

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 24TH DAY OF JANUARY 2018

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

O.A. Nos.1044 to 1047 of 2017

and

A. No.8168 of 2017

in

C.S. No.796 of 2017

V.Ganga,
W/o.Late M.Venkatachalam,
24, North Street,
Aragandanallur, Thirukoilur,
Villupuram District 605 752

... Applicant/Plaintiff
(in all applications)

-Versus-

1. N.Raman,
S/o. K.Natesan,
No.18/29, 2nd Street
Seevaram, Perungudi,
Chennai 600 056
2. M/s. MGP Builders and Developers Pvt.Ltd
Rep.by its Managing Director,
Mr.Prabhu Paulraj,
No.27, Andavar Street
Thilagar Avenue, Balaiah Garden,
Madipakkam, Chennai 600 091
3. Vinodh Kumar Velayudham,
S/o. S.Velayudham,
Suite 2501, No.2, Forest Laneway Apartments,
Toronto, Ontario, M2N 5X7,
rep.by his Power agents
Mrs.Archana Viswanathan,
W/o.Mr.V.Vinodh Kumar
Old No.13/1/1, New No.12/1/1
Mylapooran Street, Royapettah,
Chennai 600 014
4. V.Vasanth Kumar
S/o. S.Velaydham,
5. V.Prema,
W/o. S.Velayudham,
4 & 5 are at Old No.13/1/1,
New No.12/1/1, Mylapooran Street
Royapettah, Chennai 600 014

6. K.Kalaivani,
D/o.Kannan,
H No.20/9, Peters Colony,
Paters Road, Royapettah,
Chennai 600 014
 7. S.Velayudham,
S/o. Srinivasan
Old No.13/1/1, New No.12/1/1
Mylapooran Street, Royapettah,
Chennai 600 014
 8. Mrs.A.Tasmiyah,
W/o.Abdul Raheem,
F1, Life Style Apartments
1/106, Post Office Street
Thuraipakkam, Chennai 600 097
 9. Housing Development Finance Corporation Ltd
2nd Floor, I.T.C.Centre
760, Anna Salai,
Chennai 600 002
- ... Respondents/Defendants
(in all applications)

O.A. No.1044 of 2017:-

Original Application praying that this Hon'ble Court be pleased to an order of interim injunction restraining the Respondents 3 to 5 and 8/Defendants 3 to 5 and 8, or their agents, servants, men, or anyone claiming under or through them and/or authorised by them from in any manner interfering with the Applicant/Plaintiffs peaceful possession and enjoyment of the suit Schedule B and C properties forming part of the suit Schedule A property morefully described in the schedule appended to the Judges summons, pending disposal of the above suit.

O.A. No.1045 of 2017:-

Original Application praying that this Hon'ble Court be pleased to an order of interim injunction restraining the Respondents 3 to 5 /Defendants 3 to 5 or their agents, servants, men, or anyone claiming under or through them and/or authorised by them from encumbering, alienating or dealing with the property, morefully described in the suit Schedule B property, forming part of suit Schedule A

property, more fully described in the Schedule appended to the Judges summons, either by way of sale mortgage, Lease, Joint Venture or in any other manner and/or altering the physical features of the property, pending disposal of the above suit.

O.A. No.1046 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the 8th Respondents/8th Defendant, or her agents, servants, men, or anyone claiming under or through her and/or authorised by her from in any manner encumbering, alienating or dealing with the property, morefully described in the suit Schedule C property forming part of suit Schedule A property, either by way of sales mortgage, Lease, Joint Venture or in any other manner and/or altering the physical features of the property, pending disposal of the above suit.

O.A. No.1047 of 2017:-

Original Application praying that this Hon'ble Court be pleased to an order of interim injunction restraining the 9th Respondent/9th Defendant, or its officer, agents, servants, men, or anyone claiming under or through it and/or authorised by it from enforcing its claim as against the Applicant/Plaintiff of her property on the basis of the alleged equitable mortgages purported to have created by Respondents 3 to 5 and 8/Defendants 3 to 5 and 8 in its favour in respect of the suit schedule B and C mentioned properties respectively, forming part of suit Schedule A mentioned property, more fully described in the Schedule appended to the Judges summons pending disposal of the above suit.

A. No.8168 of 2017:-

Application praying that this Hon'ble Court be pleased to receive the additional documents set out in the schedule appended to the Judge's Summons as additional documents in

the above suit on behalf of the plaintiff and consequently permit the applicant/plaintiff to effect necessary amendment in the main plaint.

