

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 03RD DAY OF JANUARY 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A.No.4114 of 2016
in
C.S.No.120 of 2016

1 Ms.P.Vasundhara Devi @ Kanchana
D/o Late P.R.K.Sastry
No14/15, Old No.56/12, Giri Road
T.Nagar,
Chennai 600 017

2. Mrs.V.Girija Pandey
W/o.Mr.K.P.Pandey
No14/15, Old No.56/12, Giri Road
T.Nagar,
Chennai 600 017

...Plaintiff

-Vs-

Ms.Geetha
D/o. Late K.P.Krishnaswamy
Flat No.14/12, Old No.56/12, Giri Road
T.Nagar,
Chennai 600 017

...Defendant

A.No.4114 of 2016:

Ms.Geetha
D/o. Late Sri K.P.Krishnaswamy
Flat No.T-2, 3rd Floor
Sterling Dwarakamayee Apartments
New No.14/4, Old No.56/1
Giri Road,T.Nagar
Chennai 600 017

...Applicant/Defendant

-Vs-

1.P.Vasundhara Devi @ Kanchana
D/o.Late P.R.K.Sastry
First Floor, BSR Enclave Apartments
New No14/15, Old No.56/12, Giri Road
T.Nagar,Chennai 600 017

2. Mrs.V.Girija Pandey
 W/o.Mr.K.P.Pandey
 First Floor, BSR Enclave Apartments
 New No.14/15, Old No.56/12
 Giri Road, T.Nagar
 Chennai - 600 017.
 ...Respondents/Plaintiffs

3.Mrs.J.Lalithakumari
 W/o.Late Sri Anjaneya Sharma
 House No.68-40-1, Santhapeta
 (Near Anjaneya Swamy Temple)
 Ongole, Prakasam District
 Andhra Pradesh.

4.Mrs.Y.Nagalakshmi
 W/o.Mr.Y.Surya Narayana Rao
 House No.2-4-904, Plot No.59, Road No.7
 Surya "Sri" Nivas, Samathapuri Colony
 Opp.To New Nagore Bus Stop
 Kothapet, Hyderabad - 500 035
 Telangana State.

5.Mrs.V.Uma Devi
 W/o.Sri Balasubramanian
 Flat No.502, Rathna Towers
 Street No.16, Gandhi Nagar
 Hyderabad - 500 080
 Telangana State.

...Proposed Defendants

Application praying that this Hon'ble Court be pleased to implead proposed respondents 1) Mrs.J.Lalithakumari 2) Mrs.Y.Nagalakshmi and 3) Mrs.V.Uma Devi, who are the legal heirs of applicants vendor as defendants 2,3,4 in the suit.

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

This application has been filed by the applicant/defendant to implead the legal representatives of her vendor.

2. The respondents/plaintiffs have instituted a suit for declaration of sale deeds dated 06.12.2001 and 14.08.2014 are null and void and for consequential relief.

3. The case of the applicant / defendant is that in the plaint, there are serious allegations made against the vendor of the defendant and hence, unless they are impleaded as the parties, the applicant / defendant would not be in position to answer the allegations made against her vendor.

4. The learned counsel for the respondents/plaintiffs have filed their detailed counter affidavit, denying and disputing the allegations made by the applicant/defendant herein.

5. The learned counsel for the applicant/defendant relied on the decisions of the judgments in M/s.Neyvely Lignite Corp. Ltd.Vs Special Tahsildar (Land Acquisition) Neyvely and ors. - [JT 1995(1) S.C.281] ; Aliji Momonji & Co.Vs Lalji Mavji - [CDJ 1996 SC 573], [1996 (5) SCC 379] ; Pankajbhairameshbhai Zalavadia Vs.Jethabhaikalabhai Zalavadiya (Deceased) Through LRs. & Others - [CDJ 2017 SC 1116], [2017 (9) SCC 700]; Kasturi Vs Iyyamperumal and others [2005 (6) SCC 733] ; Bhogadikannababu and others Vs. Vugginapydamma and others [2006 (5) SCC 532] and Vidur Implex and traders private

limited and others Vs. Tosh Apartments private limited and others [2012 (8) SCC 384] in support of her contentions.

6. According to the learned counsel for the applicant/defendant, the allegations made against the vendor of the defendant can be answered only by impleading the legal representatives of her vendor. It is further contended that apart from this suit, two other suits have been filed in respect of the same property and the legal representatives of the vendor were impleaded as the parties in the said suits.

7. Per contra, the learned counsel for the respondents by citing a judgment of the Supreme Court in the case of **Hari Mohan Sharma & Anr. V. Charanjeet Singh Rekhi & Ors.etc.** Reported in 2017 SCC Online SC 2552, urged that the plaintiff is a *dominus litus* and if ultimately, it is found that necessary parties are not impleaded, the plaintiff would fail in the suit and in any event, the applicant / defendant has no *locus standi* to file this application.

8. The Supreme Court in the case of ***Hari Mohan Sharma & Anr. Vs. Charanjeet Singh Rekhi & Ors.etc.,*** in paragraphs 5 and 6, it has been held as follows:-

"5. Having heard learned counsel for the parties, we are of the view that the Single Judge is correct. The plaintiff in both the suits for specific performance is *dominus litus*

and has chosen Charanjeet Singh Lekhi who resides in Delhi (since deceased) and his wife Manjit Kaur as persons against whom the lis exists.

6. It is clear that if ultimately it is found that there is no cause of action against either of these people, his suit will fail ; or if it is found, in execution proceedings, that the aforesaid persons have nothing to do with the agreement to sell in question, such execution proceedings will fail. That is the risk that the plaintiff takes in these matters. It is clear, therefore, that persons who state that they happen to be Defendant Nos.1 & 2 and Defendant Nos.2 & 3 respectively in the two suits are persons who have to take independent proceedings against the said defendants and/or the plaintiff if they allege collusion between the plaintiff and the defendants."

9. In the light of the above judgement of the Supreme Court, the applicant / defendant has no right to file this application and if the allegations leveled against the defendant are to be answered, the applicant can well examine the legal representatives of her vendor.

10. In such view of the matter, this application is dismissed.

Sd./- M.K.K.S.J.

03.01.2019

//Certified to be a true copy//

Dated this the day of 2019.

DL/18.01.2019

COURT OFFICER

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