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**Order reserved on
30.09.2024**

**Order pronounced on
10.01.2025**

O.A.No.609 of 2024
in
C.S.No.134 of 2024

RMT.TEEKAA RAMAN, J.

The plaintiff is the applicant herein.

2. The plaintiff filed the above suit in C.S.No.134 of 2024 seeking the relief of declaration of his title in respect of item Nos.1&2 of the suit schedule property and for permanent injunction restraining the defendants 1 to 3 from alienating any encumbrance and for permanent injunction restraining the defendants 1 to 3 in respect of the item Nos.5 &6 of the suit schedule property; for mandatory injunction in respect of the items 1, 2, 3 and 4; further sought the declaration to declare the settlement deed dated 16.02.2017 in respect of item Nos.7 to 8 and also similar prayer in respect of settlement deed dated 28.10.2010 in respect of item No.9.

3. The plaint proceeds on the basis that he had purchased the



property in the name of the son and daughter and his wife and now at his old age, they have ditched him and hence he filed the suit. Pending suit, he has also filed O.A.No.609 of 2024 for injunction in respect of the item No.5 of the suit schedule property.

4.Adjudication paper reveals that initially the plaintiff/applicant also moved O.A for similar relief in O.A.No.416 of 2024 in respect of item No.4 and for 4 applications for interim direction in A.Nos.2923, 2924, 2925 & 2926 of 2024 in respect of item Nos.1 to 4 of the suit property. Interim order appears to have been given on 24.06.2024 in O.A.No.416 of 2024. The respondents herein have filed vacate stay application in A.No.3991 of 2024 for vacate the interim injunction granted by this Court for the non compliance of Order XXXIX Rule 3 (a) of CPC as one amongst the ground.

5. By an order dated 12.08.2024 this Court has called for the reports from the Registry and found that the applicant, after obtaining the interim injunction, has not complied with the requirement of Order XXXIX Rule 3 of CPC, which is specifically ordered while granting interim injunction and consequently, for non-compliance of the earlier



order of interim injunction was vacated. However, liberty was given to file fresh application. Accordingly, present application is filed.

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6(a). The petitioner/applicant is SP.Valliappan, son of Subramaniam Chettiar filed the suit seeking the relief as stated supra and the present application is filed in respect of item No.5 of the suit schedule property, pending disposal of the appeal.

6(b). The case of the applicant/plaintiff is that the property was purchased in the year 1981 by the plaintiff in the name of the second defendant while he was 8 years old and in the sale deed itself, the second defendant was represented by the plaintiff and he invested 5.5 Crores during 2009 and constructed resorts in the name and style of 'Lakshmi Holiday Inn'.

6(c). It appears that as per the pleadings, the plaintiff executed a settlement deed as a Power of Attorney for the second defendant on 12.05.2017 in favour of the third defendant and based upon the public notification issued on 03.02.2024 in 'Dina Thanthi' wherein the third respondent has stated that partnership was dissolved unilaterally



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by the daughter of the plaintiff and hence the plaintiff has come forward with the relief of declaration to set aside the sale deed, settlement deed and for declaration of his title over the suit property.

7. Counter has been filed by the second respondent, who is the son of the plaintiff.

8(a). The first respondent is the wife, the second respondent is the son and the third respondent is the daughter and respondents 4 to 9 are the tenants and grand son is the 10th respondent.

8(b). The sum and substance of the submission of the learned counsel for the petitioner is that the property was purchased by the plaintiff's father in the name of the second defendant and on behalf of the second defendant/son, the plaintiff/father has executed a settlement deed in favour of the third respondent and now the partnership was dissolved at the instance of the third defendant daughter. Hence, seeks declaration and for permanent injunction as stated supra.

9(a). The case of the second respondent/second defendant is



that they have specifically denied that the suit item Nos.1 to 9 of the properties are not purchased and earned by the plaintiff/father.

9(b). According to the second respondent, his grandfather namely Late A.Subramaniam Chettiar is the person who developed the business and he died on 20.02.1994. During the life time of his grandfather, he purchased various properties in the name of the second defendant/second respondent when he was minor.

9(c). After the death of the grandfather, the plaintiff/father was inducted as a partner on 21.02.1994. Subsequently, two other partners were also been inducted. Hence, this is a specific case of the second respondent/second defendant that the property was purchased by the grandfather during his minority represented by his father namely, the plaintiff. After obtaining his majority, the second defendant has settled the property in the name of the third defendant sister. Of course, the plaintiff was acted as Power of Attorney of the second defendant and he is not the author of the document. As he has no title to settle the property in favour of the third respondent since sale deed was purchased and stand in the name of the second defendant/second respondent, the second



respondent is presumed to be the owner.

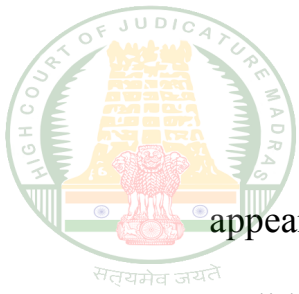
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9(d). On attaining majority, he has settled the property in respect of the third respondent/third defendant. The settlement deed was executed by the plaintiff as a power agent alone.

9(e). It is specifically mentioned that the second defendant alone is the owner of the property and hence, he had a knowledge even at the time of the execution of the settlement deed.

9(f). It is the specific case of the second respondent that the plaintiff has no source of income to contribute to purchase the land in the name of the second defendant and the properties mentioned in item Nos.5 & 6 are purchased by the grandfather Late A.Subramaniam Chettiar alone and after his death, the plaintiff father appears to have been inducted as a partner.

9(g). The partnership Firm which was developed by the third respondent/third defendant. Therefore based upon the settlement deed dated 12.05.2017 given by the second respondent, the third respondent



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appears to have been formed a partnership Firm in the name of 'Lakshmi Holiday Inn' on 25.05.2017 which is a Partnership at Will and subsequently, it was dissolved.

10. After perusing the document, the third defendant appears to have executed a lease deed dated 05.02.2024 and leased the item No.5 of the suit property in favour of the second respondent and he is in possession of the property and running a Lodging and Restaurant in the name and style of Lakshmi Retreat with due permission of the concerned authorities, as could be seen in the document filed in the typeset namely, Form D issued by the Thasildar, Kothagiri, dated 26.02.2024, Udhayam Certificate (MSME) issued on 05.03.2024, Form C certificate issued by FSSAI dated 14.02.2024, Fire Service License dated 17.04.2024 and GST certificate issued on 05.05.2024 which proves that the second respondent is in possession running business which is substantiated by the statement of accounts.

11. Since the sale deed stands in the name of the second respondent and it was represented by the father/plaintiff and the position that whether the plaintiff purchased the property in the name of the



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second respondent as pleaded by him or purchased in the name of the second respondent by the grandfather is matter for trial. So also the settlement deed was executed by the second respondent in favour of the third respondent. The plaintiff has not executed a settlement deed in his individual capacity, however, appears to have executed as a power agent of the second defendant alone and hence I find no *prima facie* case in favour of the plaintiff.

12. Hence, I find that the plaintiff has not made out a *prima facie* case and made out convenience in favour of the second respondent alone. Hence, I have no hesitation to reject the claim. The observations made above is only for the purpose of disposal of this original application.

13. With these observations, this Original Application is dismissed.

10.01.2025

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RMT.TEEKAA RAMAN, J.

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**Predelivery order made in
O.A.No.609 of 2024
in
C.S.No.134 of 2024**

10.01.2025