

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 05TH DAY OF OCTOBER 2020

THE HON'BLE MS. JUSTICE P.T.AHSA

A.Nos.8135 and 8136 of 2019
in
C.S.No.231 of 2004

1.M/s Apex Agencies,
Potti Patti Plaza,
No.35, Nungambakkam High Road,
Nungambakkam,
Chennai - 600034.

2.Smt.P.Gnanamba (Deceased)
W/o Shri P.Obul Reddy,
No.5, 2nd Street,
Subba Rao Avenue,
Nungambakkam,
Chennai - 600 034.
Rep. by her Power of Attorney.

*3.P.Obul Reddy

*4.P.Vijaya Kumar Reddy

*5.P.Dwarakanath Reddy

*6.K.Meenakshi Reddy

*7.E.Vijayalakshmi Reddy

*8.E.Rohini Reddy,
Plaintiff 3 to 8 residing at
No.5/6, Subba Rao Avenue,
2nd Street, Nungambakkam, Chennai.

*(Plaintiff 3 to 8 brought on records
as LR's of the Deceased 2nd Plaintiff
as per order dated 14.09.2009
in Appl.No.4664 of 09)

... Plaintiff

-Versus-

1. M/s Thanthi Trust
(Owners of the Daily Thanthi Tamil News Daily)
No.46, E.V.K.Sampath Salai,
Chennai - 600 007.
Rep. by its Managing Trustee.

2.Chennai Murasu Pvt.Ltd.
Rep. by its Director,
No.66, Anna Salai,
Chennai - 600 002.
(Amendment carried out as per order
Dt.16.07.2010 in A.No.6203 of 2007) ... Defendants

This civil suit praying that this Hon'ble Court be pleased to

(i) For a sum of Rs.2, 44, 91, 565/- (Rupees Two Crores forty four lakhs ninety one thousand five hundred and sixty five only) being the rental arrears due by the Defendants as per the order of the Learned Rent Controller from 28.04.1995 till January, 2004, together with interest at the rate of 18% per annum from the date of the plaint till the date of realisation.

(ii) For the cost of this suit.

A.No.8135 and 8136 of 2019:

1.M/s Apex Agencies,
Potti Patti Plaza,
No.35, Nungambakkam High Road,
Nungambakkam,

Chennai – 600034.
Represented by its Partner

2.Smt.P.Gnanamba (Deceased)
W/o Shri P.Obul Reddy,
No.5, 2nd Street,
Subba Rao Avenue,
Nungambakkam,
Chennai - 600 034.
Rep. by her Power of Attorney
Shri.P.Obul Reddy

3. P.Obul Reddy

4. P.Vijaya Kumar Reddy

5. P.Dwarakanath Reddy

6. K.Meenakshi Reddy

7. E.Vijayalakshmi Reddy

8. E.Rohini Reddy,

3 to 8 residing at
No.5/6, Subba Rao Avenue,
2nd Street, Nungambakkam,
Chennai.

... Applicant/Plaintiff
in both applications

WEB COPY
-Versus-

1. M/s Thanthi Trust
(Owners of the Daily Thanthi Tamil News Daily)
No.46, E.V.K.Sampath Salai,
Chennai - 600 007.
Rep. by its Managing Trustee.

2.Chennai Murasu Pvt.Ltd.
Rep. by its Director,
No.66, Anna Salai, Dinrose Estate,
Chennai - 600 002.

... Respondents/Defendants
in both applications

A.No.8135 of 2019:

Application praying that this Hon'ble Court be pleased to amend the
name of the Plaintiffs in the short and long cause title of the above suit.

M/s Apex Agencies,
Potti Patti Plaza,
No.35, Nungambakkam High Road,
Nungambakkam,
Chennai – 600034.
Represented by its Partner

Smt.P.Gnanamba (Deceased)
W/o Shri P.Obul Reddy,
No.5, 2nd Street,
Subba Rao Avenue,
Nungambakkam,
Chennai - 600 034.
Rep. by her Power of Attorney
Shri.P.Obul Reddy

P.Obul Reddy

P.Vijaya Kumar Reddy

P.Dwarakanath Reddy

K.Meenakshi Reddy

7. E.Vijayalakshmi Reddy

E.Rohini Reddy,

3 to 8 residing at
No.5/6, Subba Rao Avenue,
2nd Street, Nungambakkam, Chennai.

To

1. M/s Apex Agencies,
Potti Patti Plaza,
No.35, Nungambakkam High Road,
Nungambakkam,
Chennai – 600034.
Represented by its Partner

2. P.Dwarakanath Reddy,
residing at
No.5/6, Subba Rao Avenue, 2nd Street,
Nungambakkam, Chennai.
And wherever found in the Plaint in C.S.No.231 of 2004.

A.No.8136 of 2019:

Application praying that this Hon'ble Court be pleased to To delete the name of the Plaintiffs 2 to 4 and 6 to 8 wherever found in the plaint in the C.S.No.231 of 2004.

These Applications and Civil Suit coming on this day before this court for hearing the Court made the following order:

The plaintiffs have moved two applications (a)A.No.8135 of 2019 to amend the name of the plaintiffs in the long and short cause title and (b)A.No.8136 of 2019 to delete the name of the plaintiffs 2 to 4 and 6 to 8 wherever found in the Plaint in C.S.No.231 of 2004.

2.The brief facts which are necessary for disposing of the above application are as follows:

The plaintiffs have filed the suit C.S.No.231 of 2004 for recovery of a sum of Rs.2,44,91,565/- being the rental arrears due by the defendants as per the order of the learned Rent Controller from 28.04.1995 till January 2004 together with interest @18% per annum from the date of the Plaint till the date realization.

