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O.S.A. No.158 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

O.S.A.No.158 of 2023
and
C.M.P.No.19829 of 2023

- 1.Sambath Kumar
- 2.Narayanan
- 3.Pradeep Kumar
- 4.Selvdurai
- 5.Nirmal
- 6.R.Rama Krishnan
- 7.A.Vijaya Kumar
- 8.Munuswamy
- 9.A.Baskar
- 10.D.Lokesh
- 11.K.Prakash

.. Appellants

VS.

- 1.Prabhu Ramakrishnan
- 2.P.Vishal
- 3.Shyam Kumar Shrivastava (Died)
- 4.Ram Kumar Shrivastava



Sanjay Kumar Shrivastava (Deceased)

5.Anita Shrivastava

6.Sangeeta Setpal

7.Rashmi Khare

8.Keerthi Shrivastava

9.Vijay Kumar Verma

10.Ajay Kumar Verma

11.Neeta Shrivastava

12.Sub Registrar,
Red Hills, Chennai – 52.

13.A.K.Nageswara Rao

14.Meeta Shrivastava

15.Harsh Shrivastava

16.Harshita Shrivastava

[Respondents 14 to 16 brought on record as legal heirs of the deceased 3rd respondent vide order of Court dated 07.08.2024 made in CMP.Nos.9427, 9433, 9437 of 2024]

.. Respondents

Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 11 of the Original Side Rules read with Rule 15 of the Letters Patent, against the Judgment and Decree passed in Application No.2792/2020 in C.S.No.321 of 2019 dated 21.03.2022 on the file of this



For Appellants :: Mr.A.Palaniappan

For Respondents :: Mr.S.Pugalenthil for R1 and R2

R3 – No such person

Mrs.R.Anitha,

Special Government Pleader for R12

Mr.Shanmugam.SA for R4 to 11, 14 to 16

J U D G M E N T

(Judgment of the Court was made by S.S.SUNDAR,J.)

This original side appeal is directed against the order dated 21.03.2022 made in A.No.2792 of 2020 in C.S.No.321 of 2019.

2. The appellants herein are the defendants 11 to 21 in the suit in C.S.No.321 of 2019. The respondents 1 and 2 herein, filed the suit in C.S.No.321 of 2019 for partition and separate possession of the 1st plaintiff's 19/24th share in the item Nos.1 and 2 of the suit schedule properties, for partition to allot 1/24th share in favour of the 2nd plaintiff in respect of item Nos.1 and 2 of the suit schedule properties and for a declaration that the sale deeds executed by other sharers in favour of other defendants are null and void.



3. The suit was contested by the appellants on various grounds questioning the quantum of share to which the plaintiffs are entitled to.

During the pendency of the suit, the appellants filed an application in A.No.2792 of 2020 to strike off specific pleadings found in the plaint in C.S.No.321 of 2019.

4. From the reading of the affidavit filed in support of the application and the prayer, this Court is able to see that the substantial portion of the plaint averments are sought to be struck off. The learned Judge observed that at the time of deciding an application under Order VI Rule 16 of the Code of Civil Procedure, the Court has to see only the averments in the plaint and the pleadings cannot be struck off on the basis of the defence that is raised in the written statement. The learned Judge also found that the application is devoid of any *bona fides* or merits.

5. The learned counsel appearing for the appellants now states that the appeal can be dismissed however with a direction to the Hon'ble trial Judge to dispose of the suit as expeditiously as possible within a time stipulated by this Court and with a liberty reserved to the appellants to raise



all their contentions in the suit itself at the time of trial.

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6. The learned counsel appearing for the contesting respondents has no objection for this course.

7. Hence, this appeal is dismissed, however liberty is granted to the appellants to raise all their objections with regard to maintainability of the plaintiffs' claim or about the quantum of shares during the trial of the suit. Since the suit itself is pending from the year 2019, depending upon the order of seniority and other priorities, the Hon'ble Judge dealing with original side suits is requested to expedite the trial and dispose of the suit as expeditiously as possible. Both the parties have undertaken to cooperate with the trial of the suit. Hence, when the matter is listed for trial, both the parties shall not take any unnecessary adjournments. No costs. Consequently, the connected miscellaneous petition is closed.

(S.S.S.R., J.) (K.R.S., J.)
19.08.2024

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Neutral Citation : Yes/No

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