These Applications coming on this day before this court for hearing the court made the following order:-

CS.No.796 of 2017 has been filed by the Plaintiff, V.Ganga, against nine Defendants.

2. The 1st Defendant is N.Raman, who claims that he had purchased the suit property from the Plaintiff by a sale deed dated 15.12.1982, registered as Document No.4634 of 1982 in the Office of the Sub Registrar, Joint II, Saidapet. The Plaintiff denies the execution of the said sale deed.

3. The 2nd Defendant is M/s.MGP Builders and Developers Private Limited and is said to be the Power of Attorney Agent of the 1st Defendant. The 3rd to 5th Defendants are said to be the purchasers of a portion of the suit property, measuring about 1185.25 sq.ft., by a registered sale deed dated, 6.7.2017, registered as Document No. 4164 of 2017. The other portion of the suit property, measuring 1185.22 sq.ft. had been purchased by the 8th Defendant by a registered sale deed, dated 17.5.2017 and registered as Document No. 2885 of 2017 in the Office of the Sub Registrar, Velachery. The 6th and 7th Defendants are said to have attested the sale deed in favour of the 3rd to 5th Defendants. The 3rd to 5th Defendants and the 8th Defendant have created equitable mortgages in favour of the 9th Defendant, Housing Development Finance Corporation Limited,

by Memorandum of Deposit of Title Deeds, dated 6.7.2017 and 17.5.2017, respectively. The property, which is the contention in the suit, is vacant house site, bearing Plot No.2, Annanagar, I Street, Chennai, measuring 2400 sq.ft. The property purchased by the 3rd to 5th Defendants had been shown as vacant house site, bearing Plot No.2B, measuring 1185.22 sq.ft. in Annanagar, I Street, Chennai and the property purchased by the 8th Defendant has been shown as a vacant house site, bearing Plot No.2A, Annanagar, I Street, Chennai, measuring 1185.22 sq.ft.

4. According to the Plaintiff, she had purchased the vacant site, bearing Plot No.2, in S.No.259/3, Annanagar, I Street, in S.No.259/3, Annanagar, I Street, Chennai by a sale deed dated 26.7.1982, registered as Document No. 3069 of 1982 in the Office of the Sub Registrar, Joint II, Saidapet, from N.Ethiraj, son of Narasimha Naicker, for valuable consideration. She had been in possession and enjoyment of the property. Her vendor, N.Ethiraj, had purchased the property from T.Annakodi Ammal, who had acquired the same by an allotment made in a partition deed, dated 13.12.1965, registered as Document No. 4961 of 1965 in the Office of the Sub Registrar, Madras-Chengalput. The Plaintiff had been issued a patta in Patta No.3151.

5. According to the Plaintiff, her husband was having an IOC Petroleum Outlet at Thirukoilur and he passed away in December, 1993. She was not able to visit Chennai

frequently. However, she had been exercising her right as owner over the property. It has been further stated that a family friend of her relative, who happened to pass through the aforesaid property, in the first week of August 2017, found a notice board put up in the said plot. In the said notice board, it was stated that the property was for sale. Subsequently, the Plaintiff made enquiries. She found that there was a sale deed dated 15.12.1982 said to have been executed by her in favour of the 1st Defendant, N.Raman and had been registered as Document No. 4634 of 1982 in Book-I, Volume 1659, Pages 259-262 in the Office of the Sub Registrar, Joint II, Saidapet.

6. It has been further stated by the Plaintiff that she further found that subsequently the said N.Raman, who is the 1st Defendant herein had executed a General Power of Attorney in favour of the 2nd Defendant, M/s.MGP Builders and Developers Private Limited, represented by its Managing Director, Prabhu Paulraj. The Power of Attorney was dated 29.11.2016 and had been registered as Document No.7023 of 2016 in the Office of the Sub Registrar, Velachery. The 2nd Defendant, thereafter, had sold one half of the property, measuring 1185.22 sq.ft. in favour of the 3rd to 5th Defendants by sale deed dated 6.7.2017 and the 6th and 7th Defendants are said to have attested the sale deed, which had been registered as Document No. 4164 of 2017 in the Office of the Sub Registrar, Velachery. Similarly, the 2nd Defendant had sold the other half of the suit property,

measuring 1185.22 sq.ft. to the 8th Defendant by a registered sale deed dated 17.5.2017 which had been registered as Document No.2885 of 2017 in the Office of the Sub Registrar, Velachery. The purchasers, namely, the 3rd to 5th Defendants on the one hand and the 8th Defendant on the other hand, had both created equitable mortgages in favour of the 9th Defendant, who is the Housing Development Finance Corporation Limited, Annasalai, Chennai, by Memorandum of Deposit of Title Deeds, dated 6.7.2017 and 17.5.2017 respectively.

