

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, COIMBATORE.

Present: **Thiru. K. RAJASEKAR, B.Com., B.L.,**
Principal District Judge, Coimbatore.

Wednesday, this the 26th day of October 2022

I.A.No.1/2021
In
O.S.No.161/2015

S.Chinnadurai

... Petitioner/4th Defendant

-vs-

1. B.Sabarinath

2. S.Uma Maheshwari

3. S.Namagiri

4. S.Ramanan

5. S.Sabariram

6. S.Arumugam

7. Ramesh

8. D.Satiyanarayanan

9. S.Nazmuniza

10.S.Nizamudhin

11.S.Raseena Nilafur

12.S.Dowlathneesa

13.S.Dhasleema

14.S.Mustaq Ahamed

15.S.Raffiyamma

16.Indira

17.N.Santhi

18.N.Mahendran

19.D.Narendra Raj

20.The District Collector, Coimbatore

21.The Thasildar, Coimbatore

22.The District Registrar, Coimbatore

23.The Joint Sub Registrar, Coimbatore

... Respondents 1 & 2/Plaintiffs

... 3rd to 23rd Respondents/
Defendants 1 to 3, 5 to 22

This petition is coming on 27.09.2022 for final hearing before this Court in the presence **Thiru.N.Chandrasekaran**, Advocate for the petitioner/4th

defendant and of **Tvl.S.Sinnaraj and S.Ganesan**, Advocates for the 1st and 2nd Respondents/Plaintiffs and upon hearing both side arguments, perusing petition, and other relevant records, having stood over for consideration till this date, this Court made the following:

ORDER

The Petitioner/4th Defendant filed the petition under order VII Rule 11 and Section 151 of CPC to reject the plaint filed by the Respondents 1 and 2/Plaintiffs.

2. The brief averments of the affidavit filed along with the petition:

The suit property originally belonged to one Muniappa Chettiar s/o. Nanjunda Chettiar, who sold the same as per Sale deed dated 28.06.1962 in favour of one Chikkuthamma Chettiar s/o. Masi Chettiar. On 07.10.1984, the suit property was purchased by the Defendant No.4 from Chikkuthamma Chettiar and possession was handed over to him. Thereafter, Chikkuthamma Chettiar and his family resided in the suit property as a tenant. In the year 1988, he informed that there is a suit filed against the suit property, by one Savi Enterprises in O.S.No.661/1985 on the file of Principal Subordinate Judge, Coimbatore. Subsequently, the suit was decreed in favour of Savi Enterprises. By suppressing the earlier sale deeds executed in favour of this defendant, Chikkuthamma Chettiar sold the property once again to one Showkath Ali and Nazmuniza. Further it is also came to light that the suit property was sold through the Court on the basis of decree passed in O.S.No.661/1985 in favour of one B.N.K.Sathyanarayana Chettiar. In order to alleviate the intensity of dispute, this defendant purchased the property from Showkath Ali and his family by way of Sale deed dated 24.01.2009 and also from B.N.K.Sathyanarayana Chettiar as per Sale deed dated 01.10.2009. Showkath Ali died on 19.01.1998. Sathyanarayana Chettiar died on 05.01.2010. In the meantime, the legal heirs of Sathyanarayana Chettiar filed a collusive suit in

O.S.No.844/2013 and the same is pending. It is also found that mutations were effected in the name of Showkath Ali and the respondents No.7, 8, 13. Hence, this defendant filed a suit in O.S.No.1258/2013 on the file of I Additional District Munsif, Coimbatore for declaration, declaring the sale deeds executed between Showkath Ali, Nazmuniza, Nizamudhin, Rafiamma and Chikkuthamma Chettiar as null and void and consequently to issue patta in his name. The suit was decreed on 12.03.2015. Subsequently, the 5th respondent filed a suit in O.S.No.1240/2015 on the file of District Munsif, Coimbatore for declaration to declare the Judgment and Decree passed in O.S.No.1258/2013 on the file of I Additional District Munsif, Coimbatore as null and void and consequential relief. Subsequently, by colluding with other respondents, the plaintiffs filed the present suit before this Court for very same relief of declaration, declaring the Decree passed in O.S.no.1258/2013 as null and void. Hence, the present suit is clear abuse of process of law and the same is not maintainable in law. The legal heirs of Satyanarayana Chettiar filed impleading petition in O.S.No.1258/2013 and the same was dismissed in I.A.No.3290/2014 and I.A.No.2719/2014. Under the above circumstances, since Satyanarayana Chettiar had already sold the suit property in favour of this defendant, the suit filed by them is not maintainable and prays to reject the plaint.

