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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 10TH DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N.SESHASAYEE

C.S. No. 156 of 2016
and
A.Nos.2722 & 2723 of 2021

C.S. No. 156 of 2016:-

Kokilambal Thanu
W/o. Late N.Thanu
65/2, Luz Church Road
Mylapore, Chennai - 600 004.

...Plaintiff

Vs

1. Mrs. Vasanti Neelakantan
W/o. Late T. Neelakantan
No.24, Gilchrist Avenue
Harrington Road
Chetpet, Chennai - 600 031.

2. Ms. Radha Neelakantan
D/o. late T.Neelakantan
No. 24, Gilchrist Avenue
Harrington Road
Chetpet, Chennai - 600 031

3. Ms. Usha Neelakantan
D/o. late T.Neelakantan
No. 24, Gilchrist Avenue
Harrington Road
Chetpet, Chennai - 600 031

4. Ms. Vidya Neelakantan
D/o. late T.Neelakantan
No. 24, Gilchrist Avenue
Harrington Road
Chetpet, Chennai - 600 031.



5. Brilliant Tutorials

It is rep by Managing Director,
Mr.Vasanthi Neelakandan
No.12, Masilamani St,
T.Nagar, Chennai - 600 017

6. Central Bank of India

Asset Recovery Branch
48/49, Montieth Road
Egmore, Chennai - 600 008
Rep by its Asst General Manager.

7. M/s. Bhoomi & Buildings Pvt. Ltd.

Rep by its Managing Director
Mr.A. Sundar
No.6, Padmanabha Nagar 2nd Street
Adayar, Chennai - 600 020.

8. Mr. Mohammed Zaid

Hamid Building
No.190, Anna Salai Chennai.

...Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a Decree
and judgment in favour of the Plaintiff and against the defendants

a) for a declaration declaring that the Release Deed dated
06.01.2011 registered as Document No. 92 of 2011 on the file of the
Sub-Registrar of Assurances, Periamet as null and void since the same
was registered fraudulently by the 1st Defendant

b) for a declaration declaring that the alleged mortgage dated
26th August 2013 executed by the 1st defendant in favour of the 6th
defendant and registered as Document No.2009/13 on the file of the

Sub-Registrar of Assurances, Thiyagaraya Nagar as null and void



since the registration was done fraudulently

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c) pass a preliminary decree for partition according to Hindu Succession Act embracing all legitimate successors to the estate of Late Mr.Neelakantan and separate possession of the same by metes and bounds or otherwise, in respect of the schedule C,D,E & F of the suit properties.

d) For a declaration declaring that the alleged sale dated 26.07.2012 in respect of the schedule A property executed by the 1st defendant in favour of the 7th defendant registered as Document No.1728 of 2012 as null and void on the file of the Sub-Registrar, non est and not binding on the plaintiff

e) For a declaration declaring that the alleged sale dated 25.06.2012 in respect of the Schedule B property executed by the 1st defendant in favour of the 7th defendant registered as Document No.1476 of 2012 on the file of the Sub-Registrar, as null and void, non est and not binding on the plaintiff

f) For a declaration declaring that the alleged sale dated 16.10.2012 in respect of the schedule G property executed by the 1st defendant in favour of the 8th defendant registered as Document No.5696 of 2012 on the file of the Sub-Registrar as null and void, non est and not binding on the plaintiff



g) For permanent injunction restraining the defendants or their men, agents, servants, or any one acting through from creating any encumbrance over the suit schedule mentioned properties by way of sale, mortgage, lease etc.,

h) to award costs

i) Liberty to be reserved to the plaintiff to apply for final decree for partition.

A.No.2722 of 2021:-

M/s. Bhoomi & Buildings Pvt Ltd.,
Rep by its Managing Director Mr. A.Sundar
6, Padmanabha Nagar, 2nd Street
Adyar, Chennai - 600020

...Applicant/7th Defendant

-versus-

Kokilambal Thanu
w/o Late N.Thanu
65/2 Luz Church Road
Mylapore, Chennai - 600004

...Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to set aside the Order dated 19.02.2021 setting the 7th defendant exparte in the suit and consequently permit the 7th defendant to contest the suit on merits.

A.No. 2723 of 2021:-

Mohammed Zaid
s/o H.Hussain
No.190 Anna Salai
Chennai - 600006

...Applicant/8th Defendant

-versus-

Kokilambal Thanu
w/o Late N.Thanu
65/2 Luz Church Road
Mylapore, Chennai - 600004

...Respondent/Plaintiff



Application praying that this Hon'ble Court be pleased to set aside the Order dated 19.02.2021 setting the 8th defendant exparte in the suit and consequently permit the 8th defendant to contest the suit on merits.

This Civil Suit along with these applications coming on this day before this Court for hearing in the presence of Mr.A.V.Arun, Advocate for the Plaintiff herein in C.S.No.156 of 2016 and for the respondent in A.No.2722 & 2723 of 2021 and Mr.M.L.Ganesh, Advocate for the 6th Defendant in C.S.No.156 of 2016 and Mr.A.Thayaparan, Advocate for the 7th and 8th Defendants in C.S.No.156 of 2016 and upon reading the Plaint filed herein and the Judge's Summons and the affidavit of A.Sundar filed in A. No.2722 of 2021 and the affidavit of H.Mohammed Zaid filed in A. No.2723 of 2021 and the learned Counsel appearing for the plaintiff would submit that there is a certain property, which originally belonged to the husband of the Plaintiff, they had a son, that on his demise the property devolved equally on the plaintiff his widow and his son, that subsequently the son too died and his right devolved again on the son's widow and children as well as the plaintiff, the plaintiff has executed a release deed as concerning her share over the property in favour of her daughter-in-law and grandchildren, that daughter-in-law and the grandchildren have later mortgaged the property to a bank and when the bank initiated action for recovery of the mortgaged money, the suit came to be laid by the plaintiff



challenging the release deed executed by the plaintiff in favour of her daughter-in-law and grandchildren and the learned Counsel further added that the mother in law is now dead and her heirs are the defendants and the learned Counsel for the 6th defendant would submit that the property has already been sold under the SARF AESI Act and it is ordered as follows:-

(i) That the suit in C.S. No.156 of 2016 be and is hereby dismissed as infructuous.