7. According to the Plaintiff, she never executed any sale deed or sold her property to N.Raman, as alleged by the 1st Defendant. Consequently, she claimed that the sale deed in favour of N.Raman is a fraudulent document. She also claimed that the subsequent documents executed by him by N.Raman, namely, the Power of Attorney, in favour of the 2nd Defendant and the sale deeds executed by the 2nd Defendant in favour of the 3rd to 5th Defendants and in favour of the 8th Defendant are both fraudulent documents. It is under these circumstances that the Plaintiff has come before this Court, seeking declaration that the sale deed dated 15.12.1982, registered as Document No. 4634 of 1982, in the Office of the Sub Registrar Joint II, Saidapet, Chennai, said to have been executed by her in favour of the 1st Defendant, N.Raman is illegal, null and void and also for declaration that the Power of Attorney dated 29.11.2016, executed by N.Raman, in favour of the 2nd Defendant, M/s.MGP

Builders and Developers Private Limited and registered as Document No. 7023 of 2016 in the Office of the Sub Registrar, Velachery is null and void with respect to both the two sub divided plots, namely, 2A and 2B and also further declaration that the sale deeds executed by the 2nd Defendant in their capacity as Power of Attorney Agent of the 1st Defendant to and in favour of the 3rd to 5th Defendants and also in favour of the 8th Defendant are null and void and for a further declaration that the equitable mortgages by Memorandum of Deposit of Title Deeds, executed by the 3rd to 5th Defendants and by the 8th Defendants are null and void and for permanent injunction, restraining the 3rd to 5th Defendants and the 8th from encumbering or dealing with the property in any manner whatsoever and also for injunction as against them from interfering with her possession and enjoyment and for a mandatory injunction, directing the 1st Defendant to cancel the sale deed dated 15.12.1982, registered as Document No. 4634 in the Office of the Sub Registrar Joint II, Saidapet and for costs.

8. Along with the plaint, the Plaintiff has filed OA.No.1044 of 2017, seeking interim injunction, restraining the 3rd to 5th Defendants and the 8th Defendant, from interfering with the peaceful possession and enjoyment of the Schedule B and C properties, OA.No.1045 of 2017 seeking interim injunction, restraining the 3rd to 5th Defendants from alienating or dealing with the property, which they had purchased, OA.No.1046 of 2017 seeking interim injunction,

restraining the 8th Defendant from encumbering or dealing with the property, which she had purchased, OA.No.1047 of 2017, seeking interim injunction, restraining the 9th Defendant from enforcing their claim as against the 3rd to 5th Defendants Defendants and 8th Defendant, pursuant to the equitable mortgages, created in their name and during the course of the arguments, the learned counsel has also filed A.No.8168 of 2017, seeking to receive additional documents in the suit.

9. When the applications were moved, this Court on 13.10.2017, had granted an order of interim injunction in OA.No.1044 of 2017, OA.No.1045 of 2017 and OA.No.1046 of 2017. The said order of interim injunction has been extended from time to time and is in force as on date. This Court had issued notice to the Respondents in OA.No.1047 of 2017. Subsequently, the Respondents entered appearance and also filed their counter affidavits.

10. The 1st Respondent, in his counter, has stated that he had purchased the A-Schedule property from the Plaintiff, by a registered sale deed, dated 15.12.1982 and registered as Document No. 4634 of 1982 in the Office of the Sub Registrar, Joint II, Saidapet, Chennai. It has been stated the Plaintiff had produced only one document, pertaining to the revenue records, which was dated 13.4.2015. The 1st Defendant denied the allegation that the sale deed in his favour was a manipulated document. It has been stated that the Plaintiff has filed the encumbrance

