

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

C.S.No.128 of 2017

1.R.Parthasarathy

2.C.V.Raghavendran

3.Mrs.Vasantha

4.S.Subramanian

5.Mrs.P.Ramya

6.K.Suresh Kumar

... Plaintiffs

/Vs./

P.S.Meenakshi Sundaram

... Defendant

Plaint filed under Order VII Rule 1 of The Code of Civil Procedure Read with Order IV Rule I of O.S. Rules, praying for judgment and decree as against the defendant as follows:

(a) for a Declaration declaring that the plaintiffs are the co-owners / joint owners of 841.09 Sq.ft. of UDS in Plot No.449, Door No.52, 4th Cross Street, Mandavelipakkam, Chennai – 600 028, measuring 1 Ground 49 Sq.ft., (2,449 Sq.ft.,) comprised in R.S.No.4458 part, New S.No.4436/135, Block B morefully described in the "Schedule Property"

together with the common areas and the defendant, his men, agents, servants lawful attorneys or any person or persons claiming through the defendant do not have any right, title or interest over the Schedule Property;

(b) for Permanent injunction restraining the defendant or his men, agents, servants, representatives, relatives, servants or his attorneys or any other person or persons claiming under or through the defendant from in any way interfering with the peaceful possession and enjoyment of the UDS of 841.09 Sq.ft., of the "Schedule Property" that has not been transferred to the plaintiffs;

(c) for the costs of the suit.

For Plaintiffs : Mr.U.Prabhu for
M/s.AAV Partners

For Defendant : No appearance

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J U D G M E N T

The suit has been filed for a Declaration declaring that the plaintiffs are the co-owners / joint owners of 841.09 Sq.ft. of UDS in Plot No.449, Door No.52, 4th Cross Street, Mandavelipakkam, Chennai – 600 028, measuring 1 Ground 49 Sq.ft., (2,449 Sq.ft.,) comprised in R.S.No.4458 part, New S.No.4436/135, Block B morefully described in the "Schedule Property" together with the common areas and the defendant, his men, agents, servants lawful

attorneys or any person or persons claiming through the defendant do not have any right, title or interest over the Schedule Property; for Permanent injunction restraining the defendant or his men, agents, servants, representatives, relatives, servants or his attorneys or any other person or persons claiming under or through the defendant from in any way interfering with the peaceful possession and enjoyment of the UDS of 841.09 Sq.ft., of the "Schedule Property" that has not been transferred to the plaintiffs.

2.The case of the plaintiffs is that the land measuring an extent of 1 Ground 49 Sq.ft., (2,449 Sq.ft.,) bearing Plot No.449, Door No.52, 4th Cross Street, Mandavelipakkam, Chennai – 600 028 belonged to the defendant, by virtue of Sale Deed dated 29.03.1990. The defendant by a Sale Agreement dated 01.10.1992, had agreed to sell his undivided share in favour of Mr.F.Susairaju, permitting him to put up 4 to 5 flats on the first and second floors. A Power of Attorney Deed dated 09.10.1992, registered as Document No.725 of 1992 at Sub-Registrar Office, Mylapore, was executed in favour of the said Mr.F.Susairaj.

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3.The plaintiffs would further state that the Power Agent Mr.F.Susairaju had been carried on construction business in the name and style of M/s.Ashok Builders. Pursuant to the Sale Agreement and the Power of

Attorney, the builder had entered into an Agreement with the first plaintiff and the vendors of the other plaintiffs to sell the flats and constructed thereon and after construction, the defendant, through his Power of Attorney Mr.F.Susairaju, had executed the Sale Deeds and handed over the possessions to the plaintiffs.

4.The plaintiffs would further state that after selling the flats constructed on a property in Plot No.449, Door No.52, 4th Cross Street, Mandavelipakkam, Chennai – 600 028, the defendant does not have any right over the same. Further the defendant retained the un-divided share of 841.09 Sq.ft.

5.Despite service of summons, the defendant failed to appear and to contest the suit and hence, the defendant set ex-parte.

6.In order to prove the case of the plaintiffs, PW1 to PW5 have been examined and Ex.P1 to Ex.P30 have been marked.

7.The learned counsel for the plaintiffs would submit that the first plaintiff examined as P.W.1; second plaintiff examined as P.W.2; fourth plaintiff examined as P.W.3; sixth plaintiff examined as P.W.4 and the Power Agent of the fifth plaintiff examined as P.W.5 and marked the following documents as

Ex.P1 to Ex.P30 as documentary evidence in order to prove the suit claim:-

- 1) Ex.P1 is the xerox copy of Sale Agreement dated 01.10.1992 by the defendant in favour of the builder;
- 2) Ex.P2 is the xerox copy of Power of Attorney dated 09.10.1992 executed by the defendant in favour of the builder;
- 3) Ex.P3 is the Planning Permit dated 26.11.1992 in favour of the builder along with Letter and regularation plan;
- 4) Ex.P4 is the original Agreement dated 05.05.1993 executed by the builder in favour of the first plaintiff;
- 5) Ex.P5 is the original Sale Deed dated 16.06.1993 executed by the defendant through POA in favour of the first plaintiff;
- 6) Ex.P6 is the original EB Card of the first plaintiff;
- 7) Ex.P7 is the original Property Tax Card of the first plaintiff;
- 8) Ex.P8 is the original Water and Sewerage Tax Card of the first plaintiff;
- 9) Ex.P9 is the original Memorandum of Agreement dated 03.11.1993 executed by the builder in favour of the vendor of the second plaintiff;

