

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 03RD DAY OF AUGUST 2018

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.D.No. 34335 of 2017

and

A.No. 7240 of 2017

in

C.S.No. 322 of 2012

B.Rajasekar

S/o. A.P.Balarama Naidu

New No.11, Old No.3/5, S.S.Shahib Street,

Aminjikarai, Chennai 600 029. :Plaintiff/Applicant/

Plaintiff

Vs

1. K.Pandurangan

S/o. Krishnaswamy

New No.32, Old No.11, S.S.Shahib Street,

Chennai 600 029.

2. P.Vijayakumari

W/o. K.Pandurangan

New No.32, Old No.11, S.S.Shahib Street,

Chennai 600 029.

3. R.Karunakaran

S/o. Ramachandran

Plot No.1691, 15th Street,

H Block, Anna Nagar, Chennai 600 040.

4. S.Govind

S/o. P.Sundaram

No.21, Veerappa Nagar

First Floor, Alwar Thiru Nagar,

Chennai 600 087.

:Defendants/Respondents/
Defendants

A.No. 7240 of 2017:

Application praying that this Hon'ble Court may be pleased to permit the Applicant/Plaintiff to incorporate

<https://hcservices.ecourtse.gov.in/hcservices/> in the earlier order dated 14th September 2016 in

C.S.No.322 of 2012 "permit to withdraw the suit C.S.No.322

of 2012 and file a fresh suit before appropriate court in order to entertain the new suit bearing CS.D.No.34335 of 2017".

C.S.D.No. 34335 of 2017:

B.Rajasekar
S/o. A.P.Balarama Naidu
New No.11, Old No.3/5, S.S.Shahib Street,
Aminjikarai, Chennai 600 029. :Plaintiff/Applicant

Vs

1. K.Pandurangan
S/o. Krishnaswamy
New No.32, Old No.11, S.S.Shahib Street,
Chennai 600 029.

2. P.Vijayakumari
W/o. K.Pandurangan
New No.32, Old No.11, S.S.Shahib Street,
Chennai 600 029.

3. R.Karunakaran
S/o. Ramachandran
Plot No.1691, 15th Street,
H Block, Anna Nagar, Chennai 600 040.

:Defendants/Respondents

Civil suit praying that this Hon'ble Court may be pleased to pass a judgment and decree against the defendants:

a) For a declaration that the sale agreement created by the 1st defendant fraudulently between Mrs.Perundevi Ammal and the 1st Defendant dated 22.08.1997 is null and void as it has been created fraudulently by the 1st defendant to grab the suit property and hence such sale agreement has to be declared as null and void; in consequence of it;

b) For a declaration that the Power of attorney dated 24.3.1997 and registered as Document No. 384 of 1997 obtained by 1st defendant only by impersonation and not by Mrs. Perundevii ammal at all and registered at Sub Registrar Office, Virugambakkam and as such power has

to be declared as null and void as the 1st defendant obtained fraudulent by impersonation and the same has to be cancelled at Sub Registrar Office, Virugambakkam as per Section 98 of the Registration Act, And thus render justice;

c) In consequence of it, for a declaration that the sale deed executed by the 1st defendant in favour of 2nd defendant and registered as Document No. 731 of 1997 based on such unlawful and illegal power of attorney obtained by 1st defendant by impersonation and consequently the 1st and 2nd defendants cannot get any right over the property and as such the same has to be cancelled at the Sub Registrar's Office, Anna Nagar as per Section 98 of the Registration act and the sale deed has to be declared as null and void and thus render justice.

d) For a declaration that the plaintiff is the sole and absolute owner for the suit property as he is the son of Mrs Perundevi ammal and also seeking for delivery of possession of the suit schedule property from the 1st and 2nd defendants.

e) For a declaration that the decree and judgement passed in O.S.No.8183 of 1999 dated 7.12.2004 declared to be null and void and such order has been obtained fraudulently by the 1st defendant, as fraud has been committed by all the 3 defendants in collusion with each other and did not brought to the notice of Perundevi ammal about such decree and judgement obtained by illegal and unlawful methods and the same has to be declared as null and void and it cannot be enforced at all.

f) For claiming damages against the defendants 1 and 2 at the rate of Rs.1,00,000/- (Rupees one lakh only) per month commencing from September 2017 to till the date of obtaining possession by the plaintiff for the suit schedule property as mentioned in Schedule of the plaint.

g) For costs of the suit.

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

Earlier, the learned counsel for the plaintiff seeking permission of this Court to withdraw the suit made an endorsement that "the plaintiff may be permitted to withdraw the suit with the liberty to file before appropriate forum". Based on the said endorsement, the suit was dismissed as withdrawn on 14.09.2016.

2. Now, the present application is filed praying to incorporate the following words in the earlier order dated 14.09.2016 :

"permit to withdraw the suit in C.S.No.322/2012 and file a fresh suit before appropriate forum in order to entertain the new suit bearing C.S.D.No.34335/2017".

3. The application itself cannot be maintained, as the counsel should have been vigilant enough to make an appropriate endorsement before withdrawing the suit, especially when it affects the interest of the litigant, and incorporating the above said words, i.e., "the new suit bearing C.S.D.No34335 of 2017" is not possible, as the order itself was passed in the year 2016, which cannot have reference about the subsequent suit filed in the year 2017.

4. Hence, the application is dismissed as not maintainable.

Sd/-P.S.N.J

03.08.2018

//Certified to be a true copy//

Dated this the day of 2018

JJ 11.09.2018

COURT OFFICER

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



WEB COPY