

In the court of the I Additional District Judge, Madurai.
Present:- Thiru. S. Karthikeyan, M.A., M.L., P.G.D.C.F.S.,
I Additional District Judge, Madurai .
 Friday, this the 16th day of November 2018
OS No.17/16 (counter claim of D1) .

1. Sardar Batcha
 2. Jagitha Begum ... Plaintiffs

/ Vs/

1. Syed Abuthahir
 2. The Branch Manager,
 Repco Home Finance Ltd.,
 Madurai Branch. ... Defendants

This suit came up for final hearing before me on 8.11.18 in the presence of Tvl.M.Mohamed Rafi, Counsel for the plaintiffs, and Thiru G.Sandhanam, Counsel for the defendant No.1 and the 2nd defendant remained exparte. Despite conditional order, the plaintiffs were not present hence the suit was already dismissed for default and having perused the connected records relating to counter claim and having stood over till this day for consideration, this court passed the following,

JUDGMENT

Counter claim filed by the defendant No.1 praying to direct the plaintiffs to surrender the vacant possession of the scheduled property to him without any let or hindrance within the time prescribed by this court; to direct the plaintiffs to pay the past mesne profits from the month of December 2014 to the month of July 2016 at the rate of Rs.2000-00 per month i.e the total sum of Rs.40,000-00 to this defendant; future mesne profits from the month of August 2016 till the surrender of vacant possession of the property and for costs.

Brief averments in the counter claim filed by defendant no.1 :

2. The plaintiffs are husband and wife. They have one daughter Parveen Banu and one son John Sheriff and that daughter is the wife of this defendant and the marriage took place on 3.1.2002. The allegation that the

plaintiffs offered 35 sovereign gold ornament to the first defendant, Rs.50,000-00 cash, utensils, furniture, 5 sovereign bracelet and chain etc. at the time of marriage is denied. The first defendant does not possess any alleged movables. At the time of marriage the defendant had no permanent job and now he is working as a teacher in private school, even from the date prior to his marriage. The first plaintiff from out of his monthly income as foreman in TNEB raised funds and purchase the jewels of the 2nd plaintiff and purchased the house in the name of the first defendant's wife. The marriage between Parveen Banu and the first defendant took place in the year 2002 whereas the property was purchased in the name of the first defendant's wife only in the year 2009. That itself shows that the property has been purchased out of the income of the first defendant as well as personal loans raised from Banks and private persons. The other portions of the property have been purchased by availing loan from the 2nd defendant's bank. This defendant availed loan from the 2nd defendant, the plaintiffs and their daughter Parveen Banu by way of depositing all original deeds and parent documents as security for the loan are denied as false. The second defendant never obtained any signature from the plaintiffs for the loans advanced to the said Parveen Banu and the first defendant. The plaintiffs have nothing to do with the alleged loans advanced by the second defendant. The tax registry for the suit property was in the name of Parveen Banu and the tax had been paid by her and the first defendant only. In 2010-11, and 2012-13, the tax has been paid through the plaintiffs and they have retained the receipts. The first defendant and his wife availed loan no.MDU 1218 from the 2nd defendant for the construction of the house. The plaintiffs have not disclosed any particulars regarding the amount of salary of first plaintiff, the amount of retirement benefits or pension. Admittedly the plaintiffs are having a son who is younger than Parveen Banu and he has no permanent job or income. The plaintiffs are maintaining their son and his wife

and children only out of their income of the first plaintiff. The plaintiff's family is living only hand to mouth. The plaintiffs are not in a position to spare any money and they are not even in a position to pay the rent. Parveen Banu died on 1.11.12 without any issues is admitted as true. This defendant and the plaintiffs were in cordial terms during the life time of Parveen Banu and 2 years after her death also. During that period this defendant used to give money to the first plaintiff and asked him to pay to that 2nd defendant. The first plaintiff had maliciously retained some of those receipts issued by the 2nd defendant and he has produced the same along with the plaint and claimed fraudulently as if they have been paid by himself. The mere custody of those receipt would not at any stretch of imagination confer title in favour of them. The property scheduled in the plaint was purchased by this defendant and his wife from out of the income of the defendant only. They have purchased with old tiled house. After purchase, the first defendant has approached the 2nd defendant for the construction of house building. The first defendant has availed loan from 2nd defendant on the assurance of the repayment through his salary only and constructed the house building with four floors. The loan advanced by the 2nd defendant is not sufficient to meet the entire construction of the building. Therefore this defendant had to avail personal loans from other banks and co-operative banks and also from close friends to complete the construction. The first defendant had not received any monetary help from the plaintiffs for the construction of the building. The entire building now standing has been constructed by this defendant from out of his own effort and own money. The first defendant is still repaying the loans availed for constructions. The first defendant's wife Parveen Banu was affected by chrnoic renal disease even prior to marriage and the medical expenses have been borne by the first defendant alone. However she died on 1.11.12 due to his prolonged treatment. There are four floors in the property. Out of which the first defendant lived in the ground floor and permitted the plaintiff to

