

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 15TH DAY OF NOVEMBER 2018

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A.No.3620 of 2017

in

C.S.No.574 Of 2012

V.Balamurugan,
Son of G.Venugopal,
No.12, 2nd Main Road,
Vijaya Nagar,
Velachery, Chennai-600 042.

... Applicant/Plaintiff

-Versus-

1.Mr.G.Venugopal,
S/o.(Late) P.V.Govindaraji Chettiar,
Door No.12, Second Main Road,
Vinayanagar, Velachery, Chennai-600 042.

2.Mr.M.S.Elangeswaran,
21, 7th Main Road, Dhandeswaram Nagar,
Velachery, Chenani-600 042.

3.Mrs.V.Meenakshi,
Blk 699 & 14-03 Hougang Ste 52
<https://hcservices.ecourts.gov.in/hcservices/>
Singapore 530699.

4.Miss.V.Dhanalakshmi,
D/o.G.Venugopal,
Door No.12, Second Main Road,
Vijayanagar, Velachery, Chennai 600 042.

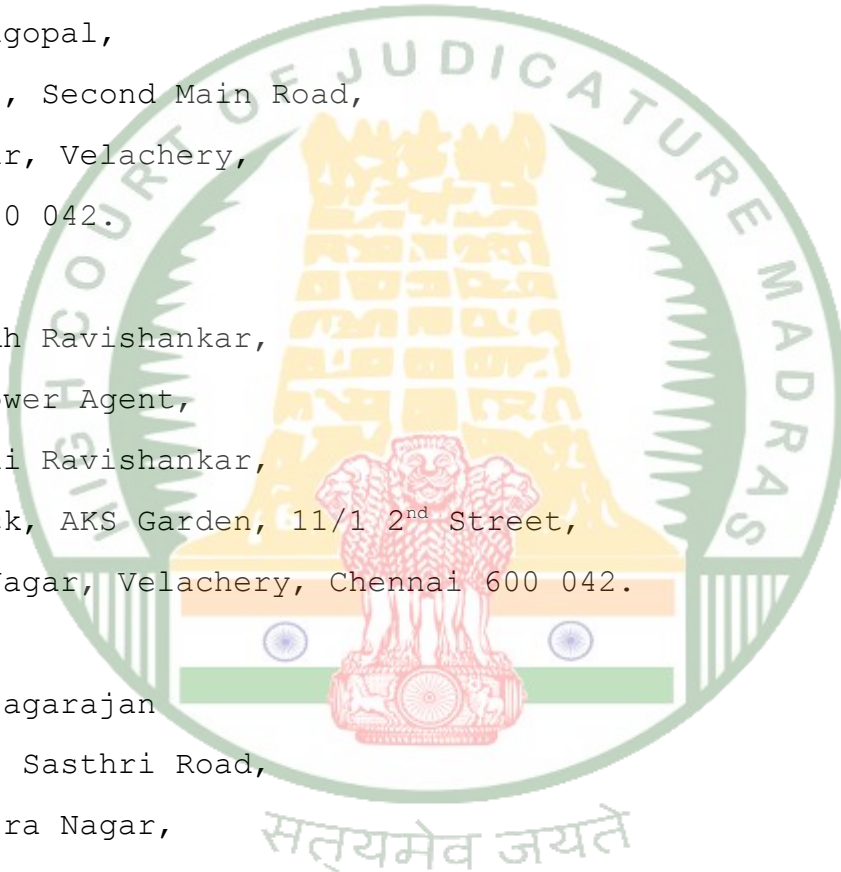
5.Miss.V.Kasthuri Thilagam,
D/o.G.Venugopal,
Door No.12, Second Main Road,
Vijayanagar, Velachery,
Chennai 600 042.

6.Mr.Vinodh Ravishankar,
Rep. by Power Agent,
Mrs.Shalini Ravishankar,
F2, B-Block, AKS Garden, 11/1 2nd Street,
Ramagiri Nagar, Velachery, Chennai 600 042.

