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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 15TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.S. No.109 of 2020

and

O.A. No.145 of 2020

and

A. No.1057 of 2020

and

E.P.No.78 of 2018

1. R.S.Mohan,

Flat No.7, Sadguru Apartments,
Next to Vrindhavan Park and
Mahatma Society, Kothrud, Pune – 411 038
Presently residing at,
Flat No.L3, Block No.2,
YS Enclave, Door No.134A,
Arcot Road, Viruguambakkam,
Chennai- 600 092

2. R.S.Sankar,

No.129, Wiltshire lane,
Pinner, Middlesex, United Kingdom, HA5 2NA,
represented by his Power of Attorney Agent R.S.Mohan,
Flat No.7, Sadguru Apartments,
Next to Vrindhavan Park and Mahatma Society,
Kothrud, Pune – 411 038

3. R.S.Ravi alias Rajapalayam Subramaniam Ravi,

No.6/1, Church Road, 1st Cross Street,
Koramangala, 6th Block,
Bangalore – 560 095



4. R.S.Meena alias Meena Varadarajan,
1204, Maple, L&T Eden Park,
M.R.Radha Road,
Siruseri, Kelambakkam – 603 103

5. Sivakama Sundari Viswanathan,
Flat 15, Gemini Court, 852, Brighton Road,
Purely, Surrey, United Kingdom CR8 2FD,
represented by her Power of Attorney Agent R.S.Mohan,
Flat No.7, Sadguru Apartments,
Next to Vrindhavan Park and Mahatma Society,
Kothrud, Pune – 411 038

6. Srikumar Subramanian Viswanathan,
Flat 15, Gemini Court, 852, Brighton Road,
Purely, Surrey, United Kingdom CR8 2FD
represented by his Power of Attorney Agent R.S.Mohan,
Flat No.7, Sadguru Apartments,
Next to Vrindhavan Park and Mahatma Society,
Kothrud, Pune – 411 038

7. Karthik Viswanathan,
19 Kettle Street, Colchester Essex,
United Kingdom, CO4 5US,
represented by his Power of Attorney Agent R.S.Mohan
Flat No.7, Sadguru Apartments,
Next to Vrindhavan Park and Mahatma Society,
Kothrud, Pune – 411 038

8. R.Nalini alias Nalini Rudhra,
Wife of late R.S.Rudhra,
No.6/27, 3rd Cross Street,
Teachers Colony, Jayaram Nagar,
Thiruvannmiyur, Chennai- 600 041

9. R.Anusha alias Anusha Rudhra,
daughter of late R.S.Rudhra,
No.6/27, 3rd Cross Street,
Teachers Colony, Jayaram Nagar,
Thiruvannmiyur, Chennai- 600 041

... Plaintiffs/Applicants



-Versus-

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1. M.S.Ganesh,
Son of M.M.Samy,
502/2, Pantheon Road,
Egmore, Chennai- 600 008
 2. R.S.Jagan,
No.16/76, Spur Tank Road,
Chetput, Chennai-600 031
Presently residing at No.23/15,
D2, Oakwood Apartments,
Anderson Road, Opposite to Sastri Bhavan,
Thousand Lights, Chennai- 600 006
 3. R.S.Manohar,
No.84, Spur Tank Road,
Chetput, Chennai- 600 031
Presently residing at
No.12/84, Second Floor,
Spur Tank Road,
(Mayor Ramanathan Salai)
Chetput, Chennai- 600 031
 4. Mrs.Bhavani,
No.16/76, Spur Tank Road,
Chetput, Chennai- 600 031
Presently residing at
No.23/15, D2, Oakwood Apartments,
Anderson Road, Opposite to Sastri Bhavan,
Thousand Lights, Chennai- 600 006
- ...Defendants/Respondents

Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and decree against the defendants herein:

a. To declare the attachment of the suit property dated 04.02.2019, registered as document No.4 of 2019, in the office of the Sub Registrar,



Periamet, as void ab initio and neither binding on the plaintiffs and third defendant nor on the suit property.

b. To declare the Proclamation No.11 of 2020 in EP No. 78 of 2018 in C.S.No.1033 of 2010, on the file of this Hon'ble Court as illegal, void abinitio and not binding on the plaintiffs as well as on the suit property.

c. Permanent Injunction restraining the First Defendant from interfering with the Plaintiffs right, interest, title, peaceful possession and enjoyment of the Suit Property.

d. To pay the cost of this suit.

O.A. No.145 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of ad interim injunction restraining the 1st respondent/1st defendant, their men, agents, any person claiming through the 1st respondent/1st defendant or on instructions from the 1st respondent/1st defendant from interfering with the petitioner's peaceful possession and enjoyment of the suit schedule property, morefully described in the schedule to judges summons, pending disposal of the above suit.