certificates along with plaint, which related to a totally different property, namely, Plot No.15. The present suit is with respect to Plot No.2. The 1st Defendant claimed that he was a bona fide purchaser. Subsequently, on 29.8.2016, he had appointed V.Soundararajan as his Power of Attorney Agent by a registered Document No.5283 of 2017 in the Office of the Sub Registrar, Velachery. Subsequently, he cancelled the said document, by a registered cancellation deed, bearing Document No.7022 of 2016 in the Office of the Sub Registrar, Velachery. He, thereafter, executed a General Power of Attorney in favour of the 2nd Defendant on 29.11.2016, registered as Document No. 7022 of 2016 in the Office of the Sub Registrar, Velachery. He further stated that subsequently, the property was divided into two halves, namely, B and C Schedule properties and he claimed that the Plaintiff has come to Court suppressing true facts and without placing any material document to prove her bona fide. He further claimed that the transaction, through which he purchased the property, is a genuine transaction. He has stated that the interim injunction granted by this Court should be vacated and the applications should be dismissed.

11. The 2nd Defendant, has also filed a counter affidavit. According to the 2nd Defendant, the 1st Defendant and his Power of Attorney Agent, V.Soundarajan had approached the 2nd Defendant with the title deeds of the suit property. After obtaining legal opinion, it was found

that the property originally belonged to T.Annakodi Ammal, who had sold the same in favour of N.Ethiraj, son of Narasimha Naicker by a sale deed dated 22.7.1982, registered as Document No. 3031 of 1982 in the Office of the Sub Registrar, Joint II, Saidapet. A layout was formed and the suit property in Plot No.2, measuring to an extent of 2400 sq.ft. was sold in favour of the Plaintiff by a sale deed dated 28.7.1982, registered as Document No.3069 of 1982 in the Office of the Sub Registrar, Joint II, Saidapet. Subsequently, the Plaintiff conveyed the property to the 1st Defendant, by a sale deed dated 15.12.1982, registered as Document No.4634 of 1982 in the Office of the Sub Registrar, Joint II, Saidapet.

12. It was further stated that the 2nd Defendant had also mutated the revenue records in his name. The encumbrance certificates obtained from the Sub Registrar, Joint II, Saidapet for the period from 1.1.1966 to 2.6.2016 and from the Sub Registrar, Velachery for the period from 15.9.1994 to 10.11.2016 disclose all the above transactions. It has been stated that the 1st Defendant had executed a Power of Attorney in favour of the 2nd Defendant, which was registered as Document No.7023 of 2016, in the Office of the Sub Registrar, Velachery. Thereafter, the 2nd Defendant developed the property and applied for sub division of the land into two plots, as Plot No.2A and Plot No.2B before the Greater Chennai Corporation. This was also approved and permission was granted.

13. It was further stated that subsequently the property in Plot No.2A was sold in favour of the 8th Defendant, by a registered sale deed, dated 17.5.2017, registered as Document No. 2885 of 2017, in the Office of the Sub Registrar, Velachery and the property in Plot No.2B was sold in favour of the 3rd to 5th Defendants by a registered sale deed, dated 17.5.2017, registered as Document No. 2885 of 2017. It has been stated that the 2nd Defendant had developed the property, after obtaining legal advise. It has been specifically stated that the Plaintiff was indulging in acts of coercion and that she had suppressed the material documents. It has been specifically stated that the documents filed are with respect to Plot No.15, whereas the suit property is Plot No.2, which was subsequently sub divided as Plot Nos.2A and 2B and therefore, it has been stated that the applications must be dismissed.

14. The Defendants 3-7 have filed a common counter affidavit. The 5th Defendant had sworn to the counter affidavit. She denied all the allegations made in the plaint. She has specifically stated that the statement in the plaint that a family member/friend came to know in the first week of August 2017 that a notice board was put up was totally false since the B and C Schedule properties were sold in the month of July 2017 itself and thereafter, there was no necessity to put up any board, stating that the plot was vacant and was for sale. It was stated that the

Plaintiff had deliberately filed documents relating to Plot No.15 with an intention to misguide the Court. It has been further stated that the Plaintiff had filed the encumbrance certificate with respect to another plot. It has been stated that the 3rd to 5th Defendants are bona fide purchasers for valuable consideration.

15. It has been further stated that after the Plaintiff sold the property in favour of the 1st Defendant, she has no subsisting right or title over the property. It has been further stated that subsequent to the purchase, they had also mutated the revenue records and obtained Town Survey Land Register in their name and they had subsequently leased out the property to third parties, for storing construction materials and therefore, it has been stated that there is no prima facie case and there is no balance of convenience in favour of the Plaintiff.

