

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 10TH DAY OF APRIL 2018

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

A. No.7180 of 2017

in

C.S. No.14 of 2016

S.S.Mamallan

S/o.T.S.Nathan

Door No.4/26, Karani Garden,

1st Street, Saidapet,

Chennai - 600 015.

.. Plaintiff

Vs.

1.D.Mallika

W/o.K.Dhanasekar

2.Ramesh

3.Yasodha

4.Arumugam

All are residing at:

No.78/3, Jones Road Lane,

Saidapet,

Chennai - 600 015.

.. Defendants

A. No.7180 of 2017

D.Mallika

W/o.K.Dhanasekar

No.78/3, Jones Road Lane,

Saidapet, Chennai - 600 015

.. Applicant / Defendant

Vs.

1.S.S.Mamallan

S/o.T.S.Nathan

Door No.4/26, Karani Garden,

1st Street, Saidapet,

Chennai - 600 015.

.. Respondent / Plaintiff

2.Ramesh

3.Yasodha

4.Arumugam

All are residing at:

No.78/3, Jones Road Lane,

Saidapet,

Chennai - 600 015.

.. Respondents 2 to 4 / Defendants 2 to 4

Application praying that this Hon'ble Court be pleased to stay the above suit C.S.14 of 2016, till the disposal of O.S.No.5828 of 2012 pending on the file of VI Addl. Judge, City Civil Court, Chennai.

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

This application has been filed, under Section 10 of CPC, seeking an order to stay the suit in CS.No.14 of 2016, till the disposal of OS.No.5828 of 2012, pending on the file of the 6th Additional City Civil Court, Chennai.

2. OS.No.5828 of 2012 had been filed, by D.Mallika, against two Defendants, namely, (1) Mullainathan and (2) Sri la Sri Kalyana Sundara Sivaprakasa Swamigal, Sri Kumara Devar Madalayam Adheena Karta, Thiruvannamalai Sivaprakasa Swamigal Adheenam, Thuraiyoor, Trichy.

3. The following reliefs were sought in OS.No.5828 of 2012:-

- a) declaration that the agreement for sale dated 7.9.2010 is still hold good and valid.
- b) declaration that the cancellation of General Power of Attorney deed dated 4.8.2011 is null and void with respect to this Plaintiff and the same shall not bind on this Plaintiff?
- c) direction to the Defendants to perform their part of contract as per the agreement for sale dated 7.9.2010, by executing the sale deed to and in favour of the Plaintiff, by accepting the balance sale consideration.
- d) permanent injunction, restraining the Defendants, their men, agents, person or persons, claiming through or under them from alienating the suit property in any mode to any prospective third parties.
- e) permanent injunction, restraining the Respondent, his men, agent or any other persons, claiming through him, from interfering with the peaceful and absolute possession and enjoyment of the Plaintiff Schedule property without due process of law, pending disposal of the above suit.
- f) To pay costs of the suit by the Defendants to the Plaintiff.

4. The Schedule to the plaint in OS.No.5828 of 2012 is as follows:-

"SCHEDULE

All that piece and parcel of land measuring to an extent of 1050 sq.ft. situated in Rs.122, Block NO.34, at Door No.78/4, Jones Road (Lane), Saidapet, Madras 600015,

bounded on the East by 5.5. Feet Jones Road, West by S.No.118, North by C.S.Ganesan House, bearing Door No.78/5, South by Mr.Sekar House, bearing Door No.78/3."

5. The cause of action for the suit in OS.No.5828 of 2012 arose on 5.7.2010, when the 2nd Defendant therein, executed a General Power of Attorney in favour of the 1st Defendant therein and registered the same before the Sub Registrar, T.Nagar, on 07.09.2010 and the 1st Defendant entered into an agreement of sale with the Plaintiff on behalf of the 2nd Defendant and received Rs.2,50,000/- as advance sale consideration and on 21.5.2011, when the 1st Defendant received two instalments towards sale consideration and endorsed the same in the agreement of sale and on 4.8.2011 when the 2nd Defendant executed a cancellation of General Power of Attorney, deed by cancellation letter dated 27.4.2012.