A. No.1057 of 2020:-

Application praying that this Hon'ble Court be pleased to stay all



further proceedings pursuant to the Order of Attachment dated 04.02.2019 registered as Document No.4 of 2019, in the office of the Sub Registrar, Periamet and Proclamation No.11 of 2020 in E.P.No.78 of 2018 in C.S. No.1033 of 2010 on the file of this Hon'ble Court, pending disposal of the aforesaid suit.

E.P.No.78 of 2018:-

M.S.Ganesh,
S/o M.M.Samy,
No.502/2, Pantheon Road,
Egmore, Chennai 600 008.

... Petitioner /Decree Holder

-Versus-

1.Mr.R.S.Jagan,
S/o Late R.S.Subramanian

2.Mrs.Bhavani,
W/o R.S.Jagan,
No.1 & 2, residing at No.16/76,
Spur Tank Road, Chetpet,
Chennai 600 031.

...Respondents/Judgement Debtors

Execution Petition praying that this Hon'ble Court be pleased to issue warrant for attachment and sale of the immovable property described in the schedule hereto; under Order 21 Rule 54, 64 & 66 CPC r/w Order 39 of O.S.Rules.



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This Civil Suit along with these applications and Execution Petition coming on this day before this court for hearing in the presence of Mr.Kalyan Jhabakh for M/s Surana & Surana, advocates for the plaintiffs in C.S.No.109 of 2020 and for the applicants in O.A.No.145 of 2020 and A.No.1057 of 2020 and Mr.T.M.Hariharan, advocate for the 1st defendant in C.S.No.109 of 2020 and for the 1st respondent in O.A.No.145 of 2020 and A.No.1057 of 2020 and for the decree holder in E.P.No.78 of 2018 and upon reading the plaint filed in C.S.No.109 of 2020 and the petition filed in E.P.No.78 of 2018 and the order dated 23.03.2021 made in O.A.No.145 of 2020 and A.No.1057 of 2020 and the order dated 10.01.2019 made in E.P.No.78 of 2018 and the 1st defendant filed his counter stating that the learned master inadvertently attached the entire schedule mentioned property and the proclamation of sale was also issued for the entire schedule mentioned property instead of the Judgment debtors 1/8th share and this court doth recording the same and in view of the modifications, the order passed by the learned master is not binding on the plaintiffs and nothing survives for further adjudication in this suit as the relief sought for in this suit in C.S.No.109 of 2020 itself is granted and **it is ordered as follows:-**



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That the order dated 10.01.2019 passed in E.P.No.78 of 2018 be and is hereby modified and the attachment of the entire suit schedule property registered as Document No.4 of 2019, in the office of the Sub Registrar, Periamet be and is also hereby modified to the extent of Judgment Debtors 1/8th share alone of the property morefully setout in the schedule hereunder.

2. That the petitioner in E.P.No.78 of 2018, shall proceed with the sale proclamation of the Judgment Debtors 1/8th share in the said property.

3. That the suit in C.S.No.109 of 2020 be and is hereby dismissed as infructuous.

4. That these O.A. No.145 of 2020 and A. No.1057 of 2020 do stand closed.

SCHEDULE

SR No	DESCRIPTION OF PROPERTY	INTEREST OF JUDGEMENT DEBTOR	INCUMBRANCES
1	All that piece and parcel of land and house building bearing Door No.84, Old Door No.45/1A, Spur Tank Road, Chetpet, Chennai 600 031, comprised in parts of R.S.Nos.451/2 & 449/3 of Egmore Revenue Division, admeasuring an extent of 2 grounds and 2112 sq.ft. Or thereabouts and bounded as per previous documents on	1/9 th Undivided share in the schedule mentioned property	- Nil-



SR No	DESCRIPTION OF PROPERTY	INTEREST OF JUDGEMENT DEBTOR	INCUMBRANCES
	the North by House belonging to Chacko, South by Spur Tank Road, East by Dr.TV Naidu Roas, and West by Western Part of Plot Nos.50 & 51 (1/45-B, Spur Tank Road) situate within the registration district of Chennai Central and Sub-registration district of Periamet.		

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR
NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 15th DAY OF MARCH 2022.

Sd/-
ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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11.04.2022

C.S. No.109 of 2020
and
O.A. No.145 of 2020
and
A. No.1057 of 2020
and
E.P.No.78 of 2018

ORDER

DATED : 15.03.2022

THE HON'BLE MR.JUSTICE
P.VELMURUGAN

FOR APPROVAL: 12.04.2022

APPROVED ON : 13.04.2022

Copy to:-

The Sub Registrar,
Sub Registrar Office,
Periamet, Chennai.



