

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 07TH DAY OF FEBRUARY 2020

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

C.S.NO.812 OF 2015

1.M.Mahalingam

2.M.Jayam

Both residing at
No.113/2, Raman 8th Street,
Royapuram,
Chennai-600 013. ...Plaintiffs

-Versus-

S.M.Anandavel,
S/o.Late N.V.S.Murugavel,
No.23, College Road,
DECEE Manor 10th Floor,
Nungambakkam,
Chennai-600 006. ...Defendant

This civil suit praying that this Hon'ble court be
pleased to a judgement and decree.

(i) To granting a decree for specific performance
directing the defendant to execute and register a sale deed
absolutely conveying the schedule mentioned property in
favour of the plaintiffs as per the terms of the agreement
for sale dated 16.07.2012 entered into between the
plaintiffs and the defendant and if necessary by getting
necessary conveyance or document from the defendant's
brother S.M.Shanmugavel and his sons to convey clear and
marketable title to the plaintiffs and consequently direct
the defendant to hand over vacant possession of the

schedule mentioned property within time to be fixed by this Court, failing which appoint an officer of Court to perform the same

(or)

in the alternative directing the defendant to pay the plaintiffs a sum of Rs.6,77,00,000/- together with interest at the rate of 24% per annum on Rs.1,00,00,000/- from the date of plaint till date of realization.

ii) For permanent injunction restraining the defendant his men, agents and servants and everyone claiming under him and acting on his behalf from in any manner alienating or encumbering the schedule mentioned property in any manner whatsoever.

(iii) To directing the defendant to pay the costs of the suit.

This Civil Suit coming on this day before this court for hearing the court made the following order:

During the course of examination in chief of PW1 on 09.09.2019, the learned counsel for the plaintiffs attempted to mark a photocopy of Memorandum Recording Oral Family Arrangement-cum-Partition dated 06.10.1992. The marking of this document was strongly objected to by the learned counsel for the defendant on the following grounds.

1. It is a photocopy and not an original.

<https://hcservices.ecourts.gov.in/hcservices/> is an unregistered document.

Therefore, it cannot be relied upon as per Section 17 read

with Section 49 of the Registration Act. Therefore, the matter has been placed before the Court by the learned Master.

2. The learned counsel for the plaintiffs submitted that it was stated in the plaint at paragraph-3 at page 3 that the defendant furnished to the plaintiffs the copies of the following documents, viz., Xerox copy of the partition deed dated 27.01.1958, unregistered agreement dated 30.07.1978, unregistered deed of release dated 03.08.1978, Memorandum of Oral Family Arrangement dated 06.10.1982 and Deed of declaration of disclaimer dated 10.10.1992. On this basis, the learned counsel for the plaintiffs submits that these are the documents that were provided to the plaintiffs by the defendant. He further submitted that these averments were not denied in the written statement of the defendant. For all these reasons, the learned counsel submitted that he should be permitted to mark the document. सत्यमेव जयते

3. On the contrary, the learned counsel for the defendant submitted that the averments in paragraph-3 of the plaint were denied by the defendant in paragraph-4 in the written statement. In specific, the defendant stated that he has produced all the documents as requested by the plaintiffs. In the light of the said denial, the learned counsel for the defendant submitted that this document should not be permitted to be marked as evidence because it is a photocopy and it is unregistered document, although

the instrument in question is required to be compulsorily registered.

4.I considered the submissions of the learned counsel for the respective parties and examined the relevant pleadings.

5.I find that the assertion of the plaintiffs and the denial thereof by the defendant, with regard to the handing over of these documents by the defendant to the plaintiffs, is a matter that cannot be determined at this stage. Consequently, it is not possible to decide, at this juncture, as to whether the objections of the defendant are tenable or not. Therefore, this document should be received in evidence subject to the objections of the defendant both on the ground of non-production of the original and on the ground of inadmissibility of the document on account of non-registration. All these objections shall be considered and decided only at the time of final disposal.

6. Post the matter before the learned Additional Master IV on 24.02.2020 for continuation of the evidence of PW1.

Sd/-S.K.R.J.

07.02.2020

//Certified to be a true copy//
Dated this the day of 2020.

SU/13.02.2020

COURT OFFICER