6. The present suit in CS.No.14 of 2016 has been filed by S.S.Mamallan against four Defendants, namely, (1) D.Mallika, (2) Ramesh, (3) Yasodha and (4) Arumugam, seeking the following reliefs:-

a) direction to the Defendants to deliver possession of the suit property.

b) direction to the Defendants to pay the accumulated damages for the unlawful occupation and enjoyment of the suit property from June 2012 to November 2015 at the rate of Rs.15,000/- per month amounting to Rs.6,30,000/- (Rupees six lakhs and thirty thousands only)

c) direction to the Defendants to pay the future damages for the unlawful occupation and enjoyment of the suit property from the date of the plaint till the

possession is handed over at the rate of Rs.15,000/- per month.

d) permanent injunction, restraining the Defendants from destroying or meddling or dealing with the suit property or inducting any third party interest.

e) for costs of the suit.

7. The Schedule of property to the plaint in CS.No.14 of 2016 is as follows:-

"SCHEDULE OF PROPERTY

All that piece and parcel of land and building, bearing Door No.78/3, Jones Road lane, Saidapet, Chennai 600 015, comprised in Block No.34, bearing Patta No.CA.105/2014, TS.No.122 of Mambalam Village, measuring an extent of 1037 sq.ft. and which is bounded on the North by: Plot and House belongs to one Mr.V.Chinnadurai and C.Chitra, South by: Plot and House belongs to Mr.N.Sekar, East by : 5 feet Public Passage, West by : Angu Mudhaliar House in all admeasuring 1037 sq.ft., situated within Sub Registration District of Thiyagaraya Nagar and registration District of Chennai South and Mambalam-Guindy Taluk."

8. The cause of action for the suit in CS.No.14 of 2016 when OS.No.6402 of 2007 had been filed and a decree had been passed on 28.10.2009 and when Sri Kumaradev Swamigal Mutt, conveyed the suit property to the Plaintiff and when the Plaintiff acquired right as absolute owner and when the Defendant refused to give delivery of possession and when the Defendant refused to recognise the earlier decree for eviction.

9. It is also to be seen that the Plaintiff in CS.No.14 of

2016, has filed an application in IA.No.5528 of 2017, seeking to implead himself in OS.No.5828 of 2012 and the said application was dismissed for default and another application had been, seeking to restore the said application.

10. In the affidavit filed in support of the present application in A.No.7180 of 2017, the 1st Defendant D.Mallika, claimed that the entire land in No.78, Jones Road Lane, Saidapet, originally was owned by Tiruvannamalai Sivaprakasa Swamigal Aathinam, Thoriyur. It has been stated that the predecessor in title was permitted to be a tenant and the predecessor in title and other persons were in occupation. The 2nd Defendant in the suit filed OS.No.7923 of 1997, which was dismissed for default and thereafter, another suit in OS.No.6402 of 2017, had been filed by Sri Kumaradev Swamigal Mutt against the predecessor in title, Pounammal and the other tenants. The Defendants claimed that they wanted to purchase the property under the City Tenants Protection Act. However, the suit was decreed for recovery of possession of the land after removing the superstructure.

11. It has been stated that Pounammal had effected a concrete superstructure and had settled the property in favour of two daughters and a son. They had jointly executed a sale deed in favour of the Plaintiff. It has been stated that one Mullainathan, who obtained a General Power of Attorney from Sree Thiruvannamalai Sree Sivaprakasa Swamigal Aathinam Peria Madam, had entered into an agreement of sale with respect to the land. It has been stated that in respect of the said agreement of sale, she had filed OS.No.5828 of 2012. The present suit in CS.No.14 of 2016 had been filed by the

Plaintiff, seeking delivery of possession. The Plaintiff therein claimed ownership rights.

