



C.M.A.(MD.No.618 of 2018

WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 28.06.2024**

**CORAM**

**JUSTICE N. SESHASAYEE**

**and**

**JUSTICE L.VICTORIA GOWRI**

C.M.A.(MD) No.618 of 2018

and

C.M.P.(MD).No.7197 of 2018

1.P.Kandasamy  
2.K.Banumathy  
3.M.Thangavel  
4.T.Geetha

... Appellants / Petitioners / Plaintiffs

**Vs**

1.P.Muthusamy  
2.P.Sellammal  
3.M.Logambal  
4.M.Sureshkumar  
5.M.Vijayakumar  
6.P.Meenakshi  
7.S.Indumathi

... Respondents/Respondents /Defendants



C.M.A.(MD.No.618 of 2018)

Prayer: Appeal filed under Section 19 of Family Court Act to set aside the fair and decreetal order dated 06.07.2017 passed in I.A.No.26 of 2017 in O.S.No. 31 of 2017 on the file of the Additional District Judge / Fast Track Mahila Court, Karur.

|                |   |                                                     |
|----------------|---|-----------------------------------------------------|
| For Appellants | : | Mrs.N.Krishnaveni                                   |
| For R-1        | : | Mr.V.R.Shanmuganathan,<br>for Mr.P.Athimoolapandian |
| For R-2 to R-7 | : | Mr.S.Srinivasa Raghavan                             |

### ORDER

(Order of the Court was delivered by N.SESHASAYEE, J.)

The present Appeal is preferred challenging an order passed by the learned Additional District Judge (FTC), Mahila Court, Karur, in I.A.No.26 of 2017 in O.S.No.31 of 2017, dated 06.07.2017, dismissing an application filed by the plaintiffs for an order of interim injunction to protect their possession of the suit property.

2. The facts are as below:



C.M.A.(MD.No.618 of 2018)

WEB COPY

- The plaintiffs and the 8<sup>th</sup> defendant were part owners of the three items of the suit properties with a combined total extent of 8,953 square feet.

The total shares are described as below:

| Name of the members of the family | Item 1 | Item 2 | Item 3 |
|-----------------------------------|--------|--------|--------|
| First Plaintiff / P.Kandasamy     | 2/5    | 2/5    | 1/4    |
| Second Plaintiff / K.Banumathy    | -      | -      | 1/4    |
| Third Plaintiff / M.Thangavel     | 1/5    | 1/5    | -      |
| Fourth Plaintiff / T.Geetha       | -      | -      | 1/4    |
| Eighth Defendant / R.Arumugam     | 1/5    | 1/5    | -      |
| Ninth Defendant / Eswari          | -      | -      | 1/4    |

To sum up, the first plaintiff and eighth defendant jointly owned 3/5<sup>th</sup> share in Items 1 and 2. The second plaintiff, fourth plaintiff and the ninth defendant jointly owned 3/4<sup>th</sup> share. The 1<sup>st</sup> plaintiff, 2<sup>nd</sup> plaintiff, 4<sup>th</sup> plaintiff together were entitled to 3/4<sup>th</sup> share in the third item, and the 9<sup>th</sup> defendant owned 1/4<sup>th</sup> in the third item. (The shares of



C.M.A.(MD.No.618 of 2018

WEB COPY

various parties is not conclusive and it requires a certain degree of reconciliation, but it is not of any significance in the context of the outcome of this order)

- On 19.10.2015, all the co-owners of this plot of land except the eighth defendant, joined to execute a power of attorney dated 19.10.2015 in favour of the first defendant. The 8<sup>th</sup> defendant executed a separate power of attorney dated 23.10.2015 in favour of the first defendant as regards his share in the property.
- On the strength of these power of attorney documents, the first defendant had sold the property to defendant Nos.2 to 7, who as among themselves are close relatives.
- Besides those who had executed the power of attorney in favour of the first defendant, there is yet another fractional sharer. She was Radha, and the defendant Nos.2 to 7 had purchased her share directly from her. With this purchase, the defendant 2 to 7 had purchased their entire three items of the suit properties.