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.15.03.2022

CORAM

THE HONOURABLE MR.JUSTICE P. VELMURUGAN

**C.S.No.109 of 2020 &
O.A.No.145 of 2020 &
E.P.No.78 of 2018 &
A.No.1057 of 2020**

1.R.S.Mohan
2.R.S.Sankar
3.R.S.Ravi alias Rajapalayam Subramaniam Ravi
4.R.S.Meena alias Meena Varadarajan
5.Sivakamasundari Viswanathan
6.Srikumar Subramanian Viswanathan
represented by his
Power of Attorney Agent R.S.Mohan
7.Karthik Viswanathan
8.R.Nalini alias Nalini Rudhra
9.R.Anusha alias Anusha Rudhra

... Plaintiffs

VS.

1.M.S.Ganesh
2.R.S.Jagan
3.R.S.Manohar
4.Bhavani

... Defendants

Prayer: Complaint filed under VII Rule 1 CPC r/w Order IV Rule 1 of Original

Side Rules seeking for the following reliefs:

(a) to declare the attachment of the suit property dated 04.02.2019,

<https://hcservices.ecourts.gov.in/hcservices/>

registered as Document No.4 of 2019, in the office of the Sub Registrar,



Periamet, as void ab initio and neither binding on the plaintiffs and Third Defendant nor on the suit property;

(b) To declare the Proclamation No.11 of 2020 in EP.No.78 of 2018 in CS.No.1033 of 2010 on the file of this Court as illegal, void abinitio and not binding on the Plaintiffs as well as on the suit property;

(c) Permanent injunction restraining the First Defendant from interfering with the Plaintiffs right, interest, title, peaceful possession and enjoyment of the suit property; and

(d) to pay cost of this suit.

For Plaintiffs : M/s. Surana and Surana

For Defendant 1 : Mr.T.M.Hariharan

JUDGMENT

CS.No.1033 of 2010 has been decreed in favour of the plaintiff who is the first defendant herein, against the second and fourth defendants herein for a sum of Rs.58,86,986.30 together with interest at 6% per annum from the date of decree till the date of realisation, for which, the first defendant herein filed an execution petition in E.P.No.78 of 2018 for attachment of



dated 10.01.2019, the learned Master attached the entire schedule mentioned property instead of 1/9th undivided share in the schedule mentioned property and the same was recorded in SRO Periamet. Thereafter, the sale proclamation for the entire schedule mentioned property was issued and the public auction scheduled to be held on 05.03.2020.

2. After coming to know about the said public auction, the other share holders of the schedule mentioned property have filed the instant CS.No.109 of 2020 seeking for the following reliefs:

(a) to declare the attachment of the suit property dated 04.02.2019, registered as Document No.4 of 2019, in the office of the Sub Registrar, Periamet, as void ab initio and neither binding on the plaintiffs and Third Defendant nor on the suit property;

(b) To declare the Proclamation No.11 of 2020 in EP.No.78 of 2018 in CS.No.1033 of 2010 on the file of this Court as illegal, void abinitio and not binding on the Plaintiffs as well as on the suit property;

(c) Permanent injunction restraining the First Defendant from interfering with the Plaintiffs right, interest, title, peaceful possession and enjoyment of the suit property; and

(d) to pay cost of this suit.



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3. In the present civil suit, the plaintiffs have stated that the defendants 2 & 4 who are the judgment debtors are entitled for 1/8th share in the schedule mentioned property, after the demise of one R.S.Kanthimathi.

4. The first defendant who is the decree holder has filed his counter in O.A.No.145 of 2020 & A.No.1057 of 2020 in CS.No.109 of 2020 stating that the learned Master inadvertently attached the entire schedule mentioned property and the proclamation of sale was also issued for the entire schedule mentioned property instead of the Judgment debtors' 1/8th share.

5. Recording the same, the judgment debtors' 1/8th share of the schedule mentioned property alone has to be attached and as such, the order of the learned Master dated 10.01.2019 has to be modified to that effect. Accordingly, the order dated 10.01.2019 passed in **E.P.No.78 of 2018** is **modified** and the attachment of the entire suit schedule property registered as Document No.4 of 2019, in the office of the Sub Registrar, Periamet is also modified to the extent of Judgment Debtors' 1/8th share alone of the schedule mentioned property.

6. In view of the above modifications, the order passed by the learned



Master is not binding on the plaintiffs and nothing survives for further adjudication in this suit as the relief sought for in this suit in C.S.No.109 of 2020 itself is granted. Accordingly, **CS.No.109 of 2020 is dismissed as infructuous.** However, the execution petitioner can proceed with the sale proclamation of the Judgment Debtors' 1/8th share. Consequently, **O.A.No.145 of 2020 & A.No.1057 of 2020 are closed.**

Sd./-P.V.J.
15.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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