

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.Present : **Tmt.N.Renuga**, B.A., B.L.,

District Munsif, Sulur

Tuesday, the 21st day of March 2023**I.A.No.3/2022****in****O.S.No.74/2022**

1. Ranjani

2. Ravi

...Petitioners / Defendants

/ Vs /

1. Saraswathi

2. Ramesh Kumar

...Respondents / Plaintiffs

This petition is coming on 08.12.2022 for final hearing before me in the presence of Thiru.T.A.Anandakumar, Advocate for the Petitioners and of Thiru.R.Prabakaran, Advocate for the Respondents and on hearing of submission of both parties upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioners under Order 7 rule 11 R/W section 151 of CPC to reject the plaint in suit in OS.No.74/2022.

1. The brief averments of the affidavit filed by the petitioner as follows:-

1.1. The petitioners purchased one of the suit properties from one Ganapathy gounder and one from one M/s.Jawaharlal & Co, by two sale deeds, through the power agent and sale deeds were registered as doc.No.8504/2011 and doc.No.6468/2012 SRO, Sulur. Subsequently all Revenue records were muted into 1st petitioner name pertaining to the suit properties. After the 1st petitioner purchased and she was enjoying the suit property. Then the respondents began to disturb continuously her peaceful possession and enjoyment in the suit property. The 1st petitioner had preferring complaint before the Police Authority.

1.2. According two FIRs were registered against the respondents on 2012, by the Inspector of Police, Sulur for Two separate incidents. Accordingly the 1st

petitioner filed a suit for permanent injunction against the respondents in OS.No.150/2012, before the Hon'ble Subordinate Judge Court, Tiruppur. The defendants appeared in the case and filed their written statement also. Subsequently the suit was transferred to the Hon'ble Principal Subordinate Judge of Coimbatore and renumbered as OS.No.1025/2012. Since the suit property lies within the jurisdiction of Coimbatore District, the suit was transferred to Coimbatore and it was posted in the trial list and the 1st petitioner also began the trial.

1.3. After a year long duration, finally the respondents completed by cross examination and thereafter the defendant was also examined and the defendants were cross examined in detail. During the cross examination, many questions were put to the defendants. Especially regarding the non – filing of any suit for partition, limitation, res-judicata etc. Finally a decree and judgment was passed on 17.12.2019 in petitioners favour. This is the suit was decreed as prayed for the relief of permanent injunction, thereby the respondents/plaintiffs were herein restrained by a decree and judgment of permanent injunction. The appeal suit is pending, the respondents filed a complaint before the land grabbing cell, Coimbatore in 2021.

1.4. The decree and judgment passed by the Hon'ble Principal Subordinate Judge, Coimbatore in OS.No.1025/2012, also confirmed the petitioners title, possession and enjoyment. The petitioners' vendor Ganapathy gounder sold a portion of the property to one M/s.Jawaharal & Co. vide sale deed doc.No.4707/1994, registered before the SRO, Sular. Even after 17 years of sale, the plaintiffs herein never sought declaration in a separate suit or in the suit in OS.No.1025/2012 or in the present suit. So the sale of the said property in the year 1994 by Ganapathy gounder which is a part of the suit property herein, have been accepted by the plaintiffs herein. The said property has been purchased by the 1st petitioner in the year 2012 only. So it is not purchased by 1st petitioner from Ganapathy gounder but from M/s.Jawaharal & Co. So the plaintiffs herein have purposely suppressed the said facts for the reason best known to them. The

plaintiffs have not whispered anything about the sale deeds. Because the plaintiffs know very well that the sale deeds were genuine deeds and even if pleaded that will be barred by limitation.

1.5. The daughters of the said Ganapathy gounder are necessary parties to the above suit. Because they only know about the relationship between the said Ganapathy gounder and the plaintiffs herein. The legal heir ship certificate of Ganapathy gounder is not produced by the plaintiffs which is fatal to the case of the plaintiffs. The plaintiffs pleaded that the daughters got married before the year 1989 and hence they have no right in the ancestral property and hence they are not necessary parties to the above suit. The suit property is the individual property of Ganapathy gounder. So none of his son or daughters have no right question the sale deeds executed by Ganapathy gounder through his power of attorney. Though the said daughters have no right in the suit properties as matter of law the daughters are necessary parties to the above suit as per the latest rulings of the Hon'ble Supreme court of India. On this ground also the above suit is liable to be rejected.

