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O.S.A. No.243 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

CORAM

THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **P.DHANABAL**

O.S.A. No.243 of 2024
and
C.M.P. No.29064 of 2024

Arasapan

... Appellant

Vs.

- 1.V.Dhanasekar
- 2.V.Umapathi
- 3.V.Thiruvengadam
- 4.R.Suguna
- 5.S.Vaijyanthi
- 6.S.Dilli Raji
- 7.S.Meena
- 8.J.Kumar
- 9.J.Vijayakumar
- 10.S.Poongothai
- 11.J.Somasundharum
- 12.J.Ponni
- 13.J.Bhavani
- 14.K.Selvam
- 15.K.Nagaliingam @ Patti
- 16.K.Chinnaponnu
- 17.Kasthuri
- 18.N.Indira
- 19.V.Kantha
- 20.V.Balaji
- 21.V.Krishnamurthy
- 22.R.Kutty @ Lalitha
- 23.C.Thiagarajan
- 24.N.Muniyammal



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- 25.G.Chinnammal
- 26.S.Navaneetham
- 27.M.Sekar
- 28.M.Kamatchi
- 29.B.Mari
- 30.B.Elumalai
- 31.A.Kousalya
- 32.S.R.Dilli Naicker
- 33.D.Indhrani
- 34.D.Selvam
- 35.D.Hari
- 36.Gowri
- 37.Shanthi
- 38.S.Sundhar
- 39.D.Ponolli
- 40.S.Yavanarajan
- 41.S.Vedhandham
- 42.S.Uma Maheswari
- 43.D.Vedha
- 44.D.Kotteswaran
- 45.D.Kumar
- 46.M.Kalaivani
- 47.D.Ramaprabha
- 48.J.Dhana KUmar
- 49.S.Jamuna
- 50.K.Sekar
- 51.B.Seenu
- 52.S.Padmavathi
- 53.V.Loganathan
- 54.M.R.Oyyappan
- 55.M.L.Maheshwari
- 56.V.Shanmugam
- 57.K.Mayan
- 58.M.R.Thennarasu
- 59.M.Devi
- 60.I.Rajamani
- 61.D.Sangupathi
- 62.M.R.Dharmalingam
- 63.S.Ram Kumar
- 64.G.S.Balaji
- 65.Meenambal
- 66.S.Kotteswari @ Gowthami

... Respondents



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Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules, 1994 and Clause 15 of the Letters Patent of 1865 against the order dated 04.12.2024 in A.No.6279 of 2024 in C.S.No.147 of 2016.

For Appellant : Mr.K.Sharath Chandran

For Respondents : Ms.Hema Sampath,
Senior Counsel
for Mr.N.Umapathi for R5 to R7
Mr.R.Dinesh Kumar for R31
Mr.P.Senthilvel for R45
Mr.T.M.Pappiah for R61 and R62

No appearance for
R1 to R4, R18, R29, R30, R32,
R34 to R41, R43 to R47, R49,
R50 and R58

R8 to R13, R48, R63 and R64
- No such person

R14 to R16, R19, R20, R22 to
R25, R28, R52, R53, R56, R59
and R60 - Unclaimed

R17, R21, R26, R33, R42, R51,
R54, R57 and R65 - deceased



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ORDER

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

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This original side appeal is directed against the order of learned Single Judge in A.No.6279 of 2024 in C.S.No.147 of 2016 dated 04.12.2024.

2. The appellant is a third party to the suit and he has purchased an extent of one are of land from the 50th defendant on 16.09.2019 pending suit. It is admitted that the appellant had filed a suit for specific performance in O.S.No.1542 of 2011 and obtained a decree on 09.04.2012 against his vendor, the 50th defendant in C.S.No.147 of 2016. Appellant filed a suit in O.S.No.2863 of 2024 against defendants 6 to 9 and 47 in C.S.No.147 of 2016 for bare injunction. By the order impugned, the suit filed by the appellant was stayed. Aggrieved by the same, the above appeal is filed.

3. The brief facts that are necessary for the disposal of this appeal are as follows:

3.1 The suit in C.S.No.147 of 2016 was filed by respondents 5 to 7 herein for the following reliefs:



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(i) Directing partition of the suit properties which are morefully described in the Schedule B 2 hereunder between plaintiffs and 1st to 23 and 40th to 46th defendants herein and allocate 1/24 share to the plaintiffs with metes and bounds;

(ii) Appoint an Advocate Commissioner to divide the properties which are morefully described in the Schedule B 2 hereunder by metes and bounds and put the plaintiffs in possession of their respective share;

(iii) For declaration declaring the preliminary decree obtained in O.S.No.3261 of 1987 dated 21.09.1989 on the file of the I Assistant City Civil Court Chennai is null and void and not binding on the plaintiffs herein;

(iv) For declaration declaring the final decree obtained in I.A.No.19293 of 1996 in O.S.No.3261 of 1987 dated 21.03.2001 on the file of the I Assistant City Civil Court, Chennai is null and void and not binding on the plaintiffs herein.



