

IN THE COURT OF THE ADDITIONAL DISTRICT MUNSIF OF POLLACHI

PRESENT: THIRU.N.BHARATHIRAJAN, B.A., B.L.,

ADDITIONAL DISTRICT MUNSIF, POLLACHI.

WEDNESDAY THE 03rd DAY OF AUGUST 2022

I.A.No.02/2021 Renumbered as I.A.No.03/2022 in

O.S.No.256/2022

- 1) Krishnaswami
- 2) Radhakrishnan
- 3) Natarajan
- 4) Ravikumar

... Petitioners/Defendants 1 to 4

/VS/

- 1) S.Kumar

... Respondent/Plaintiff

- 2) The State of Tamil Nadu
Government, Rep. by its
District collector, Coimbatore.

- 3) Director, Directorate of Town
and country Planning,
Coimbatore Zonal, Coimbatore.

- 4) The Block Development Officer,
Pollachi North.

- 5) The sub collector, Pollachi.

- 6) The president, Achipatty
Panchayath, Sangampalayam Village.

... Respondents/Defendants 5 to 10

This petition coming on 26.07.2022 for final hearing before me in the presence of Thiru.K.S.Venkatesamurthy, Advocate for the Petitioner/Defendants 1 to 4, and of Thiru.M.A.Kanagaraj, Advocate for the Respondent/Plaintiff and 5 to 10 Respondents/Defendants called absent set ex-parte and on perusal of all material on record and hearing submissions, this court delivered the following:

ORDER

Petition filed under Order VII Rule 11 and Section 151 of C.P.C. for rejection of plaint.

2) GIST OF AVERMENTS IN AFFIDAVIT:

The 1st petitioner is the 1st defendant in the above suit. The other petitioners are brothers of the 1st petitioner. The petitioner has filed this petition for himself and other petitioners. The petitioners herein is the defendants 1 to 4 in the suit. The

respondent/plaintiff has filed the suit without any right or title over the alleged park even with the reference to property described in the suit. The plaint does not disclose any cause of action. when the 1st Respondent/Plaintiff did not produce any sale deed of his vendors or any other document to show any right or title over the park then he can not claim any right of user, easementary or privilege over the alleged park. A suit based on a non existent and imaginary plan is an abuse of process of court.

2.2) Admittedly there is no approved park site. The earlier suit filed by third party was dismissed after elaborate trial and thus the present suit for the very same relief is barred in the face of law. Unless, the local authority has approved the plan no right flow to panchayath or other defendants namely state and public servants. The suit is filed without issuing Sec.80 notice to the defendants 5 to 8. The suit is filed on an alleged right which was not agitated by vendor of 1st Respondent/Plaintiff even by the panchayath nor even by the defendant 6 to 8. And when the similar plea having been already negatived the present suit is barred by res-judicata.

2.3) The present suit is barred by estoppel and res-judicata. Assuming that panchayath had any right, the panchayath alone has right to sue and not by the 1st Respondent/Plaintiff who is a total stranger. The right of park site must flow from any document but there is no such approval is granted. A mandatory injunction can be sought only if the 1st Respondent/Plaintiff is already entitled to it by some document or by law but no such right has been given to the respondent and hence, the suit is not maintainable. The suit is vexatious under law. No cause of action is disclosed in the plaint. Therefore prayed to reject the plaint wholly. In support of the petitioner claim he relied the following precedents.

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|----------------------------|-----------------------------|
| 1) 2017 (1) CTC 497 | 2) (2015) 3 MLJ 436 |
| 3) 2021 (1) CTC 667 | 4) 2021 (2) CTC 255 |
| 5) AIR 2013 KARNATAKA 37 | 6) 2020 (3) MWN (Civil) 304 |
| 7) 2021 (2)MWN (Civil) 685 | 8) 2018 (3) MWN (Civil) 190 |

3) GIST OF AVERMENTS IN COUNTER:

The defendants 2 to 4 have sold 1100 sq.ft of land in site no.16, to one murugesan under the registered sale deed dated 29.06.1999 by stating that the layout is approved by the 3rd respondent herein. The respondent has purchased the above property from the said Murugasen. The land for road and park is earmarked in the plan. The layout road and the area allotted to park is kept in common for the use of layout site owners. Hence the respondent is having every right to use the public road and the park. The petitioner did not settle the land allotted for the park and now fraudulently he is trying to claim ownership of the area allotted for the park . Hence the suit is filed for mandatory injunction.

3.2) The respondents 2 to 6 join hands with the petitioners have not taken any steps to acquire the land earmarked for park in their name. The petitioners have sold the sites to the general public by mentioning the DTCP plan approval number 40553/93 LA.3 ~~ம.வ./ந.உள.இ.எண்.219/94~~ Subbian Nagar in the sale deed. The respondent has already filed an application under section 80 (2) in I.A.No.1/2020. In earlier proceedings the plaintiff is not a party. The petitioners and the respondents 2 to 6 have colluded together looking to share the value of the property allotted for park.

3.3) The respondent submit that the suit cannot be rejected on the ground of res-judicata, re-litigation, abuse process law and for estopped. The suit is for mandatory injunction directing the petitioners to execute settlement deed in favour of the 10th respondent. Since the respondent is the owner of the layout site and having interest in the common road and park and therefore he has every right to question the fraudulent act of the petitioners. The suit property is an area earmarked in the plan for public park purpose and the petitioners are trying to swallow the public property. Hence the application to be dismissed.