12. A counter affidavit has been filed by the Plaintiff in CS.No.14 of 2016, claiming that the agreement of sale relied on by the 1st Defendant cannot be taken into consideration and that OS.No.5828 of 2012 is reagitation of an issue which had already been adjudicated. It has been stated that the trial has commenced in CS.No.14 of 2016.

13. I have carefully considered the arguments advanced by Mr.T.Velusamy, the learned counsel for the Applicants/ Defendants and Mr.V.Manohar, the learned counsel for the Respondent/ Plaintiff.

14. The Defendants are the Applicants. They claimed that under Section 10 of CPC, further proceedings in CS.No.14 of 2016 must be stayed. According to them, there is an earlier suit in OS.No.5828 of 2012, in which vires of an agreement of sale by the 1st Defendant is being agitated. In the present suit, however, the Plaintiff has sought recovery of possession on the basis of a sale deed in his favour. It is further brought to the notice of this Court that trial has commenced in CS.No.14 of 2016 and the Plaintiff has already entered into the witness box and has also marked documents. It is at that stage that the Defendants have come forward with the present application.

15. Section 10 of CPC is as follows:-

"10. Stay of suit:-

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit

between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

16. The fundamental issue to be seen is whether the issues in both the suits are substantially the same.

17. The issues in CS.No.14 of 2016 revolve around delivery of possession. The issues which had been framed for consideration in CS.No.14 of 2016 are as follows:-

- i. Whether the Defendants are in lawful occupation and enjoyment of the suit property from June 2012 onwards?
- ii. Whether the Defendants are liable to pay damages for unlawful occupation and enjoyment of the suit property from June 2012 to June 105?
- iii. What is the rate of damages per month, which is to be paid by the Defendants for such unlawful occupation?
- iv. Whether the Defendants are liable to pay future damages from the date of plaint?
- v. Whether the Defendants have to be injuncted from destroying or dealing with the suit property or interacting any third party tenants?
- vi. Whether the claim of the tenants, that the Plaintiff is not the owner of the property and that they are unlawful possession can be accepted by the Court?
- vii. To what relief both the parties entitled to?

18. While framing the issues, the Defendants, who are the Applicants, have also actively participated. They did not raise any objection that the issues are substantially the same with the issues in OS.No.5828 of 2012. The issues in OS.No.5828 of 2012 are totally different. They revolve around the agreement of sale entered into by the Plaintiff therein with the 1st Defendant therein. The Plaintiff in CS.No.14 of 2016 is not even a party in OS.No.5828 of 2012. As a matter of fact, he had filed an application to implead him as a party, under Order I Rule 10 of CPC, that application has been resisted by the present Applicant, who is the Plaintiff therein. It is therefore seen that the present Applicants are playing hide and seek role. On the one hand before the City Civil Court, resisting the present Plaintiff from participating in OS.No.5878 of 2012 and on the other hand, in the present application, they seek to stay of further proceedings, wherein the Plaintiff has instituted the suit for recovery of possession.

19. The issues in CS.No.14 of 2016 and OS.No.582 of 2012 have no connection and they are not even related to each other. They are not substantially the same. The property might be the same. But, both the Plaintiff in OS.No.5828 of 2012 and the Plaintiff in CS.No.14 of 2016 have come to Court on different causes of action. The Plaintiff in OS.No.5828 of 2012 has relied on agreement of sale of the land. The Plaintiff in CS.No.14 of 2016 has relied on a sale deed in his favour. Consequently, I find that there are no merits in the present application and accordingly, the present application is to be dismissed.

20. In the result, this application is dismissed. No costs. Post the suit before the Additional Master IV for continuation of examination in Chief of PW.1 on 17.04.2018.

Sd./- C.V.K.J.

10.4.2018

//Certified to be true copy//

Dated at Madras this the th day of 2018.

COURT OFFICER (O.S.)

TPY/17.4.2018

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