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(v) *For declaration declaring the properties handled by the defendants to an extent of acre 21.38 cents which are morefully described in the Schedule B 3 hereunder to be treated as shares allotted and handled and binding on the 24th to 39th defendants;*

(vi) *For a declaration declaring the Sale Deed in Document No.3535 of 1996 dated 22.05.1996 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by 46th defendant and 47th defendant herein in favour of 58th defendant herein is null and void not binding on the plaintiffs;*

(vii) *For a declaration declaring the Partition Deed in Document No.8130 of 2001 dated 18.10.2001 on the file of the Sub Registrar Office, Sembiym, Chennai illegally registered between the S.R.Dharmalingam the father of 36th to 39th defendants and 36th to 39th defendants herein is null and void not binding on the plaintiffs;*



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(viii) *For a declaration declaring the Sale Deed in Document No.2788 of 2002 dated 22.04.2002 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by 40th to 45th defendants in favour of 58th defendant is null and void not binding on the plaintiffs;*

(ix) *For a declaration declaring the Sale Deed in Document No.4635 of 2003 dated 02.07.2003 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by S.R.Sambantha Murthi Nicker (late), S.Ravi (late) and 30th to 34th defendants in favour of 60th and 61st defendants is null and void not binding on the plaintiffs;*

(x) *For a declaration declaring the Compromise Sale Agreement in Document No.2550 of 2004 dated 22.03.2004 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by S.R.Dharmalingam (late) the father of 35th to 39th defendants in favour of 50th defendant is null and void not binding on the plaintiffs;*



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(xi) *For a declaration declaring the Sale Deed in Document No.2565 of 2004 dated 24.03.2004 on the file of the Sub Registrar Office, Sembiam, Chennai illegally executed by S.R.Dharmalingam (late) the father of 35th to 39th defendants in favour of 50th defendant is null and void not binding on the plaintiffs;*

(xii) *For a declaration declaring the Settlement Deed in Document No.2557 of 2009 dated 23.04.2009 on the file of the sub Registrar Office, Sembium, Chennai illegally executed by 62nd defendant in favour of 63rd defendant is null and void not binding on the plaintiffs;*

(xiii) *For a declaration declaring the Settlement Deed in Document No.5194 of 2009 dated 12.08.2009 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by 24th defendant in favour of 26th and 27th defendants is null and void not binding on the plaintiffs;*

(xiv) *For a declaration declaring the Release Deed in Document No.5505 of 2009 dated 26.08.2009 on the file of the Sub Registrar Office, Sembium, Chennai*



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illegally executed by 38th and 39th defendants in favour of S.R.Dharmalingam Naicker (late), 36th and 37th defendants is null and void not binding on the plaintiffs;

(xv) For a declaration declaring the Release Deed in Document No.3075 of 2011 dated 29.07.2011 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by S.R.Dharmalingam (late), 37th to 39th defendants in favour of 36th defendant is null and void not binding on the plaintiffs;

(xvi) For a declaration declaring the Settlement Deed in Document No.7206 of 2014 dated 10.12.2014 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by 59th defendant in favour of 58th defendant is null and void not binding on the plaintiffs;

(xvii) For a declaration declaring the Settlement Deed in Document No.7207 of 2014 dated 10.12.2014 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by 58th defendant in favour of



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59th defendant is null and void not binding on the plaintiffs;

(xviii) For a declaration declaring the Settlement Deed in Document No.2936 of 2015 dated 18.05.2015 on the file of the Sub Registrar Office, Sembiam, Chennai illegally executed by 24th defendant in favour of 26th defendant is null and void not binding on the plaintiffs;

(xix) For a declaration declaring the Settlement Deed in Document No.2937 of 2015 dated 18.05.2015 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by 24th defendant in favour of 27th defendant is null and void not binding on the plaintiffs;

(xx) For a declaration declaring the Rectification Deed in Document No.3318 of 2015 dated 27.05.2015 on the file of the Sub Registrar Office, Sembium, Chennai illegally executed by 59th defendant in favour of 58th defendant is null and void not binding on the plaintiffs;



(xxi) For a permanent injunction restraining the 24th, 26th, 27th, 36th, 37th, 50th, 58th, 59th, 60th and 61st defendants from an any manner alienating or encumbering the properties which are morefully described in the Schedule B 4 hereunder;

(xxii) For a permanent injunction restraining the 24th to 39th and 48th to 63rd defendants from an any manner disturbing the peaceful possession and enjoyment of the properties which are morefully described in the Schedule B 2 hereunder; and

(xxiii) and pass such further or other orders as this Hon'ble Court may deem fit proper in the circumstances of the case and thus render justice.

