

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 12TH DAY OF MARCH 2020

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

A.No.9648 of 2019
in
C.S. No.170 of 2019

G.Muniraj
S/o.C.K.Ganesan,
residing at
Door No.D74, 18th 1st Cross Street,
Periyar Nagar, Chennai-600 082. ... Plaintiff

-Versus-

1.Meganathan,
Old No.1/9, New No.38/157,
Kodambakkam High Road (M.G.R.Salai)
Grama Street,
Nungambakkam, Chennai 600 034.

2.Lakshmi
W/o.Mohan
Old No.1/9, New No.38/157
Kodambakkam High Road, (M.G.R.Salai)
Grama Street,
Nungambakkam, Chennai 600 034. ..Defendants

A.No.9648 of 2019:-

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Old No.1/9, New No.38/157,
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Nungambakkam, Chennai 600 034.

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Old No.1/9, New No.38/157
Kodambakkam High Road, (M.G.R.Salai)
Grama Street,
Nungambakkam, Chennai 600 034.

..Applicants/Defendants

-Versus-

Mr.G.Muniraj
S/o.C.K.Ganesan,
residing at
Door No.D74, 18th 1st Cross Street,
Periyar Nagar,
Chennai-600 082.

...Respondent/ Plaintiff

Application praying that this Hon'ble Court be pleased to permit the applicants/defendants to file additional written statement.

The defendants are the appellants in this application. The said application has been filed to permit the applicants / defendants to file an additional written statement. The facts necessary to dispose of the above application is herein below narrated.

2. The respondent / plaintiff has filed the suit in C.S.No.170 of 2019 to declare his right over the suit schedule property and for a consequential prayer directing the defendants to quit and deliver vacant possession of the same.

3. The plaintiff would contend that a larger extent of the property belonged to his grandfather, one Karuppan. The extent measuring 3420

square feet has been described as A - Schedule property in the plaint. The said Karuppan had died intestate leaving behind him surviving two sons and a daughter, ie., C.K.Ganesan, C.K.Natesan and K.Mumiammal as his legal heirs.

4. On the demise of the said Karuppan, an oral partition was entered into between the two sons and the female heir was left out as it was the custom that the property should devolve only on the male heirs. By reason of this oral partition, C.K.Natesan was entitled to 1649 square feet and C.K.Ganesan to an extent of 1771 square feet. The said Muniammal, the daughter of Karuppan was married and living with her husband. The Husband of the said Muniammal had died in the year 1935 and there upon she claimed a right on 1/3rd share in the A – Schedule property as a legal heir of Karuppan.

5. This was objected to by the plaintiff's father, C.K.Ganesan. In the year 1954, the said Muniammal had filed partition suit in O.S.No.895 of 1954 on the file of the City Civil Court, Chennai against her brothers. The said C.K.Ganesan was arrayed as the 1st defendant and C.K.Natesan as the 2nd defendant. After an elaborate trial, the suit was dismissed stating that the

said Muniammal did not have any right to get any share as per the Hindu

Women's Right to Property Act. By reason of this Judgement and Decree C.K.Ganesan and C.K.Natesan became the absolute owners of their respective shares.

6. After the oral partition, in the meantime the land allotted to the share of C.K.Ganesan has been re-numbered as Survey No.165/1 and the land that fell to the share of C.K.Natesan was allotted Survey No.165/2. The land belonging to C.K.Natesan comprised in Survey No.165/2 measuring an extent of 1649 Square feet was sold to one Samy @ Munusamy in the year 1958. Thereafter, the property was sold to one Saidanibi in the year 1975. However, C.K.Ganesan had not alienated the property allotted to him and the revenue records stands in the name of C.K.Ganesan.

7. The plaintiff's father C.K.Ganesan was living in a portion of the property with his wife and only son, the plaintiff. On 28.11.1957 the plaintiff's father C.K.Ganesan died intestate leaving behind him surviving his wife, Minnal and son, the plaintiff herein as his legal heirs. Since the plaintiff was only 10 years old when his father passed away, his mother left the premises to eke out her livelihood. Later, the plaintiff's mother Minnal

passed away on 13.04.1974 and by reason of this the plaintiff became the

absolute owner of the B – Schedule property. The plaintiff submits that after he got married, he was living at Periyar Nagar with his wife, son and daughter. Since his wife was of a poor health, the plaintiff was unable to come over and inspect the suit property.

8. In the year 2018, the plaintiff came to learn that the defendants have illegally occupied the property. He had personally visited the property and directed the defendants to quit from the property which was refused. On the contrary the plaintiff was threatened and physically harmed by the defendants. The plaintiff would submit that the revenue records still continue to show C.K.Ganesan as the owner of the property. The legal notice was also issued by the plaintiff to the defendants on 12.10.2018, which was received by the defendants on 16.10.2018. However, they had not come forward to submit their reply. Therefore, the plaintiff was left with no other alternative except to file the above suit.

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9. On entering appearance, the defendants had filed a written statement inter alia denying the various averments contained in the plaint and contended that the said Karuppan did not have daughter Muniammal.

On the contrary he had two daughters, namely, Nagapooshanam and Sivakami apart from his sons C.K.Natesan and C.K.Ganesan. The

defendants would further submit that the 1st defendant is the son of C.K.Ganesan and the 2nd defendant is his daughter in law. He denied that the plaintiff was the son of C.K.Ganesan.

10. The defendants would contend that after the demise of C.K.Ganesan, his family as well as his brother's family were residing in the B-Schedule property. The 1st defendant would contend that since he had fallen in the bad times, he was attempting to sell the property to raise funds. For this purpose, he had handed over the entire documents pertaining to the property to brokers. It appears that the plaintiff had approached the 1st defendant for purchasing the B – Schedule property and had obtained the entire documents pertaining to the same. The plaintiff had requested time to purchase the property and therefore the 1st defendant had initially kept quite about the property.

11. The defendants would contend that the plaintiff has nothing to do with the suit property. The plaintiff was attempting to take advantage of the fact that his father was also called Ganesan and utilising the similarity in the name he was attempting to create documents and has come forward to file the present suit.

12. From the records it is seen that the suit is posted for evidence and P.W.1 has been examined in chief and his cross examination has commenced. At this juncture the defendants / applicants have come forward with the present application for permission to file an additional written statement. The affidavit filed in support of the petition is absolutely bereft of details. The only averment found at paragraph no.18 which reads as follows:

“18. We further state that the additional written statement are the essential to place before this Hon'ble Court to defend this case and therefore, we are filling this application to permit us to file additional written statement in this suit.”

13. That apart, a reading of the additional written statement which is now sought to be filed does not contain any new averment which is not found in the original written statement and the additional written statement is nothing but a repetition of the earlier written statement.

14. The applicants have not made out any new case necessitating the filing of an additional written statement. The additional written statement filed along with the instant application is nothing but more or less a repetition of the contentions raised in the original written statement that, the

plaintiff is not the son of C.K.Ganesan and that the records are manipulated. Considering the above circumstances and the fact that no convincing reasons have been given on the side of the applicants for filing the additional written statement the application deserves to be dismissed. Accordingly, the application is dismissed.

Sd./-P.T.A.J
12.03.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 24/03/2020

COURT OFFICER(O.S.)

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