4) The Petitioners/Defendants 1 to 4 filed Written Argument.

5) POINTS FOR CONSIDERATION:

1. Whether the petition is to be allowed or not ?

6) DISCUSSION AND DECISION:

Heard both sides. Records perused. The suit is filed by the respondent/ plaintiff against the petitioners/Defendants 1to 4 and other respondents herein for Mandatory Injunction.

7) "Or.7 R.11, The plaint shall be rejected in the following cases :

- (a) Where it does not disclose a cause of action,
- (b) where the relief claimed as undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so,
- (d) Where the suit appears from the statement in the plaint to be barred by any law
- (e) where is not filed in duplicate
- (f) where the plaintiff fails to comply with the provisions of Rule 9 : [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff]

8). This courts decides that to resolve the issue involved in this petition it is useful to state the gist of the avernments in the plaint are as follows.

9) The defendants 1 to 4 formed a D.T.C.P layout in S.F.No.94/3 at sangampalayam village and named the layout as subbaiya nagar and the D.T.C.P plan approval number is 40553/93 LA.3 ம.வ./ந.உள.இ.எண்.219/94; The plaintiff purchased a house site for an extent of 1100 sq.ft in the subbaiya nagar layout; The defendants 1 to 4 had sold all 36 sites to general public by mentioning the D.T.C.P approval number; As per D.T.C.P approved plan the defendants 1 to 4 ought to

have settled the lands which earmarked for public road and park purpose in favour of the 10th defendant village panchayath but they willfully failed to gift the land; Value of the house sites were fixed subject to allotment of lands for public road and park; The defendants 1 to 4 colluded with the other defendants fixed the house sites value without settling the lands which allotted for public purpose in favour of the 10th defendant ; The defendants 1 to 4 without adding the house site owners had filed the suit in O.S.No.396/2012 against the defendant 5 to 10 for bar injunction; The plaintiff is not a party to the above suit; The defendant 5 to 10 have preferred appeal before the sub court and the plaintiff also taking steps to implead himself as a party to the appeal; That the defendants 1 to 4 have to settle the lands allotted for public purpose in favour of the village panchayat is a per-condition for getting D.T.C.P approval; The defendants 1 to 4 are now claiming the lands allocated for public road and park without giving them to panchayat; The plaintiff is one of the house site owner of the subbaiya nagar; Therefore, the plaintiff filed this suit for mandatory injunction directing the defendants 1 to 4 to execute a settlement deed in favour of the 10th defendant village panchayat with regard to the lands allocated for park and road.

10) It is settled law that the plaint avernments and the documents filed along with the plaint alone to be taken into consideration to decide the application for rejection of plaint. The respondent/plaintiff has produced six number of documents along with the plaint. Document No.1 is certified copy of sale deed which stands in the name of the plaintiff. In the sale deed it is mentioned as "அ.சங்கம்பாளையம் கிராமம் புலத்தில் க.ச.94/3 பாகத்திற்கு கட்டுப்பட்ட பூமியை லே அவுட் செய்து வீட்டுமனை இடங்களாகப் பிரித்து கோப்பு எண் 40553/93 எல்.ஏ.3 ன் படியும் ம.வ.ந.உ.இ.எண் 219/94 ன் படி அங்கீகாரமும் பெற்று சுப்பையா நகர் எனப் பெயர் வைத்துள்ள வீட்டுமனை குடியிருப்பில் மனை எண் 16 என்றள்ள மனைக்கு எல்லைகளும் அளவுகளும்" .

11) Document No.6 is the approved layout plan and in that plan 13376 sq.ft. land have been allotted for park. Thus, the avernments contained in the plaint and

the documents filed therewith shows that the plaintiff purchased a house site in the subbaiya nagar layout which was formed by the defendants 1 to 4. The house site was sold mentioning the D.T.C.P approval number 40553/93 LA.3 ம.வ./ந.உள.இ.எண்.219/94. Further shows that as per plan the defendants 1 to 4 have to settle the land allotted for public road and park in favour of the 10th defendant village panchayat. But the defendants 1 to 4 instead of settle the lands allotted for public road and park in favour of the 10th defendant are claiming ownership over the lands.

12) The plaintiff and house site owners are not made as a party to the earlier suit in O.S.No.396/2012 and further an appeal against the judgment of O.S.No.396/2012 is pending before the Sub-court and the plaintiff is taking steps to implead himself as a party in the said appeal. The copy of judgment and decree in O.S.No.396/2012 is produced along with the plaint.

13) From discussed above this court concludes that the plaint avernments and the documents filed therewith disclose the 1st Respondent/Plaintiff's right and cause of action against the petitioners herein and the other defendants. Further this court decides that only after full trial the plea of re-judicatae and abuse of process of court could be decided. Therefore, this court concludes that there is no merit in this petition.

14) In the result, the petition is dismissed. No costs.

Dictated to the steno-typist, typed by her in the Computer, printed, corrected and pronounced by me in open court this the 03rd day of August 2022.

Sd/- (N.Bharathirajan)
Additional District Munsif,
Pollachi.

List of witness and documents for Both side:- Nil -

Sd/- (N.Bharathirajan)
Additional District Munsif,
Pollachi.