3.2 In the plaint it is stated that the suit properties are their ancestral properties which were owned by their ancestor one Vedhandhi Murugappa Naicker. It is further stated that Sri Vedhandhi Murugappa Naicker had a son by name Rengasamy Naicker and two daughters by name Mrs.Alamelu Ammal and



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Rajammal. Respondents 1 to 4 are the legal heirs of Mrs. Alamelu Ammal. From the plaint averments, it is difficult to understand the genealogy. It is admitted in the plaint that the properties which are described as Schedule C1 and Schedule C2 are the subject matter of properties in O.S.No.3261 of 1987 on the file of I Assistant Judge, City Civil Court, Chennai filed for partition. The said suit was decreed and a preliminary decree was passed on 21.09.1989 and a final decree was passed on 21.03.2001 based on a compromise memo dated 21.07.2000. The suit is filed mainly challenging the preliminary decree and final decree as null and void and for declaring several alienation as void. It is pertinent to mention that after filing suit, some of the defendants were transposed as plaintiffs 4 to 8 (D40, D41, D43, D44 and D45). Respondents 1 to 4 are defendants 6 to 9 and they are the contesting respondents.

4. As indicated earlier, the properties which are the subject matter of suit in O.S.No.3261 of 1987 were subsequently alienated and dealt with by the parties to the suit. The appellant is the purchaser of the property, which is also the subject matter of the suit in O.S.No.3261 of 1987. During the pendency of the suit, defendants 6 to 9 filed an application to transfer the suit filed by appellant and to stay all further proceedings in O.S.No.2863 of 2024



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on the file of the II Assistant Judge, City Civil Court, Chennai. This appeal by the present appellant is against order in A.No.6279 of 2024 granting stay of further proceedings in the suit in O.S. No.2863 of 2024 filed by appellant for permanent injunction as a purchaser of property, deriving title through the parties to the compromise decree which is challenged in the suit filed by contesting respondents.

5. Learned counsel for the appellant submitted that in the application filed by the plaintiffs in the suit in C.S.No.147 of 2016, this Court found that the plaintiffs have not made out a prima facie case to grant injunction restraining the contesting respondents from interfering with the possession and enjoyment of the property by the plaintiffs. It is stated that respondents 1 to 4 herein who are defendants 6 to 9 in C.S.No.147 of 2016 sail with plaintiffs and they are the defendants in the suit filed by appellant. It is contended that they have filed the application in A.No.6279 of 2024 after knowing that the appellant has already filed an application for injunction in his suit. Since the matter is posted for hearing the other side viz., the respondents 1 to 4 herein, the application in A.No.6279 of 2024 is filed by the applicants just to prevent the appellant from getting interim injunction to protect his possession. Though the learned



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senior counsel relied upon a few precedents on the maintainability of the appeal, this Court finds no relevance to the facts of this case.

6. The core fact that the appellant is a person who has purchased one of the properties and that he has filed a suit in O.S.No.2863 of 2024 on the file of the II Assistant Judge, City Civil Court, Chennai to protect his possession against contesting respondents 1 to 4 herein is not in dispute. It is stated that the plaintiffs in C.S.No.147 of 2016 have given their consent to change of patta in favour of appellant. The cause of action for the suit filed by appellant against respondents 1 to 4 is entirely different.

7. The plaintiffs, who have filed an application for injunction, failed to establish that they are in possession of the properties, which are the subject matter of compromise decree in the suit in O.S.No.3261 of 1987 dated 21.09.1987 and the final decree in I.A.No.19293 of 1996 is not in dispute. In such circumstances, the order of learned Single Judge granting stay of further proceedings in O.S.No.2863 of 2024 without hearing him is irregular and is likely to affect the rights of appellant as a person claiming to be in possession.



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8. Learned counsel appearing for the appellant submitted that the application lacks bonafides as parties have approached the Court for stay of the suit filed by the appellant only after receiving summons and asked to respond to the arguments advanced by the appellant for grant of interim injunction.

9. This Court while admitting the appeal, granted an order of *status quo*. The order impugned in this appeal is in the nature of preventing the appellant from prosecuting the suit which is instituted before a competent Court. Even though the respondents are entitled to be heard before any interim order is granted, the application by some of the defendants in C.S.No.147 of 2016 for staying the suit filed by a third party cannot be granted merely by asking. When the interim application in the suit filed by the appellant is likely to be heard on merits, this Court is of the view that the appellant cannot be deprived of his right to protect his possession. This original side appeal is therefore allowed by setting aside the order of learned Single Judge granting stay of further proceedings in O.S. No.2863 of 2024. It is to be noted that an application is filed by respondents 1 to 4 herein to transfer the suit filed by appellant. However, this Court has noticed that the appellant was not even made a party in C.S.No.147 of 2016 even though he is



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shown as a respondent in the application filed for stay. The transfer application is under the pretext of joint trial. The learned Judge has granted stay without assigning any reason or on an understanding of the facts. It is open to the contesting respondents to file an application under Section 10 of the Code of Civil Procedure in the suit in O.S. No.2863 of 2024 which would be more appropriate. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (P.D.B., J.)
31.01.2025

Index:Yes
Neutral Citation: Yes
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To

The Sub Assistant Registrar,
Original Side, High Court,
Madras.



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**S.S. SUNDAR, J.
and
P.DHANABAL, J.**

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