16. The 8th Defendant has also filed her counter and she also traced out the history of the property, by stating that originally T.Annakodi Ammal was the owner of the property having been allotted a larger extent of the property by a deed of partition dated 13.12.1965, registered as Document No. 4961 of 1965. Subsequently, she sold one acre and 29 cents in S.No.259 to Ethiraj, son of Narasimhalu Naicker, by way of a registered sale deed, dated 22.7.1982, registered as Document No. 3031 of 1982 in the Office of the Sub Registrar, Joint II, Saidapet. Subsequently, the said Ethiraj had sub divided the larger extent of land into house

sites and sold one plot, namely, Plot No.2, measuring 2400 sq.ft. in S.No.259, which is mentioned in the A-Schedule and thereafter, the Plaintiff had sold the property by a registered sale deed, dated 15.12.1982 in favour of N.Raman, registered as Document No. 4634 of 1982. The said N.Raman, who is the 1st Defendant, had executed a Power of Attorney dated 29.11.2016, registered as Document No. 7023 of 2016 in the Office of the Sub Registrar, Velachery and appointed the 2nd Defendant as his Power of Attorney Agent. Then, the property in Schedule A was subdivided into Schedule B and Schedule C, each measuring 1185.22 sq.ft. The 8th Defendant has further stated that the Plaintiff had filed the encumbrance certificates pertaining to Plot No.15, which are totally irrelevant to the present suit properties. The 8th Defendant has further stated that they had also obtained loan from the 9th Defendant Bank, for purchase of the property. Subsequently, she had also mutated the revenue records, incorporating her name in the Schedule C property. She had obtained planning permission for construction of a building. This was also issued to her and she also remitted fees demanded by the Greater Chennai Corporation. She also obtained electricity service connection and also started construction in September 2017. She had constructed upto the first floor. It has been stated that the Plaintiff having sold the property in 1982, the Plaintiff has filed the present suit only with arm twisting tactics. It has been stated that the Plaintiff has

come to Court without honest intentions and consequently, the applications should be dismissed.

17. The 9th Defendant has also filed a counter affidavit, stating that the 3rd to 5th Defendants and the 8th Defendant had applied for loan and were sanctioned a loan of Rs.58.4 lakhs and Rs.90 lakhs, respectively. It has been stated that the Plaintiff has to establish that she had not conveyed the suit property to the 1st Defendant. It has been stated that the mortgages created in favour of the 9th Defendant are validly executed documents.

18. The Plaintiff has filed a common reply affidavit. In the reply affidavit, she has further stated that the 1st Defendant must have got somebody else impersonating as V.Ganga, the Plaintiff, to execute the sale deed in his favour. It was stated that the 1st Defendant must also produce the original sale deed. It was stated that the 1st Defendant had produced only certified copies of the sale deed. It has been stated that she did not execute any sale deed in favour of the 1st Defendant and it was, therefore, reiterated that the Power of Attorney in favour of the 2nd Defendant and the subsequent sale deeds by the 2nd Defendant in favour of the 3rd to 5th Defendants and in favour of the 8th Defendant are all illegal documents, which are not binding on her. It has been further stated that she was the true and lawful owner of the Schedule property.

19. Along with the plaint, the Plaintiff has produced the sale deed, through which she purchased the

property, dated 26.7.182 and registered as Document No. 3069 of 1982. The said document was registered in the Office of the Sub Registrar, Joint II, Saidapet. She had also produced a kist receipt, showing issuance of patta, dated 29.4.1992. She had thereafter produced three encumbrance certificates, for the periods from 1.1.1986 to 14.9.1994 and 1.1.1960 to 31.12.1985 and 15.9.1994 to 15.2.2015.

20. The first encumbrance certificate was with respect to Plot No.15, measuring an area of 3000 sq.ft. which is irrelevant to the suit property. The second encumbrance certificate also related to Plot No.15, measuring 3000 sq.ft. and it is also irrelevant to the suit property. The third encumbrance certificate related to a property, measuring to an extent of 3000 sq.ft. and it is also irrelevant to the suit property.

