



C.S.No.609 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

**C.S.No.609 of 2017
in A.No.183 of 2020
and O.A.No.755 of 2017**

S.AR.Somasundaram

...Plaintiff

Vs.

1.K.Jamaldeen
2.J.C.Shameem Cassim
3.M.A.Ashraf Ali
4.M.A.Mohamed Yousuf
5.M.A.Naseer Ali
6.M.S.Thamimul Ansari
7.M.M.Mohamed Payazudeen
8.M.A.Abubacker Siddique
9.K.A.Najumunissha Begum
10.D.A.Praveen Banu
11.J.Anver Salman
12.Globus Stores Private Limited,
Rep. By its Managing director,
Mr.S.C.M.Jamaldeen,
No.36, LB Road,
Adyar, Chennai-600 020.

...Defendants



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PRAYER: This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC praying to pass the judgment and decree:-

a) For declaration declaring that the plaintiff is the sole and absolute owner of the property, comprised in T.S.No.2/9, Block No.22, Urur Village, Mylapore-Triplicane Taluk more fully described in the Schedule to the Plaint from the Defendants 1 to 12;

b) Permanent Injunction restraining the Defendants, their men, agent, servant etc. from in any manner alienating the property more fully described in the Schedule to the plaint;

c) Direct the defendants to pay the cost of the suit;

d) Grant such further or other relief or reliefs as this Court may deem fit and proper necessary in the circumstances of the case.

For Plaintiff : M/s.P.Dinesh Kumar

For Defendants : M/s.M.Ajmal Azzath

ORDER

When the matter is taken up for consideration today, the plaintiff in the suit filed an affidavit dated 20.04.2022 seeking leave of this Court to withdraw the suit with liberty to file a fresh suit in the same cause of action in event of his success in Review Application No.97 of 2021.



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2. The plaintiff herein filed a suit for declaration of title based on two sale deeds dated 09.02.2005 and 09.08.2006. Defendants have come up with an application to reject the plaint in A.No.183 of 2020 on the ground that those two sale deeds were declared to be as null and void and non-est in the eye of the law in the judgment and decree passed in O.S.No.8721 of 2010 on the file of the XVIII Additional Judge, City Civil Court, Chennai. The learned counsel also brought to the notice of this Court that the said judgment was confirmed by this Court in A.S.No.876 of 2019 by judgment and decree dated 17.02.2021. Therefore the very base on which the plaintiff has filed this suit has gone. It is stated that the plaintiff already filed Review Application No.97 of 2021 before this Court for review of the judgment passed in A.S.No.876 of 2019 and the same is pending.

3. In the affidavit dated 20.04.2022 the plaintiff has stated that in the event of his success in the review application No.97 of 2021 liberty may be given to the plaintiff to file a fresh suit on same cause of action. In the opinion of this Court, the said liberty is not at all necessary, if review

S.SOUNTHAR, J.

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application No.97 of 2021 is allowed by this Court in favour of the plaintiff, the sale deeds which have been declared as non-est in the eye of law would become revived. It gives a fresh cause of action for the plaintiff to sue based on revived sale deeds. Therefore, in such case, it is always open to the plaintiff to file a fresh suit for the same relief on the basis of the said two sale deeds. In these circumstances the suit is dismissed as withdrawn. Consequently A.No.183 of 2020 and O.A.No.755 of 2017 are closed. No costs.

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Index:Yes/No

Speaking Order: Yes/No

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