3. The gist of the counter statement filed by the respondents 1 and 2/plaintiffs is as follows :

The decree passed in O.S.No.1258/2013 is a collusive decree and the same is not binding on the plaintiffs. The plaintiffs have purchased the suit property jointly as per Sale deed dated 11.09.2013 from the vendors namely Mrs.Namagiri, who is the wife of B.N.K.Sathyanarayana and two others. Thereby, they are having valid title over the suit property. The 5th defendant also filed a separate suit in O.S.No.555/2013 against the defendants 1 to 3, even though there is no such sale agreement. The 6th defendant also filed a suit for

injunction in O.S.No.1896/2013 on the file of I Additional District Munsif, Coimbatore claiming himself as tenant of the suit property. The 7th defendant also filed a suit in O.S.No.1545/2013 on the file of Principal District Munsif, Coimbatore claiming title over the suit property as if he purchased the same from the defendants 8 to 14. The above litigations shows that there is a need for comprehensive suit to clear the cloud over the title of the suit property. The plaintiffs make out the cause of action and the claims made between the parties shall be decided only by full fledged trial. Hence, prays to dismiss the application.

4. The point for consideration in this petition is

Whether the petition is to be allowed or not?

Point :

5. It is submitted by the Learned Counsel for the petitioner/4th defendant that without any legal rights which raises cause of action for filing of this suit, the plaintiffs have filed this suit. Hence, the plaint is liable to be rejected.

6. Per contra, it is contended by the Learned Counsel for the respondents 1 and 2/plaintiffs that while deciding the application under Order VII Rule 11 CPC, the Court shall consider the entire plaint pleadings and the pleas taken by the defendant in the written statement, are irrelevant. In support of his contention, he relied on the following Judgments

➤ **Bhau Ram vs Janak Singh and others reported in AIR 2012 sc 3023**

➤ **Sri Biswanath Bank vs Sulanga Bose reported in AIR 2022 SC 1519**

7. The Hon'ble Apex Court, in the case of **Bhau Ram vs Janak Singh and others** cited supra, in paragraph 8 has held that,

“the law has been settled by this Court in various decisions that while considering the application under Order VII Rule 11 CPC,

the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statement would be irrelevant”

In the case of **Sri Biswanath Bank vs Sulanga Bose** cited supra, the Hon’ble Apex Court, in paragraph 7.1 has observed as follows,

“.....as held by this Court in a catena of decisions while considering an application under VII Rule 11 CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint”.

8. By following the above principles, I have considered the case in hand.
9. On perusal of the plaint, it is pleaded by the plaintiffs as follows :

“The plaintiffs have purchased the suit property as per the registered Sale deed dated 11.09.2013 from the defendants 1 to 3 who are the legal heirs of B.N.K.Sathya Narayana, who died intestate on 05.01.2010. Originally one M/s.Savi Enterprises filed a suit for recovery of money against M/s.Guru, one Chikkuthama Chettiyar and Krishna Kumar along with one Sampath Kumar before the Sub Court, Coimbatore in O.S.No.661/1985 which was culminated into decree on 09.10.1990. Subsequently, in E.P.No.243/1992, the suit property was brought for Court auction and the same was purchased by B.N.K.Sathya Narayana on 07.04.1993. Subsequently, the 8th defendant and her husband Soukath Ali filed the petition to set aside the Sale in E.A.No.1345/1993 in the execution proceedings on the ground that they have purchased the suit property from the 15th defendant herein and the same was dismissed and the Sale was confirmed on 31.07.2006. The Sale certificate was also issued on 03.04.2008.

Thereafter, the auction purchaser filed E.A.No.695/2008 for delivery of possession and during the pendency, he died on 05.01.2010. After the death of B.N.K.Sathya Narayana/Auction purchaser, the defendants 1 to 3 filed a suit for delivery of possession in O.S.No.834/2013 on the file of II Additional Subordinate Judge, Coimbatore and the same is pending till date. Now, during the pendency of O.S.No.834/2013, the plaintiffs have purchased the same from the legal heirs of the auction purchaser. After the purchase of the properties on 29.10.2014, when the plaintiffs visited the suit property for developmental work, they came to know that there are several persons occupying the suit properties and there are multiple claims based on the fabricated and manipulated records. The 4th defendant claims title on the basis of unregistered Sale deed dated 07.09.1984 from Chikkuthama Chettiyar and he has filed a suit in O.S.No.1258/2013, in which, he questioned the two sale deeds executed by one Soukath Ali, the defendants 8, 9 and 14 with 17th defendant as per the sale deeds bearing Registration No.4512/1988 and 4513/1988. Immediately, the plaintiffs herein have filed impleading petition in the above suit and the same was dismissed. Against which, they have filed revision petition before the Hon'ble High Court, Madras, but the Learned I Additional District Munsif, Coimbatore decreed the suit on 12.03.2015. The suit in O.S.No.1258/2013 is a collusive suit and the decree is not binding on the plaintiffs and the same is liable to be set aside. As far as the 5th defendant is concerned, he is not entitled to claim right as if B.N.K.Sathya Narayana has executed Sale agreement dated 11.09.2009. The defendants 1 to 3, who have informed the plaintiffs that there is no sale agreement and they are