21. Without going into further details in all the three encumbrance certificates, which were produced as Document Nos.4, 5 and 6, the Northern boundary is Plot No15, whereas in the A-Schedule the Northern boundary is 20 ft. wide road. Consequently, all the three encumbrance certificates produced by the Plaintiff in support of the averments made in the plaint are documents, which have no relevance at all. The other document, which has been produced by the Plaintiff, is the extract from the Town Survey Land Register, dated 23.5.2015. This was issued after fee was paid in Challan No.946 of Rs.20 on 23.4.2015. Thereafter, as Document No.8, 9, 10 and 11, the documents

executed by the 1st Defendant in favour of V.Soundararajan and the subsequent cancellation of the same and subsequent execution of Power of Attorney in favour of the 2nd Defendant had been produced.

22. The Plaintiff, then, has produced as Document No.12, an encumbrance certificate dated 13.2.2017. This alone is related to the suit property, namely, Plot No.2, measuring 2400 sq.ft. This was for the period from 1.1.2015 to 29.1.2017 and it was certified by Sub Registrar, Velachery that there was no encumbrance created in the said property. Thereafter, the Plaintiff has produced documents executed by the 2nd Defendant in favour of the 3rd to 5th Defendants and also the Memorandum of Deposit of Title Deeds. The Plaintiff has produced yet another encumbrance certificate dated 9.8.2017. This was again with respect to Plot No.15, measuring 3000 sq.ft. and consequently, it is irrelevant to the suit property.

23. The Defendants also produced documents. The 2nd Defendant produced a document which was the sale deed in favour of the 1st Defendant and registered as Document No.4634 of 1982.

24. The learned counsel for the Plaintiff has stated that what was produced is only a certified copy of the sale deed and the original was not produced. However, during the course of the arguments, the learned counsel has produced the original sale deed, which was returned back to the learned counsel, since any finding based on the original

sale deed would have to form part of the trial and at this stage, the Court is interested in only determining the prima facie case.

25. The 2nd Defendant has produced three encumbrance certificates for the period from 1.1.1986 to 14.9.1994, 15.9.1994 to 1.6.2016, 1.1.1960 to 3.12.1985. All these encumbrance certificates were with respect to Plot No.2, measuring 2400 sq.ft. and the Northern boundary was 20 ft. wide road, which was the suit Schedule property.

26. It is also to be mentioned that the third encumbrance certificate produced by the 2nd Defendant for the period from 1.1.1960 to 3.12.1985 was issued by the Office of the Sub Registrar, Joint II, Saidapet. It was in that Office that the sale deeds of the year 1982 were registered and it is seen that there is entry for sale by N.Ethiraj in favour of V.Ganga, the Plaintiff and the subsequent sale deed by V.Ganga, the Plaintiff in favour of N.Raman, the 1st Defendant.

27. The 2nd Defendant has also produced the revenue records for Town Survey Land Register in favour of the 1st Defendant and the document relating to planning permission issued by the Chennai Corporation. The 2nd Defendant has also produced an additional set of documents, particularly, a report obtained under the Right to Information Act, issued by the Sub Registrar, Joint II, Saidapet, affirming the registration of the documents in favour of the 1st Defendant and executed by the Plaintiff.

The 3rd to 7th Defendants have also produced encumbrance certificates and the sale deeds in their favour. The 8th Defendant has also produced documents and also produced encumbrance certificates with respect to Plot No.2, showing purchase by N.Raman and sale by the Plaintiff and the revenue records were also produced.

28. The Plaintiff has filed an additional set of documents, which included a building plan receipt of the year 1992 and letters of MMDA and Town Planning of the year 1992. It was in respect of those documents that A.No.8168 of 2017 has been filed.

29. Even before examining the original applications, in A.No.8168 of 2018, since the issues are being determined based on the documents and not on the basis of the evidence, A.No.8168 of 2017 has to be necessarily allowed. As stated above, additional documents relate to the year 1992 and these documents have been filed by the Plaintiff to show that she is in continuous possession and enjoyment of the suit property.

