

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 13.03.2018****CORAM****THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN****C.S.No.201 of 2012**

Mrs.Thillainayagi

... Plaintiff

..Vs..

1.R.David Christopher

2.Sivapakkiam Rajadurai

... Defendants

Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of Civil Procedure Code praying to pass a judgment and decree for:

(a) Declaring the Plaintiff is the sole and absolute owner of the suit property namely the ground floor bearing Old No.M 48-B, New No.M 58-B, Lattice Bridge Road, Thiruvannamipur, Chennai-600 041 and consequently direct the Defendants to vacate and handover vacant possession to the Plaintiff;

(b) Directing the Defendants joint and severally to Pay a sum of Rs.20,000/- per month towards damages for use and occupation from the date of the suit, till the date of decree and thereafter at the same rate till the Defendants vacant and handover vacant possession to the Plaintiff;

(c) Directing the Defendants to pay the costs of the suit.

For Plaintiff : Mr.P.B.Balaji
For Defendants : No Appearance

J U D G M E N T

The suit is for declaration of title and recovery of possession. The plaintiff claims to be the owner of the property and would contend that the 1st defendant who married the plaintiff's daughter on 11.12.1984 was permitted to occupy the suit property which belongs to the plaintiff and he was residing with his wife and mother who is the 2nd defendant.

2.The plaintiff's daughter filed a Original Matrimonial Suit in O.M.S.No.15 of 2001 seeking divorce on various grounds. The said

Original Matrimonial Suit in O.M.S.No.15 of 2001 is decreed granting divorce on 13.04.2006. The said judgment was challenged by the 1st defendant in O.S.A.No.355 of 2006, which also came to be dismissed on 11.10.2011.

3.It is stated that the appeal preferred before the Hon'ble Supreme Court against the dismissal of O.S.A.No.355 of 2006 was also dismissed confirming the divorce granted. Thereafter, the plaintiff issued a legal notice on 15.02.2012 to the 1st defendant revoking the permission granted to him to reside in the suit property and sought recovery of possession. The 1st defendant had sent a reply notice making a counter claim that his wife has taken nearly 483 sovereigns of gold belonging to him and he seeks a direction to the plaintiff to return the said 483 sovereigns of gold as per the Letter of Undertaking dated 13.09.1996.

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4.Though the defendant had filed a written statement along with the counter claim and issues were framed in the suit, the suit was posted before the learned Additional Master-II for recording evidence.

The plaintiff was examined in chief and she was also cross examined by the learned counsel for the defendants. Subsequently, when the matter was listed before the learned Additional Master-II for defendants side evidence. The 1st defendant filed a proof affidavit but failed to appear for cross examination. Thereafter, the defendant did not appear on several occasions. Hence, the matter was listed before me on 24.1.2018. I had with a view to grant one more opportunity to the defendants, directed him to appear before the learned Additional Master-II on 07.02.2018 to let in evidence.

5. Neither the defendant nor their counsel were present either in the forenoon or afternoon, when the suit was listed before the learned Additional Master-II on 09.02.2018. Hence, the learned Additional Master-II directed the Registry to post the suit before the Court.

6. The learned counsel appearing for the defendants would submit that they are unable to contact the defendants. In such circumstances, I am compelled to proceed with the suit under Order 9 Rule 13 and Order 17 Rule (2) of the Code of Civil Procedure Code. From the

averments in the plaint and evidence of PW-1, it is clear, that the plaintiff is the owner of the suit property and the defendants were permitted to occupy. In fact the defendants accepted the same in written statement and made the counter claim for 483 sovereigns of jewels. He would also claim that he is also entitled to possession till such time the gold jewels are returned. The alleged letter which is referred to counter claim was not produced. Hence, the claim of the defendants is wholly untenable. Therefore, the suit is decreed as prayed for with costs. The counter claim will stand dismissed.

13.03.2018

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Index : No

Internet : Yes

Speaking Order

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List of the witnesses examined on the side of the plaintiff:

PW1 - Thillainayagi

List of Exhibits marked on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>
1.	Ex.P1	The original Sale Deed dated 29.07.1986.
2.	Ex.P2	The photocopy of decree in O.S.No.7790 of 2000.
3.	Ex.P3	The photocopy of decree in OMS No.15 of 2001.
4.	Ex.P4	The original receipt dated 19.12.2007 issued by CMWSSB.
5.	Ex.P5	The original receipt dated 07.04.2011 issued by CMWSSB.
6.	Ex.P6	The original receipt dated 09.04.2011 issued by Corporation of Chennai.
7.	Ex.P7	Photocopy of judgment in O.S.A.No.355 of 2006 dated 11.10.2011.
8.	Ex.P8	Copy of the telegraphic notice dated 08.02.2012.
9.	Ex.P9	Copy of the legal notice dated 15.02.2012.
10.	Ex.P-10	Original reply notice dated 21.02.2012.
11.	Ex.P-11	Copy of the plaint in O.S.No.614 of 2002 dated 27.01.2012.

List of the witnesses examined on the side of the defendants: Nil

List of Exhibits marked on the side of the defendants:

1.	Ex.D-1	Dr.A.Rajasekaran has written in hand in the letter pad dated 11.08.90.
2.	Ex.D-2	PW-1 write a letter to her daughter on 21.09.1994.
3.	Ex.D-3	Copy of the paper publication announcing the marriage between the first defendant and plaintiff's daughter.

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R.SUBRAMANIAN, J.

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