



O.S.A.No.132 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice D.BHARATHA CHAKRAVARTHY

O.S.A.No.132 of 2022

1.R.Palaniappan
2.C.Kanakasabapathy

.. Appellants

VS

1.M/s.Sri Surya Construction,
Rep. By its Partner,
Mrs.R.Uma, wife of Ravi,
Plot No.3, SRP Colony,
B Flat, Chennai – 600 082.

2.S.Jagadeeswari

3.M.Soundara Rajan (deceased)

4.S.Shanmugasundaram

5.S.Sivasubramaniam

6.S.Somasundaram

7.S.Nandakumar

8.The Sub Registrar
Office of Sembium Sub Registrar,
Sembium,
Chennai – 600 011.

.. Respondents



O.S.A.No.132 of 2022

Appeal filed under Order 36 Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 05.01.2022 made in C.S.No.175 of 2013.

For Appellants : Mr.G.Anbumani

For Respondents : Mr.S.Thiruvengadam
for R1

Mr.S.Nagarajan
for R2, R4 to R7

Mr.B.Tamil Nidhi
Additional Government Pleader
for R8

JUDGMENT

(Delivered by D.BHARATHA CHAKRAVARTHY.,J)

The first respondent in this original side appeal namely, Sri Surya Construction had filed C.S.No.175 of 2013 for specific performance of a sale agreement against the second respondent in this appeal namely S.Jagadeeswari. The said suit remained undefended. Ex-parte evidence was recorded and the matter was taken up for arguments for passing ex-parte decree before learned Single Judge on 05.01.2022.

2. During the course of arguments before the Learned Single Judge, learned counsel appearing for the plaintiff had submitted that



O.S.A.No.132 of 2022

one more civil suit filed by the defendant in C.S.No.175 of 2013, that is, the second respondent in this original side appeal, namely, S.Jagadeeswari, in O.S.No.10885 of 2009 is pending on the file of XII Assistant City Civil Court at Chennai. It was represented that the said suit also is relevant to the subject matter and therefore, the learned Single Judge directed that the said suit be transferred to the file of this Court and to be taken up along with C.S.No.175 of 2013.

3. A perusal of the said plaint in O.S.No.10885 of 2009 reveals that, the said Jagadeeswari, the second respondent in this original side appeal along with her husband had filed the said suit against the appellants in this original side appeal for declaration that the sale deed executed in their favour in respect of the suit property is null and void. It is represented that the said suit is in the stage of arguments. The present suit, namely, C.S.No.175 of 2013 is on the Undefended Board. It is further represented that an application to set aside the ex-parte order is also filed and is pending.

4. After hearing learned counsel for the parties, after considering the above, in our considered opinion unless the said Jagadeeswari contests the said suit in O.S.No.10885 of 2009, the



O.S.A.No.132 of 2022

plaintiff in C.S.No.175 of 2013 namely M/s Sri Surya Construction can do nothing at present in the matter as it is not a party to that suit. No useful purpose will be served by clubbing the said suit with the present suit pending on the file of this Court. This apart, we find that merely on the mentioning of the learned counsel for the plaintiff in C.S.No.175 of 2013, without affording any hearing to the other parties to the suit, the suit has been suo motu transferred and therefore, the same is also not sustainable. We find that C.S.No.175 of 2013 was originally left ex-parte by the sole defendant and now is in the very nascent stage of setting aside ex-parte order, while the trial is complete in O.S.No.10885 of 2009 and is in the stage of arguments. Therefore, in any view of the matter, the order of the learned Single Judge is not sustainable and deserves to be set aside.

5. It is also brought to our notice that pursuant to the order of the learned Single Judge, the said suit in O.S.No.10885 of 2009 on the file of XII Assistant City Civil Court at Chennai, is brought to the file of this Court and is already re-numbered as C.S.No.16 of 2022. Therefore, the said C.S.No.16 of 2022 has to be again sent back to the XII Assistant City Civil Court at Chennai from where the matter can be continued from the stage on which the suit was originally posted,



O.S.A.No.132 of 2022

before the order of transfer.

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6. In the result, the following order is passed:-

- (i) O.S.A.No.132 of 2022 stands allowed.
- (ii) The order of learned Single Judge dated 05.01.2022 in C.S.No.175 of 2013 shall stand set aside;
- (iii) C.S.No.16 of 2022 shall be sent back to the XII Assistant City Civil Court at Chennai and shall be continued and taken up for hearing proceeded further from the stage in which it stood;
- (iv) No costs.
- (v) C.M.P.No.8248 of 2022 is closed.

(P.U., J) (D.B.C., J)
28.10.2022

Index:Yes
ssm/46

To

The Sub-Assistant Registrar,
High Court, Madras.

Page 5 of 6



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O.S.A.No.132 of 2022

PARESH UPADHYAY, J.
and
D.BHARATHA CHAKRAVARTHY, J.

ssm

O.S.A.No.132 of 2022

28.10.2022