5. Mrs.Mohamed Fathima,
W/o.Mohamed Jaburulla,
19, GA Road, Chennai-600 021. ... Proposed Parties/
Defendants

Application praying that this Hon'ble Court be pleased to implead the proposed parties as mentioned in the cause title as defendants 2 to 5 in the above suit.

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

This application has been filed seeking to implead the proposed parties viz., the respondents 2 to 5.

2. The original suit viz., C.S.No.1170 of 2008 has been filed by the plaintiff/ applicant seeking specific performance of agreement of sale dated 01.07.2005.

3. The extent of land sought to be sold under the agreement dated 01.07.2005 is about 5068 sq.ft which has been described as items 1 and 2 in the suit agreement. Admittedly, these lands are in one parcel adjoining each other.

4. The defence in the said suit is that the sole defendant had already sold an extent of 1025 sq.ft. under

the registered sale deed dated 16.05.2002 in favour of the proposed parties 2 to 5.

5. Mr.G.Veerapathiran, learned counsel appearing for the applicant would contend that the agreement dated 01.07.2005 which has been marked as Ex.P2 in the suit provides that the proposed parties had agreed to withdraw the suit in C.S.No.486 of 2003 filed by them seeking specific performance of the agreement between them and the sole defendant in the suit dated 10.08.2001 and upon such withdrawal the entire property would belong to the sole defendant in the suit and therefore he was justified in entering into an agreement for the entire extent of the property measuring about 5068 sq.ft. Therefore, according to Mr.G.Veerapathiran, learned counsel the proposed parties are necessary parties to the present suit.

6. Mr.V.K.Vijayaraghavan, learned counsel appearing for the sole defendant would contend that the agreement dated 10.08.2001 was for a larger extent of 5040 sq.ft. out of which the sole defendant in the suit along with his children executed a sale deed in favour of the proposed parties for 1125 sq.ft. on 16.05.2002.

7. The suit in C.S.No.486 of 2003 was filed only for the remaining extent of 3915 sq.ft. and now the suit in C.S.No.486 of 2003 has been withdrawn on 01.02.2016 by the proposed parties. The proposed parties cannot at any stretch of imagination be said to be either proper or necessary parties to the suit.

8. As already adverted to, the suit is one for specific performance. The law relating to impleading the parties to a suit for specific performance is very clear. No person other than the person who is party to the agreement can be made a party to the suit for specific performance.

9. In the case on hand, the plaintiff is seeking performance of agreement dated 01.07.2005. The sole defendant in the suit viz., the 1st respondent in the application has already sold an extent of 1125 sq.ft out of the extent of 5040 sq.ft. in favour of the proposed parties even on 16.05.2002, much prior to the agreement of sale in favour of the plaintiff/ applicant.

10. Therefore, I do not think the proposed parties can be said to be either proper or necessary parties to the present suit, since they have nothing to do with the

agreement of sale between the plaintiff and the sole defendant.

11. Hence, this application seeking impleading is dismissed.

Sd/-R.S.M.J

09.02.2018

//Certified to be a true copy//

Dated this the day of 2018
JJ 06/07/18

COURT OFFICER

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