

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 02ND DAY OF DECEMBER 2019

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.NO.2705 OF 2019

IN

C.S. No.71 of 2017

1.Mr.S.J.KARTHIKEYAN
S/O.LATE S.JANAKIRAMAN
FIRST FLOOR OLD DOOR NO.6,
NEW DOOR NO.9, APPU MUDALI STREET,
MYLAPORE, CHENNAI-600 004.

2. MS.K.SHOUNDHARYA
D/O.S.J.KARTHIKEYAN
FIRST FLOOR, OLD DOOR NO.6,
NEW DOOR NO.9,
APPU MUDALI STREET,
MYLAPORE, CHENNAI-600 004.

3. MR.K.RAGHAVENDRAN
S/O.MR.S.J.KARTHIKEYAN,
FIRST FLOOR, OLD DOOR NO.6,
NEW DOOR NO.9,
APPU MUDALI STREET,
MYLAPORE, CHENNAI-600 004.

..PLAINTIFFS

-VS-

MR.S.J.KUMARESH,
SON OF LATE S.JANAKIRAMAN,
GROUND FLOOR,
OLD NO.6, NEW NO.9,
APPU MUDALI STREET,
MYLAPORE, CHENNAI-4

..DEFENDANT

A.NO.2705 OF 2019:

MR.S.J.KUMARESH,
SON OF LATE S.JANAKIRAMAN,
GROUND FLOOR,
OLD NO.6, NEW NO.9,
APPU MUDALI STREET,
MYLAPORE, CHENNAI-4

..APPLICANT

-VS-

1.Mr.S.J.KARTHIKEYAN
S/O.LATE S.JANAKIRAMAN
FIRST FLOOR OLD DOOR NO.6,
NEW DOOR NO.9, APPU MUDALI STREET,
MYLAPORE, CHENNAI-600 004.

2. MS.K.SHOUNDHARYA
D/O.S.J.KARTHIKEYAN
FIRST FLOOR, OLD DOOR NO.6,
NEW DOOR NO.9,
APPU MUDALI STREET,
MYLAPORE, CHENNAI-600 004.

3. MR.K.RAGHAVENDRAN
S/O.MR.S.J.KARTHIKEYAN,
FIRST FLOOR, OLD DOOR NO.6,
NEW DOOR NO.9,
APPU MUDALI STREET,
MYLAPORE, CHENNAI-600 004.

...RESPONDENTS

Application praying that this Honble Court be pleased to reject the plaint in C.S.No.71 of 2017.

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

This application is filed under Order VII Rule 11(d) of the Code of Civil Procedure to reject the plaint in C.S.No.71 of 2017.

2. I heard the learned counsel for the applicant and the learned counsel for the respondents.

3.The learned counsel for the applicant submitted that the cause of action in this suit and in an earlier suit viz.,C.S.No.938 of 2016, are the same and that, therefore, the present plaint is liable to be rejected as being barred by law. In support of his submission, the learned counsel referred to paragraph-11 of the plaint in C.S.No.71 of 2017. By referring to the said paragraph-11, he pointed out that the respondents herein filed the earlier suit in C.S.No.938 of 2016 before this Court to cancel the release deed dated 13.11.2013, which was registered as Document No.3255 of 2013 before the Sub Registrar, Mylapore. He further submitted that the earlier suit was filed on the same cause

of action and that the respondents should have sued for all the remedies/relief that they were entitled to at the relevant point of time. As a result, he submitted that Order II Rule 2 of the Code of Civil Procedure is attracted and consequently this plaint is liable to be rejected.

4. In response, the learned counsel for the respondents submitted that the subject matter of the two suits is different. In support of his submission, the learned counsel for the respondents produced a comparative statement wherein the survey numbers that are covered by the two suits and the extents of the respective properties are set out as item Nos.6 and 7 of the said comparative statement. He further submitted that the property, which is the subject matter of the release deed, is the exclusive property of the respondents, whereas the partition suit is in respect of jointly owned properties of the family. Consequently, he submitted that this application is liable to be rejected.

5. By way of rejoinder submissions, the learned counsel for the applicant submitted that the 'A' Schedule property was purchased in the name of the respondent when the respondent was three years old whereas Schedule B property was released in favour of the applicant under the release deed. Consequently, he submitted that if the respondents challenge the title of the applicant to the schedule 'B' property, it is open to the applicant to challenge the title of the respondent to the schedule 'A' property. He further submitted that the subject matter of the partition suit encompasses the schedule 'A' property.

