

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 01st DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.A.Nos.256 & 257 of 2021

in

C.S.No.163 of 2021

1. K.M.Sarala Devi
Wife of late K.T.Murugappan

2. K.M.Saravanan
Son of late K.T.Murugappan

Both are residing Old Door No.7,
New Door No.24, Pillaiyar Koil Street,
Park Town, Chennai 600 003.

.. Applicants/Plaintiffs
(in both Original Applications)

Vs.

S.K.A.Syed Ibrahim
Son of S.K.Abdul Rahim
Old No.22, New No.50
Rajagopalan Street,
Chintadripet, Chennai 600 002.

.. Respondent/Defendant
(in both Original Applications)

O.A.No.256 of 2021

Original Application praying that this Hon'ble Court be pleased to pass an order of Interim Injunction restraining the Respondent/defendant, his men, agents, servants or any other person or persons claiming through him from putting up any construction, repairs or any other activities in the

suit property morefully decribed in the Schedule hereunder pending disposal of the abvoe suit.

O.A.No.257 of 2021

Original Application praying that this Hon'ble Court be pleased to pass an order of Interim Injunction restraining the Respondent/defendant, his men, agents, servants or any other person or persons claiming through him from alienating or encumbering the suit property in any manner more fully decribed in the Schedule hereunder pending disposal of the abvoe suit.

These Original Applications coming on this day before this Court for hearing in the presence of Mr.V.M.Ravishankar Advocate for the Applicant in both Original Applications, and Mr.K.Harishankar, Advocate for the respondent in both Original Applications and upon reading the Judges Summons and the Affidavit of K.M.Saravanan filed in both Original Applications, and the plaint filed herein, and this Court having observed that in so far as the superstructure is concerned, the respondent/defendant is having exclusive right and he can deal with the same and has also got right to let out the superstructure to the prospective tenants and he has also got the right to alienate/encumber the superstructure and the learned counsel for the Applicants/Plaintiffs having made an endorsement seeks permission to withdraw this application in O.A.No.256 of 2021 and this Court doth recording the same,

it is ordered as follows:-

That the respondent/defendant herein be and is hereby directed to deposit the admitted arrears of rent of Rs.200/- per month from 14.08.2008 till December 2021 to the credit of the suit, as a Fixed Deposit in the name of the Registrar General, High Court of Madras, initially for a period of two years, in any of the nationalized banks, within a period of four weeks from the date of receipt of copy of this order.

2. That the Registrar General shall keep the Fixed Deposit receipt in safe custody till the disposal of the suit and the same shall be renewed periodically on its expiry date.

3. That S.K.A.Syed Ibrahim, the Respondent/Defendant in O.A.No.257 of 2021 or his men, agents, servants or any other person or persons claiming through him be and is hereby restrained by an order of interim injunction from alienating or encumbering the suit property is disposed of by granting an order of interim injunction only respect of the land and not in respect of the superstructure.

4. That the Original Application in O.A.No.256 of 2021 be and is hereby dismissed as withdrawn.

Schedule of Property

The entire superstructure in the premises bearing Old Door No.68-D & 69, New Door No.83, Singanna Chetty Street, Chintadripet,

Chennai 600 002 with the super Plinth area of RCC roof measuring 350 sq.feet, ACC roof measuring 260 sq. feet and Mangalore Tile roof measuring 350 sq. feet in the ground floor and 350 sq. feet RCC roof in the first floor and 350 sq. feet ACC roof in the second floor together with the lease hold right in the land belonging to K.T.Murugappan comprised in C.C.No.399, bearing R.S.No.1266 Part, present R.S.No.1266/8 and 1266/9 Part, measuring 1229 sq.feet (as per patta:1395 Sq.Ft) Chintadripet Village, bounded on the

North by : Mahalingam Hotel and Corporation common lane

South by : Girirajan Lodge

East by : Singanna Chetty Street and

West by : Girirajan Lodge

Situated within the Sub Registration District of Periamet and Registration District of Chennai Central.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 01st DAY OF DECEMBER 2021.