30. This Court heard the extensive arguments advanced by the learned counsel on either side.

31. The Plaintiff has come to Court with respect to Plot No.2, Annanagar, I Street, Chennai. The said Plot No.2 is a part of larger extent of land, which originally belonged to T.Annakodi Ammal. She was allotted the property by way of a partition deed. Subsequently, she had sold the property to N.Ethiraj, by Document No.3031 of 1982,

registered in the Office of the Sub Registrar, Joint II, Saidapet on 22.7.1982. N.Ethiraj divided the property into plots. One of the plots is Plot No.2. Schedule of Plot No.2 is as follows:-

"Schedule-A

All that piece and parcel of vacant house site, bearing Plot No.2, Annanagar, 1st Street, Chennai District, previously Mambalam and Guindy Taluk, presently, Velachery Taluk, Chennai Corporation limits, Velachery Village, comprised in S.No.259, Extract from the Town Survey Land Register CA.No.200 of 2016, Survey No.259/3, T.S.No.45, Block No.216, measuring an extent of 2400 sq.ft. bounded on the:

North by : 20 ft. wide road
 South by : Plot No.13
 East by : Plot No.3
 West by : Plot Nos.1 and Plot No.14"

Measuring

East to West on the Northern side :40 ft.
 East to West on the Southern side :40 ft.
 North to South on the Eastern side :60 ft.
 North to South on the Western side :60 ft.

In all admeasuring 2400 sq.ft. or thereabouts, situated within the registration District of Chennai South and Sub registration District of Velachery."

32. This plot was sold by N.Ethiraj to the Plaintiff by a registered sale deed, dated 26.7.1982 and registered as Document No. 3069 of 1982 in the Office of the Sub Registrar, Joint II, Saidapet. The Plaintiff claims

that there has been no subsequent encumbrance over the said property and that she had been in continuous possession from that particular date both in capacity as owner and as possessor. She further claimed that in the year 2017, particularly, in August 2017, when a friend of her relative, visited the plot, he found that a notice board was put up, stating that the plot was for sale and immediately, she started to make enquiries and to her shock, she found the following details:-

- a)The Plaintiff had apparently sold the property to the 1st Defendant, N.Raman on 15.12.1982 by a registered Document No.4634 of 1982.
- b)The 1st Defendant, N.Raman had executed a general Power of Attorney in favour of V.Soundararajan, registered as Document No.5283 of 2016, in the Office of the Sub Registrar, Velachery.
- c)The said N.Raman had cancelled the Power of Attorney by a registered Document No.7022 of 2016 in the Office of the Sub Registrar, Velachery.
- d)The said N.Raman had executed a General Power of Attorney in favour of the 2nd Defendant, M/s.MGP Builders and Developers Private Limited, by registered document dated 29.11.2016.
- e)The 2nd Defendant had sold a portion of the property to the 3rd to 5th Defendants, by a registered Document.
- f)The 2nd Defendant had sold the other portion of the property to the 8th Defendant.
- g)The 3rd to 5th Defendants and the 8th Defendant have executed mortgages by Deposit of Title Deeds in favour of the 9th Defendant.

33. However, the Plaintiff to prove this transaction has produced encumbrance certificates relating to Plot No.15, while the suit property, as stated above, is Plot No.2. As an example, this Court compared the boundaries and found that the Northern boundary of the suit property was 20 ft. wide road, whereas the Northern boundary of the encumbrance certificate produced by the Plaintiff was Plot No.15. Prima facie, the Plaintiff has not produced the correct documents before the Court.

34. There is yet another fact. It was specifically mentioned by the 8th Defendant in her counter affidavit that she had actually put up construction after obtaining permission from the Greater Chennai Corporation and that the construction had come upto the first floor. This fact had not been either pleaded or disclosed by the Plaintiff in her pleadings. She had, in her verification of the Schedule, mentioned that the Schedule property was only vacant land. Whereas, the 8th Defendant has specifically stated that construction had come upto the first floor. Naturally, the Plaintiff has not disclosed the correct facts before this Court.

35. The learned counsel for the Plaintiff has insisted that the 1st Defendant must be called upon to appear before the Court in person and to produce the original sale deed said to have been executed by the Plaintiff in his favour. It must be mentioned that this Court is deciding the issues of injunction only on the basis

of the facts pleaded by the Plaintiff and not on the facts pleaded by the Defendants. It is for the Plaintiff to plead and prove fraud, if she alleges fraud.

36. On the other hand, the Defendants have produced encumbrance certificates, which show registration of a sale deed. The 2nd Defendant has also produced a reply under the Right to Information Act, wherein the Sub Registrar, Joint II, Saidapet, affirmed that there is a document registered as Document No.4634 of 1982 and executed by the Plaintiff in favour of the 1st Defendant. The crux of the case of the Plaintiff is that there is no such documents. But, unfortunately, the records reveal that there is such a document. These are the issues, which have to be decided in detail during the trial. Consequently, the Plaintiff has not made out a prima facie case. The facts averred by her are contested and challenged by the Defendants.

