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Application Nos.246 & 247 of 2022
in C.S.No.161 of 2014



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2023

PRONOUNCED ON : 25.07.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application Nos.246 & 247 of 2022
in C.S.No.161 of 2014

V.Suriyakumari (Deceased)
1.M.V.Rajkumar

M.V.Sasikumar (Deceased)
2.M.V.Kalyankumar
3.M.V.Vijayalakshmi
4.M.V.Jeyamalini

...

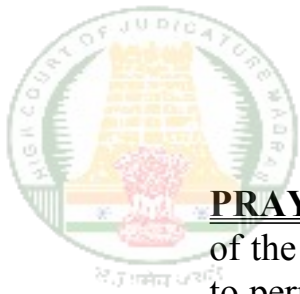
Applicants /
Plaintiffs
[in both Applications]

versus

1.V.Rangarajan
2.V.Uma Ashokan
3.AKS Housing Development Company Pvt. Ltd.,
Rep. by its Managing Director,
Old No.3A, New No.11,
B.N. Road, T.Nagar,
Chennai - 600 017.

...

Respondents /
Defendants
[in both Applications]



PRAYER in A.No.246 of 2022 : Application filed under Order XIV Rule 8 of the O.S. Rules read with Section 151 of Code of Civil Procedure, praying to permit the applicants to pay appropriate Court fee in respect of the reliefs by amending court fee column at para 27 of plaint to include the following “for relief of declaration valued at Rs.5,000/- under Section 25(d) of the Tamil Nadu Court Fee and Suit Valuation Act and pay a sum of Rs.375/-.”

PRAYER in A.No.247 of 2022 : Application filed under Order XIV Rule 8 of Original Side Rules read with Order VI Rule 17 of Code of Civil Procedure read with Section 151 of Code of Civil Procedure, praying to permit the applicants to amend the plaint to include relief “declare that deed of re-conveyance in Document No.697 of 2007 dated 01.02.2007 on the file of the District Registrar, Madras South represents the entire estate of T.M.Visweswaran with 1/3rd share to plaintiffs.”

For Applicants : Mr.S.Ramesh
[in both Applications]
For Respondent No.3 / D-3 : M/s.Ramya Subramanian
[in both Applications]
For Respondent Nos.2 & 3 / D-1&D-2 : Set *Exparte*
[in both Applications]

COMMON ORDER

A.No.246 of 2022 has been filed to amend the plaint for an additional relief along with consequential permission for paying the Additional court Fee; A.No.247 of 2022 has been filed to amend the plaint for an additional relief to declare the deed of re-conveyance in Document No.697 of 2007 dated 01.02.2007 on the file of the District Registrar, Madras South,



represents the entire estate of T.M.Visweswaran with 1/3rd share to plaintiffs.

2. Heard the learned counsels for the applicants / plaintiffs and third respondent / third defendant and perused the materials available on record.

Applications in brief:-

3. The suit is filed for partition; the suit property belonged to the father of the plaintiffs and it was acquired by the Tamil Nadu Housing Board; the father of the plaintiffs challenged the same until his life time; thereafter his son and daughters were contesting the same till Supreme Court but they were unsuccessful; however the son of the original owner, who is the first defendant herein had approached the Tamil Nadu Housing Board under Section 48(b) of the Land Acquisition Act by stating that the land was not used for the purpose for which it was acquired and got a re-conveyance in his favour; the plaintiffs came to know about the above



development only during the pendency of the suit and hence, they have filed these amendment applications to include the above prayers also in the suit.

Counter of the third respondent in brief:-

4. The suit property originally belonged to the father of the first plaintiff by name T.M.Visweswaran and the defendants 1 and 2 and the same was subjected to land acquisition proceedings by way of a notification dated 09.08.1978 issued under Section 4(1) of the Land Acquisition Act, followed by a notification dated 08.08.1981 and the same was challenged by late T.M.Visweswaran by way of filing a Writ Petition; after his death the legal representatives were also contesting the same; however on 04.09.1987, the father of the first plaintiff had executed a Will by bequeathing the suit property and some of the properties in favour of the first defendant; he has also appointed the first defendant as the executor; T.M.Visweswaran died on 10.07.1990; the said Will has been duly probated by way of an order dated 14.07.1993 in O.P.No.812 of 1992; the first plaintiff had filed a consent affidavit for grant of probate and as such the said Will had attained finality and hence there is no question of intestate succession to the suit property.



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4.1. It is true that T.M.Visweswaran had entered into an agreement for sale of the suit property with one Prakash Chettiar and S.M.Shamsuddin on 29.08.1987 for a sale consideration of Rs.4,50,000/-; as per the terms of the said Will, if T.M.Visweswaran is not available for completion of the sale, the first defendant had to act as vendor and complete the sale and take the sale consideration for himself after paying Rs.80,000/- each to the first plaintiff and the second defendant; so as per the wishes of the father of the first plaintiff and the second defendant, the suit property was bequeathed for a sum of Rs.80,000/- each from and out of the sale proceeds derived from the sale of the suit property.