6. The records were examined and the oral submissions of both the learned counsel were considered carefully.

7. The principal question that arises for consideration is whether it can be said that the plaint in C.S.No.71 of 2017 is barred by law. The legal position, in this regard, is well settled and an application under Order VII Rule 11(d) of the Code of Civil Procedure should be

tested solely by reference to the averments in the plaint. In this case, the plaint in C.S.No.71 of 2017 should be examined so as to decide whether it can be said on that basis that the plaint is liable to be rejected as being barred by law.

8. Upon examining paragraph - 11 of the plaint, which was referred to by the learned counsel for the applicant, it is noticeable that the respondents/plaintiffs referred to the earlier suit viz., C.S.No.938 of 2016 and to the remedies requested in the said suit. The said suit appears to be for the purpose of cancelling the Release Deed dated 13.11.2013 and for consequential permanent injunction in respect thereof. The other aspect of the plaint, which should be examined, is the cause of action paragraph of the plaint. After examining the cause of action, it is clear that the respondents / plaintiffs referred therein to their entitlement for partition in respect of the suit schedule properties in their capacity as members of the family with an entitlement to a share of the said properties. In other words, one cannot conclude by reading the averments in the plaint in C.S.No.71 of 2017 that the cause of action in the suit is the same as that in the earlier suit, namely, C.S.No.938 of 2016.

9. Needless to say, it becomes necessary to examine the plaint and possibly the evidence in C.S.No.938 of 2016 in order to reach a definitive conclusion as to whether the cause of action in the two suits are the same. Such an exercise is impermissible for the purpose of deciding an application under Order VII Rule 11(d) of the Code of Civil Procedure. This principle was laid down by the Hon'ble Supreme Court in **KAMALA V. K.T.ESHWARA SA (2008) 12 SSC 661 AND SOUMITRA KUMAR SEN V. SHYAMAL SEN (2018) 5 SCC 644.**

10. Therefore, I am of the view that the present application is liable to be rejected. Accordingly, this application is rejected. Notwithstanding this conclusion, it is open to the applicant to request for framing an issue

as to whether C.S.No.71 of 2017 is barred under Order II Rule 2 of the Code of Civil Procedure so as to ensure that the said issue is considered and decided in the suit.

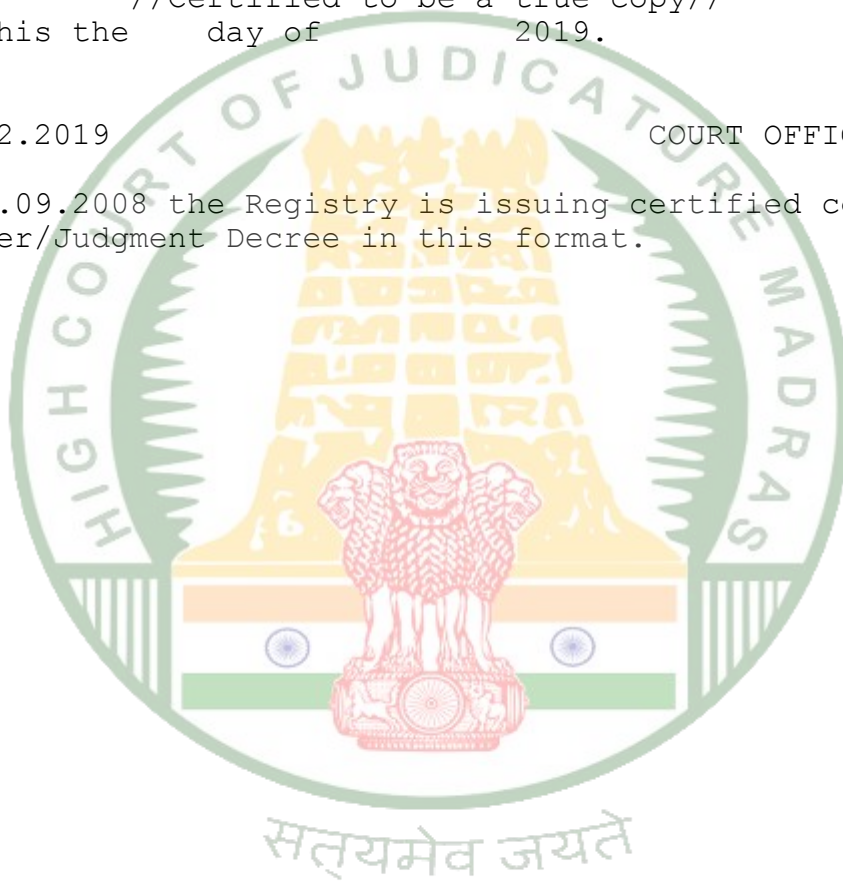
Sd/.S.K.R.J.
02.12.2019

//Certified to be a true copy//
Dated this the day of 2019.

SU/12.12.2019

COURT OFFICER

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



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