37. It is the grievance of the learned counsel for the Plaintiff that the Defendants have continued to exploit the property and further encumbrance would only invite further third parties and this would seriously prejudice the case of the Plaintiff. But, however, as purchasers, the Defendants are entitled to develop the property.

38. In this connection, the learned counsel for the Plaintiff has relied on **1994 1 SCC 1 (S.P.Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs and others)**

on the issue of fraud.

39. But, however, fraud must be pleaded and fraud must be proved. Proof is only after trial. Fraud cannot be assumed or presumed at the initial stage, where enquiry is being made on the basis of documents produced by either side and when such documents produced to make out a prima facie case. These documents have not crossed the threshold of being examined whether they are admissible, relevant or proved. Consequently, if the Defendants have indulged in fraud, the same has to be established during the trial.

40. The Plaintiff has also relied on **1996 5 SCC 550 (Indian Bank Vs. Satyam Fibres (India) Private Limited)** and **2010 8 SCC 383 (Meghmala and others Vs. G.Narasimha Reddy and others)** again on the same issue of fraud.

41. As stated above, fraud has to be proved, but the Plaintiff's case is challenged by the Defendants even on facts. The contention of the learned counsel for the Plaintiff that the 1st Defendant has to produce the original sale deed has also been examined by me and again that is an issue to be decided during the trial and not at this stage of the proceedings.

42. The encumbrance certificates show that the documents have been registered by the Plaintiff in favour of the 1st Defendant. It is the specific case of the Plaintiff that she had not executed any such document. These are issues, which have to be determined after trial. However, till such time, the 3rd to 5th Defendants and the 8th

Defendant, who had purchased the property for valuable consideration, cannot be ousted from possession. On the other hand, they can only be restrained from alienating or encumbering the property, pending disposal of the suit. However, any development made over the property will be at the risk of the 3rd to 5th Defendants and the 8th Defendant alone and the Plaintiff cannot be held responsible for the monies spent by the 3rd to 5th Defendants and the 8th Defendant. But, again, it is also made clear that the Plaintiff will have to establish fraud.

43. The learned counsel for the 8th Defendant has relied on **2012 3 LW 97 (Ramrameshwari Devi and others Vs. Nirmala Devi and others)** wherein the Honourable Supreme Court had examined a civil litigation, which was held to be frivolous and then had directed that the Court should insist upon deposit of costs.

44. In the present case, each party has alleged fraud on the other side. Consequently, the Plaintiff is directed to deposit costs into the court and the 3rd to 5th Defendants and the 8th are also directed to deposit cost into the court, so that at the end of the trial, either one of the parties may be equitably compensated.

45. In the result, I hold as follows:-

- i. In the result, A.No.8168 of 2017 is allowed to the limited purpose of taking on file the documents sought in this application alone and by allowing this application, it cannot be held that the documents can be

marked straight away during the trial. Even during the trial, the documents produced will have to cross the test of admissibility, relevancy and proof.

ii.OA.No.1044 of 2017 is dismissed, since admittedly the 3rd to 5th Defendants and the 8th Defendant are in possession today. However, the 3rd to 5th Defendants are jointly directed to deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) to the credit of the suit and the 8th Defendant is directed to deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) to the credit of the suit. However, any further development made over the property will be at the risk of the 3rd to 5th Defendants and the 8th Defendant alone and the Plaintiff cannot be held responsible for the monies spent by the 3rd to 5th Defendants and the 8th Defendant.

iii.OA.No.1045 of 2017 is allowed as prayed for. However, the Plaintiff is directed to deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) to the credit of the suit so that if the case of the Plaintiff is found to be false, the 3rd to 5th Defendants would be compensated for the injunction granted against them.

iv.OA.No.1046 of 2017 is allowed as prayed for. However the Plaintiff is directed to deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) to the credit of the suit

so that if the case of the Plaintiff is found to be false, the 8th Defendant would be compensated for the injunction granted against her.

v.OA.No.1047 of 2017 is dismissed, since the 9th Defendant is at liberty to exercise their rights as a mortgagee. However, the 9th Defendant has to file necessary application and inform the Court as to the steps taken by them to enforce the mortgages and obtain necessary permission from the Court, before taking any further action on the basis of the mortgages in their favour.

Sd/-C.V.K.J
24.01.2018

//Certified to be a true copy//

Dated this the day of 2018

jj 02/02/2018

COURT OFFICER

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