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C.S.No.424 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 21.06.2022

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.424 of 2017

1.R.Srinivasan

2.R.Sridhar

3.R.Mangalam (deceased)

4.R.Meenakshi

5.R.Bhavani

6.A.Lakshmi

.. Plaintiffs

Plaintiffs 1 to 6 are represented
by their power of attorney agent
Mr.A.Suryanarayan

(Plaintiffs 1, 2, 4 to 6
are the legal heirs of the
deceased 3rd plaintiff as per
Memo dated 13.03.2020 and the
same has been recorded by this
Court on 01.09.2022)

VS.

S.Vidya

.. Defendant



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Prayer: Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

a) Declaration that the plaintiffs are the absolute owners of the suit property and for consequential recovery of possession, directing the defendant to deliver vacant possession of the suit property to the plaintiffs after removing the lock and key put up by her.

b) costs of the suit;

For Plaintiffs : Mr.M.V.Seshachari

For Defendant : Set Exparte

J U D G M E N T

The suit is filed for declaration that the plaintiffs are the absolute owners of the suit property and for consequential recovery of possession, directing the defendant to deliver vacant possession of the suit property to the plaintiffs after removing the lock and key put up by her and for costs.



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2.The brief facts of the case of the plaintiffs are as follows:

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The plaintiffs are brothers and sisters. The suit schedule property was jointly purchased by the plaintiffs along with their mother Alamelu and sister R.Murali from M/s.Kay Bee Constructions, a partnership firm represented by its partners, as per the registered sale deed dated 27.04.1993, vide doc.No.523 of 1983 on the file of the Sub Registrar, T.Nagar. Earlier, the said partnership firm had earlier purchased the suit property with larger extent from one V.Ashok, as per the registered sale deed dated 16.02.1983 vide doc.No.226 of 1983, SRO,T.Nagar. The plaintiffs' mother Alamelu died intestate on 31.10.1985 leaving behind the plaintiffs and their sister R.Murali as her only legal heirs. Subsequently, the said R.Murali also died intestate as a spinster on 05.03.2012 leaving behind the plaintiffs as her only legal heirs. The plaintiffs were in absolute possession and enjoyment of the suit property. The 6th plaintiff got married in the year 1985 and is living along with her husband at Korattur. The plaintiffs are a Kolkatta based family and the suit property was used for their stay as and when any one of the plaintiffs came to Chennai.



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3. The defendant is the daughter of the 1st plaintiff. In the year 2004, the 1st plaintiff had to shift to Chennai in order to facilitate higher studies and employment of the defendant. Accordingly, the 1st plaintiff was residing in the suit property along with his family from the year 2004 onwards. After completion of studies, the defendant had taken a series of jobs and became financially independent. The defendant had developed a relationship with third person, which was not approved by her parents. When a family property on the outskirts of Kolkata Chandernagore was sold, the defendant demanded a share in the sale proceeds and though she is not entitled for any share, her father had to pay Rs.1,50,000/- to her. The defendant had become occasional visitor only to create trouble to her parents and started abusing them and torturing them to give their property and money to her. Thereafter, she had left from the suit property on 11.01.2017 and stayed with another person. On 02.02.2017, the 1st and 5th plaintiffs had replaced the lock in the suit property to ensure that no unauthorised entry will happen during their absence, as they were leaving to Kolkata in few days for the annual ceremony of their father and they had left to Kolkata on 05.02.2017 leaving one set of keys with the 6th plaintiff, who is staying in Chennai and



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the 5th plaintiff was having another set of keys.

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4. On 08.02.2017, the defendant illegally trespassed into the suit property by breaking open the lock in the front door and replaced with her set of keys, with an intention to prevent the plaintiffs from having access to the suit property. Therefore, the husband of the 6th plaintiff had lodged a complaint against the defendant for illegal house-breaking and criminal trespass. Subsequently, the plaintiffs issued a lawyer's notice to the defendant on 17.02.2017, calling upon the defendant to remove the lock and key placed by her in front door of the suit property flat. After the receipt of said notice, the defendant sent a reply on 24.2.2017. Despite several rejoinder notices exchanged between them, the defendant had failed to comply with the demands of the plaintiffs. Hence the suit.

5. After filing of the written statement by the defendant, issues were framed by this Court. Subsequently, on the side of the plaintiffs, Mr.A.Suryanarayan (husband of the 6th plaintiff), who is the power of attorney agent of the plaintiffs was examined in chief as P.W.1 and Ex.P.1



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to Ex.P.12 were marked. PW1 was also cross examined on the side of the defendant and Ex.D1 was marked through him. Subsequently, the defendant was examined in chief and Ex.D2 to D11 were marked and the case was adjourned for cross examination of DW1 on 23.01.2020. On 23.01.2020, DW2 was cross examined in part and Ex.P13 was marked through him and the case was posted for cross examination of DW1. In spite of several opportunities given to the defendant, the defendant has not appeared before this Court for cross examination. Hence the defendant was set exparte on 27.04.2022.