4.2. However the said sale was not completed and the suit filed by Prakash Chettiar and S.M.Shamsuddin in C.S.No.207 of 1992 for specific performance has also got dismissed as 'settled out of Court' on 04.08.1994. Thereafter the first defendant as the sole and absolute owner of the suit property had sold the same in favour of the third defendant on 01.02.2007 through a sale deed for a valuable sale consideration of Rs.50,14,400/-; in



order to fulfill the wishes of his father, the first defendant had paid a sum of Rs.16,00,000/- each to the first plaintiff and the second defendant from and out of the sale consideration; the receipt of the sale consideration has been duly acknowledged by the first plaintiff on 01.02.2007.

4.3. The first plaintiff and the second defendant were keen to get the sale proceeds as per the last Will of their father and the entire legal battle was fought only by the first defendant. It is false to state that the plaintiffs came to know about the third defendant through the re-conveyance deed executed by the Tamil Nadu Housing Board in favour of the first defendant and subsequent sale deed executed by the first defendant in favour of the third defendant. The first defendant had committed fraud and forgery in selling the suit property in favour of the third defendant. The plaintiffs were fully aware of the entire events and they were continuously following the legal proceedings. The frivolous claim made by the plaintiffs was rejected by this Court in W.P.No.26047 of 2013 dated 18.12.2013. So the applications filed by the plaintiffs to amend the suit by seeking additional reliefs cannot be entertained.



Discussion:-

5. The fact that the suit property originally belonged to one T.M.Visweswaran, who is the father of the first plaintiff and the defendants 1 to 3 is not denied. The said property was sought to be acquired by the Tamil Nadu Housing Board and in this connection a notification has also been issued. T.M.Visweswaran was fighting the Notification till the end of his lifetime and thereafter his legal representatives also contested the proceedings.

6. The matter went upto the Hon'ble Supreme Court but the legal representatives of the owner of the property were not successful against the Tamil Nadu Housing Board. However, the property was not utilized for the purpose for which it was acquired at some point of time. The first defendant got the re-conveyance deed in his favour from the Tamil Nadu Housing Board. But now what is claimed by the plaintiffs is that the said re-conveyance deed would represent the interest of the daughters of T.M.Visweswaran and hence the first defendant cannot claim any exclusive



right in the suit property. The third defendant, who is the subsequent purchaser from the first defendant had contested by stating that by virtue of the Will executed by T.M.Visweswaran while he was alive, the son alone got exclusive right and the daughters are entitled only to a portion of the sale proceeds of the suit property.

7. It is further submitted by the learned counsel for the third defendant that the Writ Petition itself has been dismissed and the first plaintiff and her sister second defendant had received their due shares in the suit property and hence they cannot seek any claim over the same. The Writ Petition has been filed challenging the acquisition proceedings initiated by the Tamil Nadu Housing Board and hence the question of title of the applicants could not have been gone into. Further the whole acquisition exercise is proved to be futile in view of the re-conveyance deed executed by the Tamil Nadu Housing Board subsequently.

8. Now the claim raised by the plaintiffs is that they have their share of right in the suit property which originally belonged to their father



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and which was acquired by the Tamil Nadu Housing Board and thereafter re-conveyed. So the contentious issues like how the re-conveyance deed got executed in favour of the first defendant's company and whether such re-conveyance deed can represent the interest of the first plaintiff and the second defendant, can be dealt only after a trial.

9. The learned counsel for the third respondent submitted that the plaintiffs got knowledge about the re-conveyance deed at the time of filing and contesting Writ Petition and hence the claim is barred by limitation. The learned counsel for the applicants submitted that the suit has been filed as early as in the year 2014 and the cause of action relates back to the date of filing of the suit and hence it cannot be claimed by the third respondent that the additional reliefs are barred by limitation.

10. The suit has been filed by the plaintiffs to declare the sale deed executed in favour of the third respondent dated 01.02.2007 as null and void and also for partition. The third defendant claims right over the property



only in pursuant to the sale deed dated 01.02.2007 which is consequent to the deed of re-conveyance executed in favour of the first defendant.

11. The declaratory relief in respect of the sale deed in favour of the third respondent has got an impact on the impugned re-conveyance as well. In other words, the declaratory relief sought with regard to the deed of re-conveyance is consequential to the declaratory relief claimed in respect of the sale deed dated 01.02.2007 executed in favour of the third respondent. In view of the nature of the facts and law involved in this matter, the same can be dealt effectively only after a trial.

12. No prejudice would be caused to the third respondent by allowing the plaintiffs to seek additional reliefs in respect of the re-conveyance deed also and the third defendant can raise all his contentions as his additional written statement subsequent to the amendment. Allowing the amendment for the additional reliefs, by itself will not entitle the plaintiffs' to get his reliefs straight away, unless the plaintiffs prove their entitlement. So it is premature to go into the merits of the reliefs sought by



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the applicants. As the applicants claim the additional reliefs in respect of the re-conveyance deed, they have filed these applications to amend the plaint by including the additional reliefs. Since the suit is still pending, the amendment sought to be made by the plaintiffs can be allowed.

13. In view of the above said reasons, the applications in Application Nos.246 and 247 of 2022 are allowed.

25.07.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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Application Nos.246 & 247 of 2022
in C.S.No.161 of 2014



R.N.MANJULA, J.

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Pre-Delivery Common Order made in
Application Nos.246 & 247 of 2022
in C.S.No.161 of 2014

25.07.2023

[1/2]