



C.S.No.385 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.10.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.385 of 2018

and

A.No.5828 of 2022

1.A.Devakiammal
2.A.Nandakumar
3.A.Sankar
4.Hemalatha
5.Vasanthi
6.S.Nithya
7.K.Selvaraj

.. Plaintiffs

vs.

1.A.Mariappan
2.M.Mallika
3.M.Subramani

.. Defendants

Civil Suit filed under Order VII Rule 1 of CPC and Order IV Rule 1 of Original Side Rules praying for the following judgment and decree against the defendants.

a) Directing the defendants to pay a sum of Rs.1,16,26,000/- [Rupees One Crore Sixteen Lakhs and Twenty Six Thousand only] to the plaintiffs



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along with interest at 18% p.a. from the date of Plaint till date of realization.

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For Plaintiffs : Mr.S.Chankra Baskaran

For Defendants : Mr.R.Radha Pandian

JUDGMENT

The application in A.No.5828 of 2022 has been filed to withdraw the civil suit with liberty to file a fresh suit on the same cause of action before the proper forum. The suit has been originally laid before this Court for recovery of a sum of Rs.1,16,26,000/-.

2. The case of the plaintiffs is that an extent of 1.33 acres has been owned by Arumugam Mudaliar. The Power of Attorney was given in respect of the said land for a plan approval in favour of the first defendant. Based on the said Power of Attorney, an approval has been obtained for an extent of 68 cents. Thereafter, the remaining 65 cents has been transferred in favour of the third defendant by the first defendant. When the plaintiffs came to know about this, there were agreements between the parties which



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were executed on 02.02.2017 and 26.02.2017, wherein the first defendant has agreed to return 35 cents instead of 65 cents. In this regard, the third defendant has also given a Power of Attorney. Thereafter, it appears that the Power of Attorney has been cancelled. Hence, it is the contention of the plaintiffs that the entire transaction is fraudulently done by the defendants, since their property has been utilized, for which the plaintiffs are entitled to claim damage to the tune of Rs.1,16,26,000/-.

3. A counter affidavit has been filed by the first defendant in Application No.5828 of 2022, wherein it is stated that the alleged disputes and transactions happened in the year 1987 and the property, which is involved in the alleged disputes, is situated at Vellanur Village, Ambattur Taluk, Tiruvallur District and thus, this Court has not jurisdiction to decide the case. The only contention raised on behalf of the defendants is that since the plaintiffs were examined in part, the suit cannot now be permitted to be withdrawn. Apart from this, the defendants have not raised any serious objections.



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4. A Perusal of the entire materials and the facts leading to filing of the present application indicate that subject property, which was originally owned by the plaintiffs' father, is now in the hands of the defendants. It is specifically alleged that there was a compromise entered into between the parties in the year 2017 and the defendants themselves have agreed to return 35 cents of land, in respect of which a Power of Attorney has also been executed by the third defendant. However, it came to be cancelled at a later stage in order to defeat the rights of the plaintiffs.

5. Be that as it may, when this Court has examined the nature of cross examination of the plaintiffs, it is seen that the plaintiffs were cross examined only with few questions. A perusal of the said questions would reveal that no right whatsoever has been created in favour of the defendants by way of admission or otherwise. In that view of the matter, in the absence of any right by way of cross examination in favour of the defendants, now the defendants cannot object to the prayer sought for by the plaintiffs in the application for withdrawal of the civil suit with liberty to file a fresh suit.



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6. When the suit itself is with regard to an immovable property which

is situated outside the jurisdiction of this Court, this Court, by considering the nature of the allegations and the nature of immovable property which appears to be in the hands of the others, is inclined to grant liberty to the plaintiffs to withdraw the present suit.

6. In the light of the above observations, the application in A.No.5828 of 2022 is allowed and the plaintiffs are granted permission to withdraw the Civil Suit with liberty to file a fresh suit on the same cause of action before the appropriate forum. Such suit shall be filed by the plaintiffs within a period of two months from the date of receipt of a copy of this order

05.10.2023

Index:Yes/No

Speaking order/Non-speaking order

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