6. Heard the learned counsel for the plaintiff and perused the records.

7. P.W.1, in his evidence has spoken about the purchase of the suit schedule property by the plaintiffs along with their mother Alamelu and sister Murali. Ex.P1 is the Power of Attorney executed by the plaintiffs in favour of the husband of the 6th plaintiff, viz., A.Suryanarayan. Ex.P2 is the certified copy of parent document. Ex.P.3 Sale Deed has been marked to show that the property has been purchased by the plaintiffs along with their



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mother Alamelu and sister Murali. Ex.P.4 is the death certificate of R.Murali, who is the sister of the plaintiffs. Ex.P5 is the C.S.R for the complaint lodged by the plaintiffs as against the defendant for her illegal act. Ex.P6 is the Lawyer's notice issued by the plaintiffs to the defendant. Ex.P7 is the acknowledgment card. Ex.P8 is the reply issued by the defendant herself. Ex.P9 is the rejoinder notice issued by the plaintiffs. Ex.P10 is the postal cover for proof of delivery. Ex.P11 and Ex.P12 Encumbrance certificates have been filed to show that the suit property stand in the name of the plaintiffs.

8. From the evidence of P.W.1 and the documents filed, it is proved that the suit property is the absolute property of the plaintiffs and that they are in enjoyment and possession over the suit property from the date of purchase. Though the defendant was examined in chief and cross examined in part, she has failed to appear before this Court to establish her case, despite several opportunities were given to her. Therefore, the evidence of P.W.1 and documents filed on behalf of the plaintiffs remain unchallenged and there is no rebuttable evidence against the case of the plaintiffs. Hence,



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the plaintiffs have proved their case.

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9. In the result, the suit is decreed as prayed for with costs.

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Index : Yes/No

Internet : Yes

Speaking/Non-speaking order

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Witnesses examined on the side of the plaintiffs:

P.W.1. - Mr.A.Suryanarayan, Power of Attorney agent of the plaintiffs

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P-1	06.03.2017	Original Power of attorney executed in favour of the 6 th plaintiff's husband.
2.	P-2	16.02.1983	Certified copy of the registered sale deed executed by V.Ashok in favour of M/s.Kay Bee Constructions



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S.No.	Exhibits	Date	Description
3.	P-3	27.04.1983	Certified copy of the registered sale deed executed by M/s.Kay Bee Constructions in favour of the plaintiffs, Alamelu and R.Murali.
4.	P-4	10.04.2012	Online printout of death certificate of R.Murali
5.	P-5	08.02.2017	Original C.S.R issued by the Inspector of Police, T.Nagar Police Station to the 6 th plaintiff.
6.	P-6	17.02.2017	Copy of Laywer's notice sent by the plaintiffs' counsel to the defendant
7.	P-7	22.02.2017	Acknowledgment card
8.	P-8	24.02.2017	Original reply letter sent by the defendant to the plaintiffs' counsel
9.	P.9	07.03.2017	Original Rejoinder notice sent by the plaintiffs' counsel to the defendant with returned cover.
10.	--		Original Postal cover for proof of Delivery on the defendant through courier
11.	P.11	29.03.2017	Original Encumbrance Certificate for the period from 01.01.1983 to 31.12.1986
12.	P.12	24.03.2017	Original Encumbrance Certificate for the period from 01.01.1987 to 22.03.2017.
13.	P.13	10.04.2017	Xerox copy of complaint given by the defendant against the plaintiffs to the Protection Officer, District Social Welfare Department,



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WEB COPY **Witnesses examined on the side of the defendant:**

D.W.1. - Mrs.S.Vidya

Exhibits produced on the side of the defendant:

S.No.	Exhibits	Date	Description
1.	D-1	--	Downloaded copy
2.	D-2	--	Original Photos (8 nos.) of Sridhar, Plaintiff-2 Illegal relationship with Sarada Subarasu, Anitha Subarasu, Sunitha Subarasu.
3.	D-3	18.03.2019	Xerox copy of the Encumbrance certificate for the period from 01.01.1983 to 17.03.2019
4.	D-4	30.12.2016	Xerox copy of D.N.A Certificate
5.	D-5	--	Xerox copy of death certificate of Alamelu Rajagopal.
6.	D-6		Xerox copy of Birth certificate of S.Vidya
7.	D-7	--	Xerox copy of High School Certificate of S.Vidya
8.	D-8	--	False age proof of plaintiffs 2 and 6
9.	D.9	26.04.2018	Xerox copy of the complaint copy to the Police Commissioner.
10.	D10	25.07.2018	Xerox copy of order copy in M.P



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S.No.	Exhibits	Date	Description
			No.4126/2018
11.	D.11	30.01.2019	Xerox copy of the FIR in Cr.No.1/2019.

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