Sd./-

ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

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18.12.2021

O.A.Nos.256 & 257 of 2021
in
C.S.No.163 of 2021

ORDER

DATED : 01.12.2021

THE HON'BLE MR. JUSTICE
ABDUL QUDDHOSE

FOR APPROVAL: 03.01.2022

APPROVED ON: 03.01.2022

Copy to:

1. The Registrar General,
High Court, Madras-104.

2. Accounts Section.

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WEDNESDAY, THE 01st DAY OF DECEMBER 2021

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.. Respondent/Defendant
(in both Original Applications)

O.A.No.256 of 2021

Original Application praying that this Hon'ble Court be pleased to
pass an order of Interim Injunction restraining the Respondent/defendant,
his men, agents, servants or any other person or persons claiming through

him from putting up any construction, repairs or any other activities in the suit property morefully decribed in the Schedule hereunder pending disposal of the abvoe suit.

O.A.No.257 of 2021

Original Application praying that this Hon'ble Court be pleased to pass an order of Interim Injunction restraining the Respondent/defendant, his men, agents, servants or any other person or persons claiming through him from alienating or encumbering the suit property in any manner more fully decribed in the Schedule hereunder pending disposal of the abvoe suit.

These original applications coming on this day before this Court for hearing the Court made the following orders:

This suit has been filed for declaration and injunction. The plaintiffs claim ownership of the suit scheduled property based on the partition deed dated 27.06.1979 registered as Document No.781 of 1979. The plaintiffs claim that they are the legal representatives of deceased K.T.Murugappan, who was one of the parties to the partition deed dated 27.06.1979.

2.According to the plaintiffs, the defendants do not have any right over the suit scheduled property. The defendants are only the owners of

superstructure and they do not have any right in respect of the land. However, as seen from the Counter Affidavit filed by the respondent/defendant, he has denied the allegations contained in the plaint as well as the affidavit filed in support of the Interim Applications. According to defendant, he claims right from one Jagadeeswari Ammal and not from the plaintiffs father K.T.Murugappan or from K.T.Chengalvarayan, who were the parties to the partition deed dated 27.06.1979 registered as Document No.781 of 1979.

3.According to the respondent/defendant, there is no privity of contract between the plaintiffs and the respondent/defendant. It is also the case of the respondent/defendant that under the registered sale deed dated 14.09.2008, the lease hold right of the suit scheduled property was transferred in his favour from Jagadeeswari Ammal and not from the applicants/plaintiffs herein.

4.The learned counsel for the applicants/plaintiffs submits that the respondent/defendant has demolished the existing superstructure and is attempting to put up new building which is detrimental to the applicants/plaintiffs who have got absolute right over the suit schedule property as absolute owner. As there are claims and counter claims as seen

from the affidavit, counter affidavit and the plaint, the claim of the applicants cannot be decided at this stage.

5. Admittedly, the respondent/defendant is having a registered sale deed dated 14.08.2008 registered as Document No.1663 of 2008 executed by Jagadeeswari Ammal in his favour. In the aforementioned sale deed, the respondent/defendant got lease hold rights in respect of the land transferred absolutely in his favour from Jagadeeswari Ammal. In the sale deed dated 14.08.2008 registered as Document No.1663 of 2008, the vendor Jagadeeswari Ammal has traced the title to K.T.Chengalvarayan over the land over which the superstructure exists and there is no reference to the name of the father of the plaintiffs, namely K.T.Murugappan, from whom the plaintiffs claim to have inherited the property.

6. However, it is the case of the applicants/plaintiffs that under the partition deed dated 27.06.1979 registered as Document No.781 of 1979 entered into between K.T.Chengalvarayan, K.T.Arumugam and K.T.Murugappan, the suit schedule property was partitioned and under the said partition, all the parties to the partition became the owners as per schedule 'D' mentioned in the said partition deed and they were permitted to enjoy the property equally amongst themselves.