contesting the suit. The 6th defendant has also filed a suit in O.S.No.896/2013 as if he is a tenant and sought for injunction before the District Munsif, Coimbatore. The said suit is also not maintainable and he is not a tenant. The 7th defendant D.Sathya Narayana also filed a civil suit in O.S.No.1565/2013 before the Principle District Munsif, Coimbatore, claiming title as if he has purchased the properties from the defendants 8 to 14, who are the legal heirs of Soukath Ali. Already, the claim made by Soukath Ali was dismissed, hence, the defendants 8 to 14 are not having any right to claim any right over the suit properties. All the rights claimed by the various persons, have created cloud over the title of the properties. Hence this suit”

10. The above plaint averments shows that the plaintiffs have purchased the property from the defendants 1 to 3, who are the legal heirs of B.N.K.Sathya Narayana, who had purchased the suit property from the Court auction held in E.P.No.243/1992. In E.A.No.1345/1993, the execution court has also confirmed the sale executed in favour of B.N.K.Sathya Narayana and sale certificate was issued on 03.04.2008. B.N.K.Sathya Narayana died on 05.01.2010. Thereafter, the title to the property inherited by the defendants 1 to 3 and they, in turn, sold the suit property to the plaintiffs on 11.09.2013.

11. The plaintiffs were very well aware that, at the time of filing the suit there is a decree, that too relates to declaration of title in favour of the defendant No.4. The said decree was not an exparte decree and it is the decree passed in contested suit, in which, the competent civil Court has passed a decree declaring that the sale deeds executed by Soukath Ali and his family members as well as Chikkuthama Chettiyar as null and void.

12. In this case, even though the plaintiffs have averred those Sale deeds in favour of Defendant No.4 are not binding on the plaintiffs, they conveniently

not produced any of the documents before this Court except the copy of the decree passed in O.S.No.1258/2013 and the Sale deed executed by the defendants 1 to 3 in favour of the plaintiffs. The plaintiffs have suppressed the vital materials regarding the dates of the sale deed executed by B.N.K.Sathya Narayana in favour of the plaintiffs which is dated 11.09.2009. On perusal of the decree passed in O.S.No.1258/2013, it shows that the vendors of the plaintiffs are not parties to the suit and the validity of the sale deed executed by B.N.K.Sathya Narayana in favour of the 4th defendant herein is not an issue in that suit. In this suit, the plaintiffs contending that there is a cloud over the title of the suit property.

13. Admittedly, the 4th defendant also claims that he has originally obtained sale deed from Chikkuthamma chettiar in the year 1984 itself and subsequently, the very same property was sold in the court auction in the execution of the decree in E.P.No.1345/1993 in favour of B.N.K.Sathya Narayana. From B.N.K.Sathya Narayana, the defendant No.4 has purchased the very same property and also purchased the very same suit property from one Showkath Ali and his legal heirs. Already several suits have been filed as stated in the plaint. Hon'ble High Court in Transfer C.M.P.Nos 676 and 677 of 2016 and 32 and 33 of 2017, has ordered to transfer all the suits before the Principal District Court, Coimbatore and to try the suits as expeditiously as possible.

14. The plaint, also shows that the plaintiff has averred that they have purchased the suit property from the legal heirs of B.N.K.Sathya Narayana, who was died on 05.01.2010 and according to him, the suit for delivery of possession filed by the defendants 1 to 3 in O.S.No.834/2013 is pending and other defendants are also claiming title over the suit property. Under this circumstances, I am of the view that there are triable issues. Even though it is contended by the 4th defendant that there is an abuse of process of the court,

since the triable issues relating to the title to the property, the contention of the 4th defendant that there is no cause of action in the suit, is liable to be rejected.

In the result, this petition is dismissed.

Dictated to the steno-typist, transcribed and typed by her in the computer, corrected and pronounced by me the order in open court on this, the 26th day of October 2022.

PRINCIPAL DISTRICT JUDGE,
COIMBATORE.

// True copy //

Draft/Fair Order in

I.A.No.1/2021

in

O.S.No.161/2015

Dated: 26.10.2022