7.Mr.S.Thiagarajan
Plot No.6, Sasthri Road,
Annai Indira Nagar,
Velachery, Chenani 600 042.

8.Mrs.J.Lalitha,
W/o.Thiagarajan,
Plot No.6, Sasthri Road,
Annai Indira Nagar,
Velachery, Chennai 600 042.

9.Rammiyam Builders,
<https://hcservices.ecourts.gov.in/hcservices/>
Rep. By it's Managing Partner,



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Door No.18, First Floor, 10th Cross Street,
 Dhandeeswaram Nagar,
 Velachery, Chennai-600 042.

...Respondents/Defendants

Application praying that this Hon'ble Court be pleased to grant an order of amendment of plaint, after plaint para 11 as 11-A to 11-D

"When the matter thus I have been informed on 08.06.2015 one of my well wisher, that the entire physical feature of the suit property was altered by putting up new Flat constructions by the purchasers of about 1705 sq.ft out of the total extent of 3410 sq.ft.i.e.the defendant 6 to 8/Respondents 3 to 5, through their builder 9th Defendant/6th Respondent and that skeleton of super structure comprised of suit with two floors and the further work is going on with rapid speed. Immediately I have contacted my counsel and instructed to do the needful and through whom I came to know the stage of the case as stated supra.

11-B) the applicant humbly submits that he has been residing in USA, since June 5th 2013 and in his absence the suit house property was demolished and new superstructure was put up during pendency of the above suit by taking undue advantage of non-service of summons in O.A.No.750 of 2012 filed for interim injunction upon one of the purchasers namely 3rd Respondent. On causing further verification it came to light that one of the sisters of the applicant by name Dhanalakshmi/4th Defendant has given a police complaint on 31.11.2014 to take action against the Power Agent 6th Respondent, the builder, for their illegal threatening of dispossession of the house property and C.S.R.No.293 of 2014 was given on 01.11.2014.

11-C) It is most respectfully submitted that in all probabilities there exists collusion among, the respondents and builder/6th Respondent, being influential person own over the Father of the Applicant/1st Respondent and through whom prevailed upon other members of the family, who are womenfolk especially in the absence of the applicant. As has been already stated, that the defendants/respondents neither filed written statement nor counter in the pending suit and O.A.No.750 of 2012 till date. The conduct of the respondent/defendants in proceeding with illegal constructions, constitute sheer abuse of process besides being fraudulent one.

11-D) It is submitted that the applicant has filed the above suit claiming ownership of 1/3 share and partition of 1/5 share in respect of the remaining 2/3 share of residential house property. The applicant is deemed to be in joint possession of the suit house property, the physical feature of the then existing residential house at the time of filing of the suit was demolished and new super structure is put up during pendency of the suit.

And also in prayer column after para 15-D,

Mandatory injunction directing the defendants to put up the plaintiff in separate possession of his entitlement of 7/15th share in the land and building in the suit schedule property"

Because of the subsequent events of putting up a new construction of residential Flat System, by the respondents 1 to 6/Defendants 1,2 and 6 to 9, on demolishing the suit house property during pendency of the suit.

In the suit valuation para 14 after d)

e) for the relief of mandatory injunction the suit valued at Rs.1000/- and pays a court fee Rs.75.50 under section of Tamil Nadu Court Fees and suit Valuation Act, 1965.

In the prayer column after para 15 D) para E) to be included as for Mandatory injunction directing the defendants to put up the plaintiff in separate possession of his entitlement of 7/15th share in the land and building in the suit schedule property" as mandatory.

And para 15 E) is to be corrected as 15 F).

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

This application prays for Amendment of Plaint by insertion of several paragraphs after paragraph no. 11 of the original plaint numbered as 11-A to 11-D. The insertions relate to a series of events that are stated to have taken place after the filing of suit, which was in 2012. Counters have been filed by the 6th as well as the 9th respondents.

