

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 02ND DAY OF FEBRUARY 2021

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

A. No.3277 of 2020
in
C.S. No.879 of 2005

U.B.Shanmugam,
S/o.U.Balasundaram,
13A, First Cross,
Srinagar Colony, Kumbakonam.

... Plaintiff

-Versus-

1. S.Sadagopan,
S/o.Srinivasan,

2. R.Malathy,
W/o.Ramanujam,

3. S.Rengarajan,
S/o.Srinivasan,

4. S.Arunprasath,
S/o.Srinivasan,
1 to 4 are at 10,
Sethuram Nagar, Kumbakonam.
Defendants 1 to 4 represent by their
power agent Mr.T.R.Rangachari.

5. T.R.Rangachari,
S/o.Raghavachariar,
25-2/B, Pelathope,
Mylapore, Chennai-4.

(**) 6. N.Nayaneetham, (Deceased)

(*)7.G.Jayakumari,
W/o.Kothandaraman
71-A, Kanmani Nagar,
Seetha Reddy Street,
Kumbakonam 612 001
Tanjore District.

(*)8.G.Krishnamurthy
S/o.Govindarasu
111E, Kallur Village
Kumbakonam Taluk
Tanjore District.

(*)9.V.Umamaheswari
W/o.Venkatesan
234, Kallur Village
Kumbakonam Taluk
Tanjore District.

(*)10.K.Jayasri
W/o.R.Kamalkannan,
424, Sri Iswarya Nagar,
Puliyampettai Village,
Umamaheswarapuram Vattam
Kumbakonam R.M.S.Tanjore District.

(*)Defendants 7 to 10 are impleaded as per order dated 30.03.2012 in
Appl.Nos.914 & 915/2012 and time extended as per order dated
10.10.2018)

(**)11.Thenmozhi
W/o.N.Navaneetham Malavarayuar
45,Main Road, Sakajinaickan Thope,
Perumpandi, Kumbakonam,
(Defendant-11.

..Defendants

(**) (11th Defendant is brought on Record as LR of Deceased 7tyj
Defendant as per order dated 12.03.2020 in Appn.No.394/2020)

A.No.3277 of 2020:

1.G.Jayakumari,
W/o.Kothandaraman
71-A, Kanmani Nagar,
Seetha Reddy Street,
Kumbakonam 612 001
Tanjore District.

2.G.Krishnamurthy
S/o.Govindarasu
111E, Kallur Village
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W/o.R.Kamalkannan,
424, Sri Iswarya Nagar,
Puliyampettai Village,
Umamaheswarapuram Vattam
Kumbakonam R.M.S.Tanjore District. ...Applicants/Defendants 7 to 10

Vs.

1.UB Shanmugam
S/o.UY.Balasundaram
13/A, First Cross, Srinagar Colony,
Kumbakonam

..Respondent/Plaintiff

Application praying that this Hon'ble court be pleased to revoke the
leave granted in Appl.No.4478 of 2005 vide order 05.10.2005.

This application coming on this day before this court for hearing, the Court made the following order:

The above application has been taken out by the newly impleaded defendants to revoke the leave that has been granted in A.No.4478 of 2005 dated 05.10.2005. The respondent has filed the suit C.S.No.879 of 2005 for a specific performance of the Agreement of Sale entered into between him and the 5th respondent who is the Power Agent to the defendants 1 to 4.

2.The case of the plaintiff is that the Agreement of Sale dated 21.10.2003 was entered into at the residence of the 5th defendant in and by which the property situated at Kumbakonam was agreed to be sold by the plaintiff while this Agreement was subsisting the 5th defendant as Power Agent had sold the property to the 6th defendant. Therefore, the respondent had filed the suit for Specific Performance. Since the Agreement was entered at Chennai the plaintiff had filed A.No.4478 of 2005 seeking leave to sue the defendants 1 to 4 and 6 and this Court by order dated 05.10.2005 was also pleased to grant the said leave.

3. Pending the proceedings, the 6th defendant sold the property to the applicants herein despite orders of injunction in O.A.No.976 of 2005. Since there was a disobedience of the order of interim injunction granted by this Court in O.A.No.976 of 2005, the respondent/plaintiff had filed A.No.1466 of 2008 for punishing the respondents. By order dated 03.02.2010, this Court was pleased to order attachment of the schedule of property which has been sold away by the 6th respondent by Sale Deed dated 31.01.2008 until further orders of this Court. This order is still in force. Thereafter, an application was moved for impleading the defendants 7 to 10 and they were brought on record by order dated 30.03.2012 in A.No.914 and 915 of 2012. It is these newly impleaded defendants who have come forward with the above application.

4. The ground on which they seek to have the leave to revoke on the ground that with reference to the very same property, the respondent/plaintiff had filed the suit against the 6th defendant and the 1st defendant herein/7th defendant on the file of the learned I Additional District Munsif, Kumbakonam in O.S.No.117 of 2008 which was dismissed after trial. As against the said Judgment and Decree in

O.S.No.117 of 2008, the respondent herein had filed A.S.No.33 of 2016 which also ended in a dismissal. Therefore, the applicant would contend that the leave granted is without there being any cause of action within the jurisdiction of this Court as the property in question is at Kumbakonam.

5.A counter has been filed denying the contentions put forward in the affidavit filed in support of the applicant. The respondent would contend that the applicants who have been impleaded pursuant to the orders of this Court cannot file an application to revoke the leave. Leave to sue was granted only in respect of the defendants 1 to 4 and 6. As regards the Civil Suit, the respondent would contend that the suit before the learned I Additional District Munsif, Kumbakonam was later in point of time to the suit for specific performance filed by the respondent.

6.The learned counsels appearing on either side made their representation on the basis of the pleadings put forward by them.

7. Heard the learned counsels appearing on either side and perused the papers.

8. The suit filed is one for Specific Performance of Agreement. Admittedly, the Agreement has been executed by the Power Agent of the defendants 1 to 4 and 6 who was residing at Mylapore which is within the jurisdiction of this Court. The suit being one on Agreement the plaintiff/respondent had invoked the jurisdiction of this Court. The suit before the Subordinate Court is one for injunction in respect of the property therefore the suit has been filed in the Court within the whose jurisdiction the schedule property is situated.

9. Therefore, the contention of the applicants that since the suit has been instituted at Kumbakonam there is no cause of action for filing the suit for specific performance before this Court is not sustainable. Further, the suit for Specific Performance has been filed prior to any point of time and that apart, the suit is based on the Agreement which has been executed at Chennai and the entire cause of action for filing the suit arisen within the jurisdiction of this Court.

Therefore, the leave granted in A.No.4478 of 2005 cannot be revoked

and accordingly, this Application is dismissed.

The applicant shall file their Written Statement on or before
22.02.2021. Post this matter on 23.02.2021.

Sd/-P.T.A.J
02.02.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

JJ 18/02/2021

COURT OFFICER(O.S.)

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