



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 29TH DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE N.SESHASAYEE

A. Nos.350 and 351 of 2021

in

C.S. No.741 of 2016

1. Arun Kapur,
S/o. Late Ved Prakash Kapur,
No. 9-E Ved Nivas,
No. 52, Taylors Road,
Kilpauk,
Chennai – 600 010. ... Plaintiff/Applicant

-Versus-

1. Mr. Anand S. Chabria,
S/o. Mr. Suresh Kumar Chabria,
No. 18, Dr. Muniappa Road,
Kilpauk, Chennai – 600 010.

2. Mr. Rajkumar Jhaver,
S/o. L. Raman Lal,
Flat No. 4A, Fourth Floor,
“Ved Nivas”, Old No. 52, New No. 36,
Taylor's Road,
Kilpauk, Chennai – 600 010 ... Defendants/Respondents

A. No.350 of 2021:-

Application praying that this Hon'ble Court be pleased to;

(i) Permit the applicant/plaintiff to amend the pleadings by adding prayer



15.12.2004, registered as Document No. 2899 of 2004, at the Office of the Registrar of Assurances, Periamet, Chennai, as null and void and not binding on the plaintiff.

(ii) Permit the applicant/plaintiff to amend the pleadings by adding the following as paragraph 11A) after paragraph no.11 in the plaint, “The plaintiff submits that an agreement for sale dated 21.10.2002 was entered into between C.S.V Raman, the plaintiff, Vinay Kumari along with Sukrit Constructions, rep. by its Partners, Rishi Kapur and Sujatha Hariharan in respect of flat '2-E'.

(iii) Permit the applicant/plaintiff to amend the cause of action in paragraph no. 18, page no.6, line no.4, by inserting “when the agreement for sale dated 21.10.2002 was entered into between C.S.V Raman, the plaintiff, Vinay Kumari along with Sukrit Constructions, rep. by its Partners, Rishi Kapur and Sujatha Hariharan.

A. No.351 of 2021:-

Application praying that this Hon'ble Court be pleased to implead C.S.V Raman, the 3rd respondent herein, as the 3rd defendant in this suit.

Reserved on : 07.10.2021
Pronounced on : 29.10.2021

The suit is laid for recovery of possession of the suit property, which as per the description in the ‘B’ schedule to the plaint is an apartment bearing No:4A. The present applications are taken out by the plaintiffs to



implead a certain C.V. Raman and also to amend of the plaint.

2. The attending facts leading upto the institution of the suit as narrated by the counsel for the plaintiff may be now stated:

- A block of land originally belong to a certain Ved Prakash. It was later developed into an apartment complex. Ved Prakash had two sons, Atul Kapur, and Arun Kapur, the plaintiff herein. Ved Prakash's widow is Vinay Kumari. As earlier mentioned, the property was developed into an apartment-complex and it was sold to very many parties. The dispute herein relates to flat no.4A. According to the plaintiff, after the demise of his father, the property devolved on his mother Vinay Kumari, himself, and his brother Atul Kapur, that sometime in 2002, Atul Kapur and Vinay Kumari had released their share in the apartment as well as the unsold undivided share in the land in favour of the plaintiff.
- Subsequently, Atul Kumar laid C.S.No.985 of 2004 against the present plaintiff challenging the very release deed that he had earlier executed. This suit came to be dismissed on 04.03.2016.
- Be that as it may, the plaintiff's son Rishi Kapur had laid O.S.No.4411 of 2005 against the present first defendant to declare



that the sale deed in latter's pertaining to flat no.4A as null and void.

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The said sale deed in favour of the first defendant was executed by a certain C.S.V.Raman on 15.12.2004. * **The Suit was decreed ex-parte on 11.04.2011, which later came to be set aside by another order dated 11.03.2019**

3. After the dismissal of C.S.No.985 of 2004, the plaintiff has laid the present suit for recovery of the property. According to the plaintiff, he became the absolute owner of the property only after the release deed executed by his brother and mother was upheld in C.S.No.985 of 2004. The first defendant is in possession of the property. He contests the suit.

4. The plaintiff has now come forward with the present applications to implead C.S.V.Raman, the vendor of the first defendant, and also for a decree to set aside the sale deed executed by C.S.V.Raman in favour of the first defendant. According to the plaintiff, the property intended to be sold to C.S.V.Raman was Flat no.2E, that C.S.V.Raman did not have any right over the Flat no.4A, and that he had no title in him to sell Flat no.4A to the first defendant on 15.12.2004. He therefore, seeks to set aside the very sale deed in favour of first defendant. Private notices were taken on C.S.V.Raman and they were returned unclaimed.



5. The first defendant has filed the counter. His counsel argued that the relief now sought is to set aside the sale deed dated 15.12.2004 by C.S.V.Raman and it is barred by limitation. Earlier the plaintiff's son Rishi Kapur has laid O.S.No.4411 of 2005 for an identical relief. It is further contended that both the plaintiff and his son live under the same roof, and it is inconceivable that the plaintiff might not be in the know of things as concerning the suit which his son has laid. This apart, given the fact that O.S.No.4411 of 2005 and the present suit are same, this suit may also have to be stayed under Section 10 CPC.

6. The learned counsel for the plaintiff submits that the son and the father are not living under the same roof, and in law both are two different individuals, and that this aspect of the matter is only evidentiary and the contention of the defendant is essentially indifferent.

Discussion & Decision:

7. Plaintiff claims recovery of property based on his title to Flat No:4A. During trial, the initial burden is on him to prove his title to Flat No. 4A, and once he discharges the initial burden, the burden will be on the first defendant to prove how he is entitled to Flat No.4A. He necessarily has to

prove his vendor's (C.S.V.Raman) title to Flat No.4A. If he fails, the



consequence would follow. ***Here it is required to be stated that the**

plaintiff's son had moved the Civil Court in O.S.No.4411 of 2005 and had obtained a decree to set aside the sale deed that Raman had executed in favour of the first defendant through his Power of Attorney.

It is the case of those who sold the property to Raman that they had sold only Flat No:2E to Raman, and not Flat No:4A. If that is so, there is no need for the plaintiff to avoid a sale deed that C.S.V.Raman had executed, more so because he is a stranger to the said sale deed. Therefore, there is no need to implead C.S.V.Raman, nor is there a need to amend the prayer.

8. In conclusion, both the applications are dismissed as unnecessary. No costs.

Sd/-NSSJ
29.10.2021

***Para 2 and Para 7 are corrected as per
order dated 01.02.2022 made in
C.S.No. 741 of 2016**

Sd/- 08.02.2022

ASSISTANT REGISTRAR O.S.II

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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PS 23.11.2021