2. Heard Mr.V.Ayyadurai learned senior counsel appearing for Mr.J.Manohar, learned counsel for the applicant, Mr.Thiagarajan, learned counsel appearing for the 1st respondent and Mrs.G.Sumitra, learned counsel appearing for the 9th respondent.

3. The suit has been filed praying for a declaration that the plaintiff is the absolute owner of 1/3rd undivided share of the suit properties as conveyed under registered settlement sale deed dated 25.09.2003 and a declaration that the registered cancellation of settlement deed executed by the 1st defendant dated 18.10.2010 bearing document no. 5050 of 2010 and registered before the joint SRO, Velachery was null and void, as well as for partition of the remaining 2/3rd of the

allotment of 1/5th to the applicant and a permanent injunction restraining defendants 1 & 2 and 6 to 9 from encumbering, alienating or interfering with peaceful possession of the suit property.

4. The basis of the suit is that the suit property constitutes ancestral joint family property and that the applicant is, accordingly entitled to 1/3rd share in the same. The array of parties comprises the father of the applicant as the 1st defendant (R1), the power agent of D1 arrayed as Defendant 2 (R2), the applicants' sisters, arrayed as defendants 3, 4, and 5 in suit/respondent 3, 4 & 5 in the application (R3, 4 and 5), Defendants 6, 7 and 8/Respondents 6, 7 and 8, purchasers of portions of the property (R6, 7 and 8) and Defendant 9/Respondent 9, (R9) the builder engaged to develop the property. The mother is not a party to the suit

5. A Settlement deed had been executed on 25.09.03 by R1 conveying 1/3rd of the suit property, comprising 1/3rd undivided share along with 1200 sq.ft of built-up area to the applicant. Out of the blue, the applicant came to know, in or about the beginning of May 2012, that R9 had been engaged to develop the suit property and that the settlement deed executed in his favour earlier had been unilaterally cancelled by R1 under a registered cancellation deed dated 18.10.2010.

6. The Applicant was taken by surprise as, according to him, he was totally unaware of the aforesaid developments. He had discharged all his obligations to his parents and sisters and had met the marriage expenses of one of his sisters as

well. He was thus wholly unaware of the reason for the cancellation of the settlement deed by his father. On the other hand, and according to him, it had been R1 who had always been a spend thrift and had never contributed to the running of the family home.

7. R1 would contend, for his part, that the property in question was not family owned, that the settlement was temporary and executed only to facilitate a bank loan, to his sons' knowledge. He would also allege that the son had reneged on his commitments to conduct the marriages of his three sisters. According to R1, he had availed a loan from the HDFC that had been topped up by the applicant. However the applicant had defaulted repeatedly in effecting repayments to the bank and the loan had also finally been settled by himself. In all, the son had betrayed the confidence and trust reposed by the father in him. It was for this reason that R1 cancelled the settlement effected by him in favour of the applicant. Such and various allegations and counter allegations have been made in the pleadings by the applicant about his father and vice versa, by the father in the written statement and counter, about the son.

8. R1 goes on state that thereafter, he had entered into an MOU dated 21.07.2011 with R9 for development of the suit property, two properties each to vest in the developer and the owners. According to him, the construction had been completed in terms of the MOU and the terms of sharing of the flats as

between the parties had also been decided and reduced to writing under an MOU dated 02.10.2014 to state that flat-A shall be allotted to the father and two sisters and flat-D to the applicant his mother and the remaining sister. However the MOU was not signed by the applicant for reasons best known to him. According to R1, the application was barred by limitation, an afterthought and ought to be rejected in limine.