C.M.A.(MD.No.618 of 2018

WEB COPY

3. Another fact now requires to be introduced. Few years prior to the above referred to sale of the suit properties in favour of defendants 2 to 7, plaintiffs 1, 3, 8<sup>th</sup> defendant and Radha had constituted themselves into a partnership firm under a registered partnership deed, dated 10.07.2009 under the name and style “*Adhithya Uyar Thara Saiva Unavagam*” . Radha had since passed away and on her demise, the partnership was stated to had been reconstituted on 27.11.2012 with her children being admitted to the firm. The partnership again underwent another reconstitution when the 4<sup>th</sup> plaintiff was also admitted as a partner. As of today, the plaintiff Nos.1, 3, 4, 8 and the children of the said Radha are the partnership firm.

4. The business of the firm is to engage in a hotel business. On 11.08.2009, the co-sharers of the property joined to execute a lease of the suit properties vide a registered lease deed, dated 11.08.2009 in favour of the aforesaid partnership firm. The lease is stated to be of the vacant site. Thereafter, the firm proceeded to construct a hotel and the business is stated to have commenced without any loss of time.



C.M.A.(MD.No.618 of 2018

WEB COPY

5.1 This is the setting. The case of the plaintiffs is as follows: Under the power of attorney which parties herein had executed in favour of the first defendant, the latter was authorized to sell the fractional shares the parties had over the vacant site, but the first defendant had sold not only the site, but also the building that stands there to the defendants 2 to 7. This meant that the 1<sup>st</sup> defendant had acted in excess of the authority granted to him under the deed of power of attorney.

5.2 It is in these circumstances, the plaintiffs had moved the Additional District Court, Karur, with a suit for declaration that the sale deeds which the first defendant had executed in favour of Defendant Nos.2 to 7 jointly or severally, as a case may be, as null and void. Along with the suit, the plaintiffs had taken out I.A.No.26 of 2017 for an order of interim injunction seeking to restrain defendant Nos.2 to 7 and their men from interfering with the peaceful possession and enjoyment of the building in the suit properties. This application for interim injunction came to be dismissed by the learned



C.M.A.(MD.No.618 of 2018)

Additional District Judge on the ground that inasmuch as the defendant Nos.2 to 7 are co-owners of the suit properties, a prayer for interim injunction cannot be maintained. The learned Additional District Judge had also proceeded to state that even in the eventuality of plaintiffs succeeding in the suit 1/5<sup>th</sup> share that belonged to Radha which defendant Nos.2 to 7 had purchased will not be vitiated and necessarily these defendants must be treated as co-owners.

6. Heard Ms.N.Krishnaveni, learned Senior counsel appearing for the appellants, Mr.V.R.Shanmuganathan, learned counsel for Mr.P.Athimoolapandian, learned counsel appearing for the first respondent and Mr.S.Srinivasa Raghavan, learned counsel appearing for respondent Nos. 2 to 7. Ms.N.Krishnaveni, learned Senior counsel appearing for the appellants / plaintiffs submitted :

- a) that the learned District Judge has not considered that the authority has been granted by plaintiff Nos.1 to 4 and the 8<sup>th</sup> defendant was only for the sale of their combined fractional share in the three items of the suit



C.M.A.(MD.No.618 of 2018)

WEB COPY

properties and not of any building therein. The hotel-building in the suit properties is the exclusive property of the partnership firm, viz., Adhithya Uyar Thara Saiva Unavagam. Therefore, to sell the building in the suit property is a clear act in excess of the authority of the power of attorney. This apart, the suit properties have been under a lease to the firm. A lease is a derivative right that gets derived from the right of ownership, and the lessor or his successor-in-interest can enter possession only after due termination of the lease. Therefore, notwithstanding the sale of the site, the leasehold right which the firm had acquired over the suit properties, and also right of ownership the firm has over the hotel-building continues with the firm.