3.The suit was originally filed by the Partnership Firm M/s.Apex Agencies represented by its Partners Mr.P.Vijayakumar Reddy and P.Gnanamba, the 2nd plaintiff wife of Mr.P.Obul Reddy. The 2nd plaintiff passed away pending the suit and her husband, the 3rd plaintiff is already on record. Thereafter, the plaintiffs 4 and 8 were brought on record. Likewise, the 3rd plaintiff / P.Obul Reddy also passed away. It is submitted by the learned counsel for the plaintiffs that a Memo was filed to bring on record the defendants 4 to 8 as the legal representatives of the deceased 3rd plaintiff. The parties had gone to trial and when the cross examination of P.W.1 was midway these applications have been moved. The necessity for moving the said applications have been brought out in Paragraphs 4 to 6 which are extracted hereinbelow:

“4.I state that after the demise of the 2nd and 3rd plaintiffs, the plaintiffs 4 to 8 who have inherited the share of the deceased 2nd plaintiff entered into a family settlement among themselves whereby the applicant/4th plaintiff along with applicants/plaintiff 6 to 8 settled the share inherited by them in the property to the 5th plaintiff viz, P.Dwaraknath Reddy. I further state that in view of the above registered settlement, I the 5th plaintiff viz., P.Dwaraknath Reddy became the absolute owner of the share owned by the deceased 2nd plaintiff.

5.I state that after the demise of the 2nd plaintiff, the Partnership Firm also underwent a change and at present Mrs.Suneetha Reddy and Adithya Reddy are the partners of the 1st plaintiff partnership firm.

6.I state that as the I, the applicant/5th plaintiff had become the absolute owner of the shares held by the deceased 2nd plaintiff, the other plaintiffs, viz., plaintiffs 3 to 4 and plaintiffs 6 to 8 are not a necessary party to the above suit,

Hence, forth. Hence, this Hon'ble Court may be pleased to amend the short and long cause title of the above suit by

deleting the names of the plaintiffs 2 to 4 and plaintiffs 6 to 8 and wherever found in the Plaint.”

4.The said applications are opposed by the defendants who have filed a counter affidavit *inter alia* contending that the applications are nothing but an attempt to fill up the *lacunae* as the defendants were able to elicit certain admissions during the cross examinations of P.W.1. In fact the main defence that has been taken out by the respondents/defendants is that the order in the rent control proceedings was not made against the 1st defendant and there was no Landlord-Tenant relationship between the plaintiffs and the 1st respondent and further, the suit was barred by limitation.

5.The respondents/defendants would submit that they were able to further elicit an admission that the Partnership Agreement with reference to the 1st applicant had not been filed and that the Firm was not registered at the time of institution of the suit. The respondents/defendants would state that when the matter was sent back to this Court, the plaintiffs have taken 8 adjournments for cross examination from 11.07.2019 to 30.09.2019 and has come up with these applications.

6.The respondents would submit that the reason given for the amendment was known to the plaintiffs even prior to the amendment being filed by them after the death of the 2nd plaintiff and therefore, in order to overcome the obstacle under Order 6 Rule 17 of the Code of Civil Procedure the applicants have come forward with these applications under order 2 Rule 10(2) of the Original Side Rules which is nothing but an attempt to mislead the Court. The 1st respondent has filed a counter supporting the case of the applicants.

7.Ms.C.S.Kiran, learned counsel for the applicant would submit that no prejudice is going to be caused to the respondents if the applications are allowed as there is no change in the constitution of the 1st plaintiff/applicant.

8.However, when this Court posed a question to the learned counsel as to whether the plaintiffs 4 to 8 were the Partners in the 1st applicant Firm, the learned counsel would respond that they have been impleaded only as the legal representatives of the 2nd plaintiff and the 5th plaintiff has inherited the interest of the 2nd plaintiff and he has been added only as the legal heir of the 2nd plaintiff.

9.Mr.S.Vennimalai, learned counsel appearing on behalf of the respondents would point out the questions which have been asked by the defendants while cross examining the plaintiffs and the answers given which has resulted in filing of the present applications which according to the learned counsel is nothing but an attempt to fill up the lacunae which cannot be permitted to be done as it will cause significant prejudice to the respondents/defendants who have been able to obtain admissions during the cross examination.

10.Heard the learned counsels appearing on either side and perused the material on record.

11.From the perusal of the records, particularly, the copy of the Partnership Deed which the respondents have filed in the typedset of papers and which has not been filed along with the Plaint, it appears that Mrs.Suneetha Reddy had been inducted as Partner on 27.06.1980. Thereafter, Adithya Reddy has been inducted as Partner on 01.01.2011. Therefore, they have been Partners of the Firm and the said Suneetha Reddy has been a Partner when the suit was filed and after demise of Gnanamba, she has not been impleaded as a Partner of the 1st respondent

12.As rightly pointed out by the learned counsel for the respondents/defendants, there is no explanation in the affidavit filed in support of the application as to the reason for the delay.

13.Taking into consideration the fact that the defendants has elicited certain admissions in their favour and the applications are filed to water down these admissions, this Court is not inclined to allow these applications and accordingly, these applications are dismissed.

The parties are directed to appear before the Master for continuation of the cross examination of P.W.1 on 04.11.2020.

Sd/.P.T.A.J.
05.10.2020

//Certified to be a true copy//

Dated this the day of सत्यमेव जयते 2020.

su/03.11.2020

COURT OFFICER(O.S.)

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