

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 12TH DAY OF FEBRUARY 2020

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.3299 of 2019

in

C.S.NO.605 OF 2008

Mr. A.V.S. Shevaraj
S/o.A.V.Sivasubramaniam,
G-1, Sakthi Towers,
57/1, 8th Cross East Street,
Shenoy Nagar,
Chennai-600 030.Plaintiff

-Versus-

1.Mr. A.N.Dyaneswaran,
S/o. A.P. Namasivayam
New No.14, Old No.26,
10th Street, M Block,
Anna Nagar East,
Chennai-102.

2. Mrs. D.Prema,
D/o. A.V.Sivasubramaniam
W/o. A.N.Dyaneswaran,
M-14, Parijathi 10th Street,
Anna Nagar East,
Chennai-102.

(*) 3. Mrs. Umayal Murugesan,
W/o.Murugesan,
Plot No.57/2, 4th Street,
Lakshmipuram Extn.,
Tambaram West,
Chennai 600 045.

..Defendants

(*) (3rd Defendant impleaded as per Order dated 30.07.2012 in A.Nos.2984,2985/12 and Order dated 14.09.2012 in C.S.No.605/2008)

A.No.3299 of 2019:-

Mrs. Umayal Murugesan,
W/o.Murugesan,
Plot No.57/2, 4th Street,
Lakshmipuram Extension,
Tambaram West,
Chennai 600 045.

..Applicant/Defendant

-Versus-

1.Mr. A.V.S. Shivaraj
S/o.A.V.Sivasubramaniam,
G-1, Sakthi Towers,
57/1, 8th Cross East Street,
Shenoy Nagar,
Chennai-600 030.

...Respondent/Plaintiff

2.Mr. A.N. Dyaneswaran,
S/o. A.P. Namasivayam
New No.14, Old No.26,
10th Street, M Block,
Anna Nagar East,
Chennai-102.

3. Mrs. D.Prema,
D/o. A.V.Sivasubramaniam
W/o. A.N.Dyaneswaran,
M-14, Parijathi 10th Street,
Anna Nagar East,
Chennai-600 102.

..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to permit the Applicant to carry out necessary repair works in the building situated in the suit property and to use the same till the disposal of the suit.

This Application coming on this day before this Court for hearing, the Court made the following Order:-

Instant application is taken out by third defendant in the main suit with a prayer to permit the third defendant to carry out repair works in the suit property and use the same till the disposal of the suit.

2. Sole plaintiff in the main suit is the first respondent in instant application and Defendants 1 / 2 in the main suit are Respondents 2 / 3 respectively in the instant application. Parties in instant application are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3. Third defendant, who has taken out instant application, does not come before this Court and pursue this application. However, this Court deems it appropriate to examine this application on merits and pass orders.

4. Mr. P.J. Sri Ganesh, learned counsel on behalf of plaintiff and Mr. P. Wilson of M/s. A.S. Kailasam & Associates, on behalf of defendants 1 and 2 are before this Court.

5. Read this in conjunction with and in continuation of earlier proceedings made in the main suit dated 28.01.2020, which reads as follows:

'Read this in conjunction with and in continuation of earlier proceedings of this Court dated 20.01.2020. Defendants' draft issues are not before this Court today also. Counsel for defendants 1 and 2 submits that draft issues have been filed vide D.No.663, dated 07.01.2020. Counsel for third defendant submits that he has also filed draft issues vide D.No.41594, dated 19.12.2019.'

Registry to verify and put up the same in the

next listing. List on 04.02.2020.'

6. Pursuant to the aforesaid proceedings, draft issues filed by Defendants 1 and 2 as well as Defendant No.3 have been placed before this Court. After perusing three sets of draft issues filed by plaintiff, defendants 1 and 2 and third defendant, 7 issues have been framed by this Court in the main suit today .

7. The main suit itself is being sent to one of the learned Additional Masters for trial and direction for expeditious trial has been given, fixing 30.04.2020 as outer limit.

8. Suffice to say that Defendants 1 and 2, who are spouses, are plaintiff's brother-in-law and sister respectively.

9. Epicentre of instant lis is a Settlement Deed dated 18.06.2007 executed by first defendant in favour of second defendant. This settlement deed was executed by first defendant on the strength of a Power of Attorney dated 02.01.2006, which has also been put in issue. Pending suit, third defendant purchased suit property from the second defendant and therefore, the third defendant was brought on record vide order dated 30.07.2012 made in A.Nos.2984 and 2985 of 2012.

10. In the light of the advanced stage of the suit and time line for main suit, this Court is left with the considered view that it would be desirable to have the suit expedited rather than taking up this application at this stage.

11. Therefore, instant application is disposed of as closed leaving all the rights and contentions of third defendant open to be canvassed in the main suit.

List this suit before learned Additional Master I on 02.03.2020.

Sd/-M.S.J
12.02.2020

//Certified to be true copy//

Dated this the day of 2020.

JJ 21.02.2020

सत्यमेव जयते

COURT OFFICER(O.S)

From 25.09.2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

WEB COPY