7.It is also the case of the applicants/plaintiffs that by virtue of the Memorandum of Deed dated 12.12.1982, the 'D' schedule property mentioned in the partition deed dated 27.06.1979, registered as Document No.781 of 1979 was allotted to the plaintiffs father, viz., K.T.Murugappan which is however disputed by the respondent/defendant as seen from the counter affidavit filed before this Court.

8.It is also an admitted fact that originally K.T.Chengalvarayan was collecting the rent from Jagadeeswari Ammal, who is the vendor of the respondent vide sale deed dated 14.08.2008. The said K.T.Chengalvarayan is none other than the paternal uncle of the plaintiffs and he was also party to the partition deed dated 27.06.1979, registered as Document No.781 of 1979 entered into between K.T.Chengalvarayan, K.T.Arumugam and K.T.Murugappan. Thus, there seems to be some relationship between the plaintiffs father and the original owner of the property from whom Jagadeeswari Ammal, the vendor of the defendant in the sale deed dated 14.08.2008 had derived title. The said K.T.Chengalvarayan died on 17.10.2006 and his death certificate has also been filed as one of the documents by the plaintiffs.

9.Thus, the facts narrated above would reveal that there are several disputed questions involved in the case and the issue raised by the respective parties can be adjudicated only after trial in the main suit.

10.Further, it is to be noted that there was admittedly a building in the suit schedule property which was enjoyed by the respondent/defendant, subsequent to his purchase under the registered sale deed dated 14.08.2008 from Jagadeeswari Ammal. The respondent/defendant now desires to demolish the superstructure and put up new construction. Whether the construction to be put up by the respondent/defendant is legal or not and whether he has legal right or not can be adjudicated only after trial and not at this stage, as there are several debatable issues involved in the dispute between the parties.

11.It is also an admitted fact that the respondent/defendant has not paid any rent ever since his purchase on 14.08.2008 and therefore, he has to be necessarily put on terms to enable him to put up new construction pending disposal of the suit. According to the learned counsel for the applicants/plaintiffs, the rent for the land paid by Jagadeeswari Ammal to the plaintiffs paternal uncle K.T.Chengalvarayan was Rs.200/- per month. The learned counsel for the respondent/defendant, on instructions from his

client submits that he would deposit the entire arrears of rent before this Court, without prejudice to the rights of the defendant in the main suit. The learned counsel would also undertake that respondent/defendant will not alienate the land in which the building is to be constructed. The said statement made by the learned counsel for the respondent/defendant on instructions is recorded.

12.Since there was an existing building which was under the occupation of the respondent/defendant admittedly, this Court is of the considered view that the respondent/defendant can be permitted to demolish the existing superstructure and put up new construction over the land, pending disposal of the suit. The issue as regards the ownership of the land can be decided only after trial.

13.As per the undertaking given by the respondent/defendant through his counsel, the respondent/defendant is directed to deposit the admitted arrears of rent of Rs.200/- per month from 14.08.2008 till December 2021 to the credit of the suit, as a Fixed Deposit in the name of the Registrar General, High Court of Madras, initially for a period of two years, in any of the nationalized banks, within a period of four weeks from the date of receipt of a copy of this order. The Registrar General shall keep the Fixed Deposit receipt in safe custody till the disposal of the suit and the same shall be renewed periodically on its expiry date.

14. For the foregoing reasons, O.A.No.257 of 2021 filed by the applicants/plaintiffs seeking for interim injunction restraining the respondent/defendant or his men from alienating or encumbering the suit property is disposed of by granting an order of interim injunction only in respect of the land and not in respect of the superstructure. In so far as the superstructure is concerned, the respondent/defendant is having exclusive right and he can deal with the same and has also got right to let out the superstructure to the prospective tenants and he has also got the right to alienate/encumber the superstructure.

15. As far as O.A.No.256 of 2021 is concerned, the learned counsel for the applicants/plaintiffs seeks permission to withdraw the application and he has also made an endorsement to that effect. Recording the same, O.A.No.256 of 2021 is dismissed as withdrawn.

16. The above order is passed without prejudice to the rights and contentions of the respective parties in the main suit.

Sd./- A.Q.J
01.12.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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