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O.S.A.No.20 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

O.S.A.No.20 of 2023

and

C.M.P.No.1308 of 2023

- 1.Vyomesh Bipinchandra Shelat
- 2.Raksha J Goolry
- 3.Chetan Bipinchandra Shelat

Appellants 1 and 2 represented by
Power Agent 3rd appellant
Chetan Bipinchandra Shelat

... Appellants

Vs.

- 1.Vaani Estates Private Limited,
Represented by its Director,
Sasikala Raghupathy,
No.60, Old No.100, 4th Street,
Abhiramapuram, Chennai – 600 018.

- 2.Subashchandra Someshwar Shelat
- 3.Rohit Someshwar Shelat
- 4.Anil Someshwar Shelat
- 5.Harnath Someshwar Shelat
- 6.Indhu Ben V Joshi



O.S.A.No.20 of 2023

WEB COURT

7.Usha Ben G Joshi
8.Manoj J Shelat
9.Yaganesh J Shelat
10.Hitesh J Shelat
11.Harsha M Joshi
12.Meena Joshi
13.Yamini Vasudev Ammasow
14.Harshini Delity
15.M/s.SSPDL Limited,
Represented by its Managing Director,
Prakash Challa,
No.11, 8th Floor, Challa Mall,
Sir Thegayaraya Road,
T.Nagar, Chennai – 600 017.

... Respondents

*[15th defendant was impleaded as per order
dated 06.02.2015 in A.No.244 of 2015]*

Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules against the order and decree dated 06.01.2023 in A.No.4119 of 2021 in C.S.No.236 of 2014 on the file of this Court.

For Appellants	:	Mr.N.L.Rajah Senior Counsel for Mr.B.Hari Krishnan
For R1	:	Mr.P.S.Raman Senior Counsel for Mr.D.Ravichander & Mr.P.Dinesh Kumar
R2 to R14	:	Not ready in notice



O.S.A.No.20 of 2023

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Original Side Appeal is directed against the order of the learned Single Judge dated 06.01.2023 in A.No.4119 of 2021 in C.S.No.236 of 2014.

2.The appellants are the plaintiffs in C.S.No.236 of 2014 filed for partition claiming 1/9th share in the suit properties and for a declaration to declare the sale deed dated 12.12.2013 in favour of the 11th defendant as null and void.

3.It is brought to our notice that, originally, applications were filed in O.A.Nos.281 and 282 of 2014 in C.S.No.236 of 2014 and a learned Single Judge of this Court passed an order dated 28.09.2016 to the effect that the defendants shall not alienate or encumber the schedule mentioned property except Item No.2 of suit Schedule-A. Even though the application in O.A.No.281 of 2014 in C.S.No.236 of 2014 was filed for injunction



O.S.A.No.20 of 2023

restraining the respondents from developing the property, the appellants filed an appeal in O.S.A.No.179 of 2017 as against the order in O.A.No.282 of 2014 in C.S.No.236 of 2014. The Division Bench, based on the undertaking given by the learned counsel for the plaintiffs not to indicate to the Statutory Authorities anything else than what is contained in the order of the learned Single Judge of this Court in Original Applications, disposed of the Appeal with a direction to the appellants to approach the learned Single Judge for variation of the order, if the circumstances so demand.

4. Thereafter, the 11th defendant filed the present application in A.No.4119 of 2021 in C.S.No.236 of 2024 to permit sale of Item No.2 of the suit A-Schedule property in variation of the earlier order dated 28.09.2016 in O.A.No.282 of 2014. The learned Single Judge, considering the facts, came to the conclusion that Item No.2 of suit A-Schedule property is the property of partnership firm. Since the said property has been sold by partners of the firm on behalf of the firm to the 11th defendant, the learned Single Judge held that the 11th defendant can be permitted to sell the suit Item No.2. Since the 11th defendant has purchased the property, the learned Single Judge, in Para



O.S.A.No.20 of 2023

No.23 of the impugned order dated 06.01.2023, held that the 11th defendant has absolute right over 2nd item of suit A-Schedule property and therefore, allowed the application. However, in order to protect the interest of plaintiffs in the event of they succeeding in the suit, the 11th defendant was directed to deposit 10% of the sale consideration of the property in the Court till the disposal of the suit.

5. Aggrieved by the findings of the learned Single Judge, the above Original Side Appeal is preferred by the plaintiffs.

6. From the very fact that the learned Single Judge has directed the 11th defendant to deposit 10% of the sale consideration, this Court is of the view that the observation of the learned Judge that the 11th defendant has absolute right to deal with 2nd item of suit A-Schedule, is subject to the outcome of the suit. Therefore, it is made clear that the finding in Para No.23 of the impugned order is only for the purpose of interim order and therefore, the suit shall be disposed of uninfluenced by any of the observations made by the learned Single Judge in Para No.23 of the order impugned in this Appeal.



O.S.A.No.20 of 2023

Section 52 of the Transfer of Property Act also protects the interest of the plaintiffs. Therefore, any alienation will be subject to the outcome of the suit and therefore, the alienations, if any, by the 11th defendant, will not bind the plaintiffs when they get appropriate relief at the time of final judgment in the suit in C.S.No.236 of 2014. In order to protect the interest of anyone who comes forward to purchase the property during the pendency of the suit, this Court directs the respondents to specifically refer to the pendency of the suit in C.S.No.236 of 2014 in the document of conveyance.

7. Accordingly, this Original Side Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (A.D.M.C., J.)
14.10.2024

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Index : Yes / No

Neutral Citation : Yes / No

S.S. SUNDAR, J.



WEB COPY



O.S.A.No.20 of 2023

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O.S.A.No.20 of 2023

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