2. Gist of avernments in counter filed by the respondents as follows:-

2.1. The petition is totally unsustainable and has to be dismissed in limine. The petitioners filed this petition to reject the plaint under order 7 rule 11 for the reason non discloser of cause of action and this suit is barred under res – judicata. The petitioner/defendant already a suit for permanent injunction in OS.No.1025/2012 it was decreed subsequently the plaintiffs filed appeal in AS.No.19/21 before the Hon'ble District Court, Coimbatore. Further the plaintiff stated cause of action for the suit in all the paragraphs, the plaintiff the suit for declaration of power of attorney and other documents by the defendants with Ganapathy gounder. The issue involved in this case has not been decided in the earlier suit. Hence, the suit is not barred res judicata. The plea of res judicata order 2 rule 2 and rejection of plaint are exclude each other. This petition has no merits has to be dismissed.

3. Point for Consideration:-

Whether the petition to reject the plaint under Order VII Rule 11 R/W section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard learned counsels for both the parties and records perused. This petition filed to reject the plaint under the grounds of 1). res judicata, 2). order 2 rule 2 and 3). the plaintiffs has no cause of action. The plaintiff filed the main suit for the relief of declaration to declare the documents which the power deed executed by Ganapathy gounder is null and void, Further subsequent documents in favour of the 1st defendant and her wife Ranjani is null and void.

4.2. The petitioners filed this petition stating that already the 2nd defendant had filed suit in OS.No.1025/2012 before Hon'ble Sub court, for the relief of permanent injunction and by ascertaining the possession of the plaintiff there in the Hon'ble court had passed decree and judgment in favour of the plaintiff. Already the plaintiff in this suit had knowledge about the existence of documents in favour of this respondents on 14.03.2011 and the power deed executed by the Ganapathy gounder in the previous suit itself. The plaintiff contested the said suit and now filed this suit by suppressing all the material facts. The respondents/plaintiff stated that the previous counsel who contested the previous case has not taken any effective steps in conducting the trial, after knowing the existence of document the plaintiff filed this suit for declaration.

4.3. On perusal of the above said facts in affidavit and counter in order to reject the plaint the plaint and documents avernments should be taken into consideration while disposing the order 7 rule 11 application. Further, the petitioners/defendants taken first plea of res-judicata and contrastive res-judicata under section 11 of CPC will not taken as a ground while rejecting the plaint. The res-judicata plea is the mixed question of law and fact it should be decided only after examining the oral and documentary evidences in detail.

4.4. Further the petitioners/defendants also raised limitation plea that the limitation for filing of this suit has already elapsed, the respondent/plaintiff stated a reasons of limitation for filing of this suit in the main cause of action is false, he already know about the existence of documents in Ganapathy gounder and defendants 1 and 2 name. The plea of limitation also to be decided only after examining detailed oral and documentary evidences, it is also a mixed question of fact and law. Hence, under the question of limitation, aspect also this plaint cannot be rejected under order 7 rule 11. Hence, the reason stated in the affidavit for the rejection of plaint can be decided only after full fledged trail by framing issues.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her into the computer, corrected and pronounced by me in open court on this the 21st day of March 2023.

District Munsif,
Sulur.

List of witnesses on petitioners side:

Nil

List of documents on petitioners side:-

Ex.P.1	---	Plaint in OS.No.150/2012	Court certified copy
Ex.P.2	---	Written statement in OS.No.150/2012	Court certified copy
Ex.P.3	17.12.2019	Judgment in OS.No.150/2012	Court certified copy
Ex.P.4	---	Deposition for DW.1 in OS.No.1025/2012	Court certified copy
Ex.P.5		Letter issued by the Sub Inspector of Police land crabbing, Coimbatore District	Certified copy
Ex.P.6	26.12.2021	Paper publication in Dhinamalar news paper	Xerox copy
Ex.P.7	28.12.2021	Reply paper publication	Xerox copy

Ex.P.8	08.07.2011	CSR receipt	Xerox copy
Ex.P.9	---	Cheque to Ganapathy gounder	Xerox copy

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.3/2022 in
O.S.No.74/2022
Dated : 21.03.2023
DMC, Sulur.