- b) So far as the finding of the Court that defendant Nos.2 to 7 are the co-owners of the properties is concerned, it is settled law that no third party co-owner will be entitled to joint possession of the property and his right is only to seek partition. So far as the present case is concerned, inasmuch as defendant Nos.2 to 7 have purchased the site



C.M.A.(MD.No.618 of 2018)

WEB COPY

wholly, if at all they have to enter possession, they could do only after due termination of lease in a manner known to law.

- c) The purchaser of the site cannot stay claim to the building. Now, with a question whether the first defendant had the authority to deal with the building which belonged to the firm is questioned in the suit, it is only appropriate that the plaintiffs' right to the building in a property is protected and preserved.
- d) The first defendant contends that before the execution of sale deeds in favour of defendant Nos.2 to 7, the plaintiffs had executed a lease of the suit properties along with the building. This document is disputed by the plaintiffs as a piece of fabrication. This apart, what the trial court had omitted to note was that even if it were to be presumed that the document relied on by the first defendant was genuine, a fact which could be tested only during trial of the suit, there still exists an impossibility of the plaintiffs executing a lease deed in favour of the first defendant even during the subsistence of the lease in favour of the firm. And, this lease in favour of the first defendant can never include



C.M.A.(MD.No.618 of 2018

WEB COPY

the hotel-building since the plaintiffs or the 8<sup>th</sup> defendant or Radha are the owners of the said building.

7. The counsel for the respondents 2 to 7 essentially contended that these defendants had already taken possession, a fact the counsel for the appellants did not dispute. She however, hastened to add that these defendants had taken forcible possession of the suit properties during the pendency of the suit. As to be expected, the counsel for the defendants 1 to 7 disputed it.

8. Rival submissions are carefully considered. This case raises a subtle issue on right to property. In law, the right over the land and the right over a building that stands on the land can vest in two different persons or entities. Jurisprudentially a lease is a derivative right which cannot be destroyed except in a manner known to law. Therefore, when the right of ownership of a property under a lease is transferred, what in essence was transferred was the right which the vendor has over the property as the lessor. Therefore, transfer of ownership cannot affect the leasehold right created in favour of



C.M.A.(MD.No.618 of 2018

the lessee. This is too fundamental a principle and does not require any elaboration. Secondly, the same set of persons can assume two different status in law and hold the property in different capacity. Whereas an individual or a group of individuals cannot be his or their own lessee, but the same is not true, if they assume different legal status, such as a company or a firm.

9. Having stated thus, this court still does not consider it necessary to examine this appeal on the touchstone of these jurisprudential principles, since the defendants 2 to 7 had already entered possession of the suit properties including the hotel-building standing on it. Here, the foundational fact on the basis of which these defendants claim legitimacy to they entering possession, along with the authority of the first defendant to deal with the hotel-building in the suit property have to be tested only during trial. But the fact remains that the defendants 2 to 7 are in possession of the suit properties including the hotel-building anywhere between 6 to 8 years.



C.M.A.(MD.No.618 of 2018)

WEB COPY

10. Ideally, this Court deems it appropriate to refrain from examining the merit of the order now impugned before it, and to confirm the same and relegate the parties to test their rival contentions during trial. All the issues are now left open for the trial Court to decide. Since the suit is now seven years old, the learned Additional District Judge (FTC) Mahila Court, Karur is required to commence the trial on **08.07.2024** and dispose of the suit within a period of three months. Both sides are required to participate in the trial with utmost seriousness and the trial Court is directed not to grant unnecessary adjournments.

11. The Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) (L.V.G., J.)  
**28.06.2024**

NCC : Yes/No

Index : Yes/No

Internet : Yes

TSG

**Note:** Registry is directed to upload the order in the official web-site on 05.07.2024 itself.



C.M.A.(MD.No.618 of 2018

WEB COPY

To

- 1.The Additional District Judge,  
Fast Track Mahila Court, Karur.
- 2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



C.M.A.(MD.No.618 of 2018

**N. SESHASAYEE, J.**  
**and**  
**L.VICTORIA GOWRI, J.**

TSG

**C.M.A.(MD).No.618 of 2018**

**28.06.2024**