9. Learned counsel appearing for the 1st defendant relies on the judgments of the Supreme Court in the case of *Mandali Ranganna & Others, etc. V .T.Ramachandra & Others*, (2008 4-L.W. 814); *Ausutosh Chaturvedi V. Prano Devi @ Parani Devi and others* ((2008) 15 SCC 610); *Revajeetu Builders and Developers V. Narayanaswamy and Sons and Other*, ((2009) 10 SCC 84); *N.C.Bansal V. Uttar Pradesh Financial Corporation and Another*, ((2018) 2 SCC 347); *Life insurance Corporation of India V. Sanjeev Builders private limited and Others*, ((2018) 11 SCC 722); *B.K.Narayana Pillai V. Parameshwaran Pillai and Another* ((2000) 1 SCC 712); *Pankaja & Another V. Yellappa (dead) by LRs & Others*, ((2004) 6 SCC 415); *Rajkumar Gurawara (dead) through LRs V. S.K.Sarwagi and Company Private Limited & Another* ((2008) 14 SCC 354) and *S.Sarojini Amma V. Velayudhan Pillai Sreekumar* (Civil Appeal No.10785 of 2018 dated 26.10.2018) to buttress his stand against the prayer sought for in amendment.

10. As far as R9 is concerned, a counter dated 10.10.2017

been completed and handed over to the family in 2014. According to the builder the applicant was fully aware of the fact that the flats were completed in 2014 and there was thus no need for him to have waited till 2017 to file the present application which is belated and liable to be dismissed as such.

11. A specific confirmation was sought from the learned counsel for R9 as to when development was complete and possession of the flats handed over to the applicant, as, in my view, such a determination would be relevant to decide the prayer in the present application. At that juncture, learned counsel for the 9th respondent draws attention to a Building Plan dated 11.10.2011 (annexed at page 108 of the typed set of documents filed by defendants 1, 3 and 5 dated 04.04.2016 in the suit), as per which a sanction for construction had been granted up to 16.11.2013 till which date only, it was valid. The statement of R9 in counter affidavit however militates against the requirement in the building sanction to the effect that construction was to be completed by 16.11.2013. No extension of building sanction has been produced for my perusal.

12. The additional affidavit dated 10.10.18 filed by the 9th respondent in response to the courts' specific query at paragraph 11 above is also blissfully vague and does not reveal the date on which construction was completed and the flats handed over to the parties.

13. Then again, at paragraph 5 of the Memorandum of Understanding dated 02.10.2014 to which R1 and 9 are parties, the parties confirm that the suit property was been handed over by the family members on 02.10.2014 to the builder for completion of the project.

14. It is thus clear, that the statement of the learned counsel for the builder to the effect that construction was completed before January 2013 as per building permission issued by the Corporation of Chennai dated 11.10.2011, is incorrect.

15. Having heard all learned counsel, I am of the view that the amendments would be liable to be granted as prayed for. The sole legal objection raised by the respondents, effectively R1 and R9, is to the effect that the application is hopelessly barred by limitation. However, there are discrepancies in the sequence of events presented, referred to the paragraphs above, that persuade me against accepting that submission.

16. Limitation is essentially a question of fact and it is for the parties to establish the bar of limitation in the suit. In any event, all the events referred to by the applicant in the application relate to the development of the suit property itself. It is thus, in my view necessary for the court to take note of the up-to-date status and position in regard to the suit property to decide the *lis* as between the parties in an effective and wholistic manner.

17. The lis concerning the entitlement of the applicant/plaintiff to the suit property would have to be decided after letting in and consideration of evidence and I thus refrain from advertng to the detailed submissions made on merits, except to the extent to which they impinge upon the adjudication of the prayer in application.

18. The Supreme Court has time and again reiterated the position that a liberal view be taken in the matter of amendment of pleadings except in cases where said amendment would amount to a fresh suit or one that would be unambiguously barred by limitation.

19. The decisions stated by learned counsel for D1 would also rather support the proposition that amendments sought for should be considered bearing in mind that they should advance proper resolution of the disputes as between the parties.

20. The application is ordered as prayed for. Let the amendments be carried out within a period of 2 weeks from date of receipt of this order. Post for framing of issues on 18.12.2018.

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Sd/.A.S.M.J.

15.11.2018.

//Certified to be a true copy//

Dated this the th day of 2018.

DL/18.12.2018

COURT OFFICER