(ii) That the Applications in A. Nos.2722 and 2723 of 2021 do stand closed.

(iii) That there shall be no costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
10th DAY OF AUGUST 2021.

Sd/-

ASSISTANT REGISTRAR(O.S. I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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C.S. No. 156 of 2016
and
A.Nos.2722 & 2723 of 2021

ORDER

DATED : 10.08.2021

THE HON'BLE MR. JUSTICE
N.SESHASAYEE

FOR APPROVAL: 06.12.2021

APPROVED ON : 14.12.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM :

THE HONOURABLE **MR.JUSTICE N.SESHASAYEE**

C.S.No.156 of 2016
& A.Nos.2722 & 2723 of 2021

KokilambalThanu

... Plaintiff

Vs.

- 1.Mrs.Vasanti Neelakantan
- 2.Ms.Radha Neelakantan
- 3.Ms.Usha Neelakantan
- 4.Ms.Vidya Neelakantan

5.Brilliant Tutorials P.Ltd,
It is rep by Managing Director,
Mrs.Vasanti Neelakandan,
No.12, Masilamani Street,
T.Nagar, Chennai - 600 017.

6.Central Bank of India,
Asset Recovery Branch,
48/49, Montieth Road,
Egmore, Chennai - 600 008,
Rep by its Asst. General Manager.

7.M/s.Bhoomi & Buildings Pvt. Ltd.
Rep by its Managing Director,
Mr.A.Sundar,
No.6, Padmanabha Nagar 2nd Street,
Adayar, Chennai - 600 020.

8. Mr. Mohammed Zaid

... Defendants



PRAYER : Civil Suit filed under Order VII Rule I of the Code of Civil Procedure read with Order IV Rule 1 of the Original Side Rules, High Court, Madras:

- a) for a declaration declaring that the Release Deed dated 06.01.2011 registered as Document No.92 of 2011 on the file of the Sub-Registrar of Assurances, Periamet as null and void since the same was registered fraudulently by the 1st Defendant
- b) for a declaration declaring that the alleged mortgage dated 26th August 2013 executed by the 1st defendant in favour of the 6th defendnat and registered as Document No.2009/13 on the file of the Sub-Registrar of Assurances, Thiyagaraya Nagar as null and void since the registration was done fraudulently,
- c) pass a preliminary decree for partition according to Hindu Succession Act embracing all legitimate successors to the estate of Late Mr.Neelakandan and separate possession of the same by metes and bonds or otherwise, in respect of the schedule C,D,E & F of the suit properties.
- d) For a declaration declaring that the alleged sale dated 26.07.2012 in respect of the schedule A property executed by the 1st defendant in favour of the 7th defendant registered as Document No.1728 of 2012 on the file of the Sub-Registrar as null and void, non est and not binding on the plaintiff
- e) For a declaration declaring that the alleged sale dated 25.06.2012 in respect of the Schedule B property executed

by the 1st defendant in favour of the 7th defendant registered as Document No.1476 of 2012 on the file of the Sub-Registrar as null and void, non est and not binding on the plaintiff

- f) For a declaration declaring that the alleged sale dated 16.10.2012 in respect of the schedule G property executed by the 1st defendant in favour of the 8th defendant registered as Document No.5696 of 2012 on the file of the Sub-Registrar as null and void, non est and not binding on the plaintiff
- g) For permanent injunction restraining the defendants or their men, agents, servants, or any one acting through from creating any encumbrance over the suit schedule mentioned properties by way of sale, mortgage, lease etc.,
- h) to award costs and to pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice.
- i) Liberty to reserved to the plaintiff to apply for final decree for partition.

For Plaintiff	: Mr.A.V.Arun
For D6	: Mr.M.L.Ganesh
For D7 & D8	: Mr.A.Thayaparan

JUDGMENT

The Applications in A.Nos.2722 and 2723 of 2021 are filed to set aside the ex-parte order passed against the defendants 7 and 8, since they have not filed their written statement.



2.The learned counsel appearing for the defendants 7 and 8 submitted that the written statement have been filed.

3.Mr.A.V.Arun, the learned counsel appearing for the plaintiff would submit that there is a certain property, which originally belonged to the husband of the plaintiff, that they had a son, that on his demise the property devolved equally on the plaintiff, his widow and his son, that subsequently the son too died and his right devolved again on the son's widow and children as well as the plaintiff, that the plaintiff has executed a release deed as concerning her share over the property in favour of her daughter-in-law and grandchildren, that the daughter-in-law and the grandchildren have later mortgaged the property to a bank and when the bank initiated action for recovery of the mortgaged money, this suit came to be laid by the plaintiff challenging the release deed executed by the plaintiff in favour of her daughter-in-law and grandchildren.

4.The learned counsel further added that the mother in law is now dead and her heirs are the defendants.

5.The learned counsel for the sixth defendant would submit that the



property has already been sold under the SARFAESI Act.

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6. Plainly, nothing survives to be considered in the suit and the same is dismissed as infructuous. Since the suit has been dismissed as infructuous, the Applications in A.Nos.2722 and 2723 of 2021 are closed. No costs.

Sd./-N.S.S.J.

10.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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