

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A.No.378 of 2018

1.Vasna Soman

2.K.P.Soman

..Appellants/Defendants

Vs.

1.N.K.Mahesh

2.N.K.Dinesh

...1st Respondent/Plaintiff

..2nd Respondent/Defendants

PRAYER : Appeal filed under Order XXXVI Rule 9 of O.S. Rules r/w under Clause 15 of Letters Patent Act against the order dated 16.06.2015 passed in Appl.No.8191 of 2014 in C.S.No.696 of 2005. Appeal No.8191 of 2014 : Application has been filed by the Applicant/Plaintiff under order XIV Rule 8 of Original Side Rules read with Order VI Rule 17 & 151 of CPC, praying to ammend the plaint by including paragraphs 9A to 9C, after Paragraph 9 in the plaint and to add additional prayers in the Plaint.

For Appellants : Mr.Madhan Babu
for Mr.R.Parthasarathy

For Respondents : Mr.M.K.Kabir, Senior Counsel
for Mr.T.Jayaraman &
Ms.M.K.Padma for R1

JUDGMENT

(Delivered by M.M.SUNDRESH, J)

The appellants are the defendants in the suit. The suit has been laid for partition and separate possession. Pending suit, an application for amendment has been filed seeking to challenge the sale effected even prior to the filing of the suit. The said application has been ordered by the learned Single Judge. Challenging the same, the present appeal has been filed.

2. The learned counsel appearing for the appellants submitted that the sale has been effected much prior to the filing of the suit. It was done pursuant to the power of attorney executed by the plaintiffs. The claim itself is barred by limitation insofar as the sale is concerned. It is further

submitted by the learned counsel appearing for the appellants that if the Court is of the view that the order of the learned Single Judge is to be confirmed, the issues will have to be left open.

3. The learned Senior Counsel appearing for the first respondent submitted that the power of attorney has been misused and thereafter the sale has been effected. There is no consideration for the same and the entire document is sham and nominal. The question of limitation will have to be considered at the time of deciding the suit, particularly when specific issue has been framed.

4. We do not find any merit in this appeal. The suit has been filed for partition and separate possession. Admittedly, issues have been framed. One of the issues is with respect to the limitation. The question as to whether there was actually a sale or it is a sham and nominal document is a matter to be adjudicated at the time of trial. Similarly, the question of limitation is also to be decided by the trial Court.

5. In such view of the matter, while dismissing the appeal, we are leaving all the issues open, including the question of limitation. Though the learned Single Judge has stated that the amendment will have effect from the date of filing of the suit, the said finding will not have any bearing on the learned Single Judge while deciding the question of limitation.

6. The Original Side Appeal stands dismissed accordingly. Taking note of the long pendency of the suit, we direct the Additional Master-I to complete the cross-examination of all the witnesses within a period of six weeks from the date of receipt of a copy of this judgment. No Costs. Consequently, connected C.M.P.Nos.16768 & 16769 of 2018 are closed.

Sub Assistant Registrar(C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

The Sub Assistant Registrar, Original Side, High Court, Madras.

+1cc to Mr.R.Parthasarathy, Advocate SR.No.11266

+1cc to Mr.T.Jayaraman, Advocate Sr.No.10539

AKM/16.03.2020 /2P-4C/

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