live in one of the houses in the ground floor due to the ailment of Parveen Banu. The first defendant treated the plaintiffs as his father and mother. The first defendant suddenly got second marriage on 15.1.14 which was arranged by the plaintiffs alone. The plaintiffs have not produced any piece of evidence to show that, they have given money for the purchase of the suit property in the name of Parveen Banu. The first defendant and his wife purchased the suit property with old house and subsequently demolished the house even during the life time of Parveen Banu. The suit property after purchase became vacant house site. If at all any right over the property, the said Parveen Banu can claim half share only in the vacant site alone. The entire superstructure was made by the first defendant alone. According to the law of inheritance, the plaintiffs can claim half share in the vacant site alone, they cannot claim any actual division which is impossible in Law and Equity. They can claim only the share value. The first defendant never accepted to divide the property. The plaintiffs are trying to swindly the entire property with a malicious intention started to disturb the possession of tenants. Hence the defendant sent a notice on 14.11.14 for which the plaintiffs sent reply on 15/12/2014 with false allegations. The allegations regarding the Sub Registrar are unnecessary and unwarranted and those allegations have no nexus with the claim in this suit. Moreover, without impleading the Sub Registrar as party, the plaintiffs are not entitled to make such allegations. The plaintiffs are not in joint possession with the first defendant hence the court fee paid by them is not correct. On that score itself the suit has to be rejected summarily. The cause of action in the plaint are nothing but high imagination of the plaintiffs. The plaintiffs are not party to the loan transactions between this defendant and second defendant. The defendant and 2nd defendant are in contractual relationship with each other in the loan transactions. The plaintiffs have no locus standi to sought any relief as against the 2nd defendant. The plaintiffs were in the occupation of the

suit property only on the permission of the first defendant. The first defendant has cancelled the permission granted to them through notice dt.14.11.14 the plaintiffs are liable to surrender vacant possession of the property to the first defendant and therefore they are liable to pay the past and future mesne profits from the month of December 2014 till surrender of the vacant portion to the first defendant. The mesne profit is valued at Rs.2000-00 p.m. Hence prayed to allow the counter claim of the defendant by passing the decree in favour of the defendant.

3. In the above case, no reply statement was filed by the plaintiff. Further, when the case was posted for trial, the plaintiff has remained absent and therefore, the suit was dismissed for default and the case was posted for evidence in respect of the counter claim.

4. Since no reply statement was filed, no issues have been framed. The defendant did not present and no oral or documentary evidence was let in. Therefore, this court proceeds to pass judgment under Order VIII Rule 10 CPC.

5. Now the points for determination is:

1) Whether the 1st defendant is entitled to a direction directing the plaintiffs to surrender vacant possession of the suit schedule property to him?

2) Whether the 1st defendant is entitled to past and future mesne profits from the plaintiffs?

3) What other relief the 1st defendant is entitled to?

Answer:

6. While filing the counter claim, the defendant has filed the following documents on his side. Pay drawn particulars and experience certificate was

produced as Document Nos. 1 to 3; Appointment order of the defendant is produced as Document No.4; Proceedings of the probation declaration to the defendant is produced as Document No.5; treatment records of Parveen banu is produced as Document No.6; letter sent by State Bank of India for one time settlement is produced as Document No.7; certificate issued by 2nd defendant is produced as document No.8; 9) Canara Bank pass book of the 2nd defendant 10) Pass book of thrift society issued by education department to the defendant 11) requisition to issue No objection certificate by the defendant 12) Loan sanction letter issued by the 2nd defendant; 13) Indian bank pass book of the 1st defendant 14) loan repayment receipts 15) Assurance letter 16) marriage application form.

7. Upon perusal of the above documents, this court has given its thoughtful consideration. The plaintiffs have filed the above suit for partition claiming 3/6th share in the suit schedule properties. However, the plaintiffs let the suit dismissed for default on 03.10.2018. No steps was taken to restore the suit within the time and the order of dismissal become final. In the above suit, the first defendant laid a counter claim as against the plaintiffs seeking for a direction to surrender of vacant possession, to pay past and future mesne profits and to pay costs of the suit. According to the first defendant, the suit schedule property was purchased in the name of his wife Parveen Banu from and out of the funds provided by him and funds raised from the 2nd defendant bank. The plaintiffs though in their plaint contended that the suit schedule property was purchased from and out of the funds of the 1st plaintiff, the plaintiffs have failed to prosecute the above suit and let it dismissed for default. Apart from that, no reply statement was filed denying the above claim of the first defendant. On going through the documents produced by the 1st defendant, it is seen that the housing loan was availed from the 2nd defedant which was paid by the first defendant vide Document 14 Receipts. Further, apart from that the 1st defendant has produced documents to show that he

availed loans from SBI, Amman Sannathi Branch, Canara Bank, Usilampatti Branch, the Educational Co-operative Society Ltd, Madurai and Public Servant Co-Op Society. Therefore, in the absence of any evidence oral or documentary to the contrary, this Court is of the considered view that the claim of the first defendant that the suit schedule property was purchased by him in the name of his wife is bound to be accepted. Further, from the plaint and written statement averments, it is found that the plaintiffs are in occupation of the ground floor of the suit schedule property. Since, the plaintiffs have no independent rights over the suit schedule properties, they bound to surrender vacant possession of the portion in thier possession. With regard to the past and future mesne profits are concerned, the first defendant is directed to work out the same under Order XX Rule 12. Since the plaintiffs have unnecessary dragged the first defendant into this litigation without any iota of right, this Courts directs them to pay costs to the first defendant. Accordingly, the points are answered.

8. In result, the counter claim of 1st defendant is allowed. The plaintiffs are directed to surrender vacant possession of the portion in thier possession of the suit schedule property within 2 months. With regard to the past and future mesne profits are concerned, the first defendant is directed to work out the same under Order XX Rule 12. The plaintiffs are directed to pay costs of the suit to the defendant.

On my dictation, partly typed by the stenographer and partly typed by me in my laptop, corrected and pronounced by me in the open court this the 16th day of November 2018.

I Additional District Judge,
Madurai.

Witness examined : Nil

Documents marked : Nil

Sd S.Karthikeyan

I Additional District Judge,
Madurai.