10)Ex.P10 is the original Sale deed dated 21.01.1994 executed by the defendant through POA in favour of the vendors of the second and third plaintiff;

11)Ex.P11 is the original Sale Deed dated 09.07.2001 executed in favour of the second and third plaintiff;

12)Ex.P12 is the Original EB Card of the second plaintiff;

13)Ex.P13 is the original Property Tax receipt and card of the second plaintiff;

14)Ex.P14 is the original Water and Sewerage Tax Card and receipt of the second plaintiff;

15)Ex.P15 is the original Memorandum of Agreement dated 05.09.1994 executed by the builder in favour of the Vendor of the fourth plaintiff;

16)Ex.P16 is the original Sale Deed dated 03.11.1994 executed by the defendant through POA in favour of the vendor of the fourth plaintiff;

17)Ex.P17 is the original Sale Deed dated 26.02.1998 in favour of the fourth plaintiff;

18)Ex.P18 is the original EB Card of the fourth plaintiff;

19)Ex.P19 is the original Property Tax receipt and card of the fourth plaintiff;

20)Ex.P20 is the original Water and Sewerage Tax Card and receipt of the fourth plaintiff;

21)Ex.P21 is the original Sale Deed dated 15.09.1997 executed by the defendant in favour of the vendor of sixth plaintiff;

22)Ex.P22 is the original Sale Deed dated 11.03.2004 executed in favour of the sixth plaintiff;

23)Ex.P23 is the photocopy of Property Tax receipt of the sixth plaintiff;

24)Ex.P24 is the photocopy of Water and Sewerage Tax Card and receipt of the sixth plaintiff;

25)Ex.P25 is the original General Power of Attorney issued in favour of Mrs.P.R.Rajeswari by the fifth plaintiff dated 29.07.2015;

26)Ex.P26 is the original Memorandum of Agreement executed by the builder in favour of the Vendor of the fifth plaintiff dated 30.03.1995;

27)Ex.P27 is the Sale Deed executed by the defendant in favour of the fifth plaintiff dated 17.03.2005;

28)Ex.P28 is the EB Card of the fifth plaintiff, letter of

transfer (xerox copy of the computer generated sheet);

29)Ex.P29 is the Property Tax receipt of the fifth plaintiff

(xerox copy of the computer generated sheet); and

30)Ex.P30 is the Water and Sewerage Tax receipt of the

fifth plaintiff (xerox copy of the computer generated sheet).

8.According to the learned counsel for the plaintiffs, the plaintiffs have proved that the defendant does not have any right over the un-divided share to an extent of 841.09 Sq.ft. Hence, the plaintiffs are entitled to decree sought for in the suit.

9.Taking into consideration, the pleadings, the evidences of P.W.1 to P.W.5 and Exs.P1 to P30, this Court is of the view that the plaintiffs have proved their case and entitled to decree sought for in the suit. Accordingly, the suit stands decreed. No costs.

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Speaking order/Non-speaking order

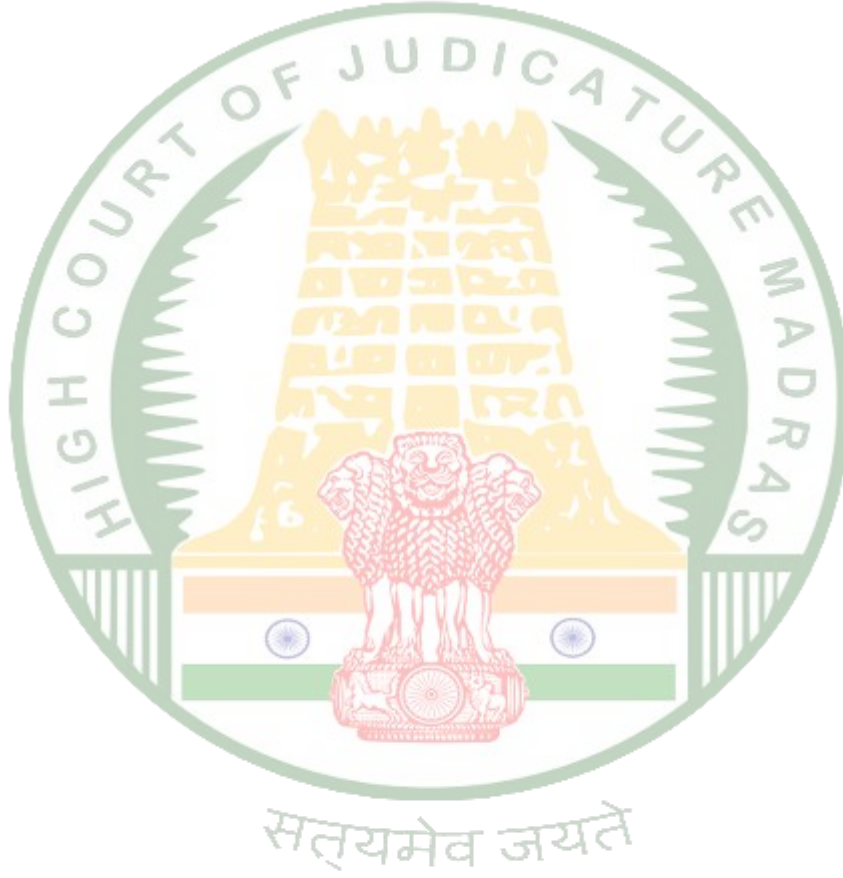
Index: Yes/No

Internet: Yes/No

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.



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K.KALYANASUNDARAM, J.,
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