

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 24TH DAY OF FEBRUARY 2020

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.NOs.206 AND 243 OF 2020

IN

C.S.NO.494 OF 2019

A.MICHAEL

S/o.late M.S.Arulanandam,
No.54, Cathedaral Road,
Gopalapuram, Chennai-600 086.

: Plaintiff

Versus

1. A.Pauline Mary

D/o.late M.S.Arulanandam,
Dass Community Centre, No.55,
Cathedral Road, Chennai-600 086.

2. A.Jesudass

S/o.Late M.S.Arulanandam,
Dass Community Centre,
No.55, Cathedaral Road,
Gopalapuram, Chennai-600 086.

: Defendants

A.No.206 of 2020:

1. MRS.THENMOZHI

W/o.late A.Joseph

2. J.ARUL BASKER

S/o.Late A.Joseph

3. J.STEPHEN

S/o.Late A.Joseph

1 to 3 residing at No.7, 7th Street,
Gopalapuram,
Chennai - 600 086.

..Petitioners / Proposed Respondent 3 to 5

-VS-

1. A.MICHAEL

S/o.late M.S.Arulanandam,
No.54, Cathedral Road,
Gopalapuram, Chennai-600 086.

: Respondent/Plaintiff

2. A.Pauline Mary

D/o.late M.S.Arulanandam,
Dass Community Centre, No.55,
Cathedral Road, Chennai-600 086.

3. A.Jesudass

S/o.Late M.S.Arulanandam,
Dass Community Centre,
No.55, Cathedral Road,
Gopalapuram, Chennai-600 086.

: Respondents/Defendants

A.No.206 of 2020:

This application praying that this Hon'ble Court be pleased to implead

1.J.Thenmozhi 2.J.Arul Basker and 3.J.Stephen as proposed third, fourth
and fifth defendants in C.S.No.494 of 2019.

A.No.243 of 2020:

A.AUGISTINE

S/o.Late M.S.Arulanandam,
Dass Colour Lab,
New No.29, Old NO.15,
Prakasam Street,
T.Nagar, Chennai 600 017.

..Petitioners/Proposed Defendant

-VS-

1. A.MICHAEL

S/o.late M.S.Arulanandam,
No.54, Cathedral Road,
Gopalapuram, Chennai-600 086.

: Respondent/Plaintiff

2. A.Pauline Mary

D/o.late M.S.Arulanandam,
Dass Community Centre, No.54,
Cathedral Road, Chennai-600 086.

3. A.Jesudass

S/o.Late M.S.Arulanandam,
Dass Community Centre,
No.54, Cathedral Road,
Gopalapuram, Chennai-600 086.

: Respondents/Defendants

This application praying that this Hon'ble Court be pleased to implead A.Augustine as proposed defendant in C.S.No.494 of 2019.

These Applications coming on this day before this court for hearing the court made the following order:

These applications are filed to implead the applicants in A.No.206 of 2020 and A.No.243 of 2020 as defendants in C.S.No.494 of 2019.

2. I heard the learned counsel for the applicants in the respective applications and the learned counsel for the respondent/plaintiff.

3. The learned counsel for the applicants submitted that an earlier suit for partition was filed by the applicants in A.No.206 of 2020. The suit schedule properties therein include item Nos.1 & 3 of the suit schedule herein which correspond to Schedule G and J, respectively, in the partition suit. Therefore, it is submitted that the said applicants are necessary or proper parties to this suit. As regards the applicant in A.No.243 of 2020, he

No.172 of 2012, which is the subject matter of challenge herein. Therefore, it is contended that he is a necessary or proper party.

4. The learned counsel for the respondent/plaintiff opposed these applications on the basis that the suit filed by the applicant is on the basis of the MoU dated 10.02.2012. In particular, he contended that the MoU reveals that the obligations arising thereunder were contingent on the defendants obtaining a licence from the RBI. In view of the refusal of the RBI to grant the licence, he contended that the settlement deeds dated 17.02.2012 and 27.07.2015 in favour of the second defendant in the suit are liable to be cancelled. The scope of C.S.No.494 of 2019 is confined to the cancellation of the said settlement deeds. Consequently, he contended that the applicants in these two applications are neither necessary nor proper parties.

5. In response to the contention of the learned counsel for the applicants in A.No.206 of 220 to the effect that Item No.1 and Item No.3 of the suit schedule properties are also the suit schedule properties under Schedule-G and Schedule-J respectively in the earlier partition suit, he pointed out that the settlement deeds deal with the respondent/plaintiff's share in the said Schedule-G and Schedule-J properties and not in the share of the parents or the sister. With regard to A.No.243 of 2020, he pointed out that the settlement deed was executed on 17.02.2012, both by the plaintiff in this suit and by his brother, the applicants in A.No.243 of 2020. However,

the subject matter of the present suit is the cancellation of the said settlement deed in respect of Item No.2 of the said settlement deed, which pertains exclusively to the respondent/plaintiff herein and not to his brother Augustine. Therefore, he contended that the said applicant is neither a necessary party nor a proper party to this suit.

6. I considered the submissions of the learned counsel for the respective parties and also examined the records.

7. On perusal of the plaint in C.S.No.587 of 2016, it is clear that it is a suit for partition laid by the applicants in A.No.206 of 2020 against the plaintiff herein and other members of the family. The suit schedule therein consists of several properties, which are described in Schedule A to L therein. It is also clear that item No.1 of the present suit corresponds to Schedule-G therein and Item No.3 correspond to Schedule-J therein. The learned counsel for the respondent/plaintiff contended that although Schedule-G and Schedule-J corresponds to Item Nos.1 and 3 herein, the plaintiffs therein have made a claim to the share of the parents and sister and not to the share of the plaintiff herein. It is not in dispute that the suit schedule property in the partition suit has not been partitioned and the right of the plaintiff herein to particular shares in such undivided property cannot be determined at this juncture.

8. Similarly, as regards the settlement deed dated 17.02.2012, it is admittedly a settlement deed executed not only by the respondent/plaintiff but also by his brother, Augustine, who is the applicant in A.No.243 of 2020. The prayer in the suit is for cancellation of the said settlement deed dated 17.02.2012, which is a registered instrument bearing document No.172 of 2012 on the file of SRO, Triplicane.

9. In these facts and circumstances, I am of the view that the applicants in the respective applications are, at a minimum, proper parties whose presence is necessary for the effective adjudication of all the questions and issues that may arise for consideration in the suit. Consequently, these applications for impleadment are allowed. Therefore, the learned counsel for the plaintiff is directed to carry out the consequential amendment in the plaint within a period of two weeks from the date of receipt of a copy of this order and serve the amended plaint on the other parties within one week thereafter.

WEB COPY

Sd/.S.K.R.J.
24.02.2020

//Certified to be a true copy//

Dated this the day of 2020.

SU/05.03.2020

COURT OFFICER

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