

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.**Present : Tmt.N.Renuga, B.A., B.L.,****District Munsif, Sulur****Monday, the 24th day of March 2025****I.A.No.3/2024****in****O.S.No.85/2024****Gurunathasamy****...Petitioner / 1st Defendant****/ Vs /****1. P.Sathyannarayanamsamy****2. S.Prema****3. S.Pradeep****4. K.Shanthi****5. K.Revathi****Rep by their power agent Govindaraj****...Respondents / Plaintiffs**

This petition is coming on 12.02.2025 for final hearing before me in the presence of Mr.A.Kuppuraj, Advocate for the Petitioner and Mr.M.Jayanthinathan, 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 petitioner under Order 7 rule 11(a) and (d) R/W section 151 of CPC to reject the plaint in O.S.No.85/2024.

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

1.1. The respondents/ plaintiffs have filed the suit against petitioner/ 1st defendant and other defendants for declaration to declare that the Lok Adalat decree dated 09.12.2023 passed in O.S.No.121/2023 on the file of this court and for other reliefs. The alleged prayer made in the plaint by the respondents/ plaintiffs do not come under the purview of order VII rules (a) and (d) of CPC because as the present

suit has been filed for declarations and consequential injunction and the same is not in accordance with law and there is no cause of action for the present suit against the 1st defendant and other defendants. Besides, the present suit is hit by Doctrine of “Abuse process of law” also.

1.2. The respondents/ plaintiffs herein are represented through their alleged power agent, who is not at all competent person to verify the plaint on behalf of them, based on an unregistered alleged power of attorney, dated 10.06.2024, which is filed as plaint document No.1. Further the alleged power agent is not at all relative and legal heir of petitioner’s predecessors in title of the suit properties in any way whatsoever.

1.3. The said alleged power of attorney would create alienable rights and interest to the power agent in respect of the suit properties for which, the said power of attorney ought to have registered after the date of 01.12.2012 in view of section 17 of Tamil Nadu Registration (Amended) Act. Thereby the alleged unregistered power of attorney has not legal force and the same is not at all binding on petitioner/ 1st defendant in any manner whatsoever and it cannot be relied upon by the respondents as valid one. Therefore the respondents/ plaintiffs have no locus standi to file the present suit on their behalf through their power agent.

1.4. Declaration as regards the some documents as well as the Lok Adalath Decree in respect of the suit property are null and void, without praying a larger relief viz., declaration of title, the present suit is not in accordance with law. Therefore, the present suit is hit by Doctrine of “Abuse process of law and court” and nothing else.

1.5. The respondents have suppressed earlier preliminary decree passed in O.S.No.71/1960 and its final decree passed in I.A.No.523/1964 and the exchanges of notice between other defendants, petitioner/ 1st defendant and the respondents herein in respect of confirmation of oral partition, which did take place prior to 15.06.2006 between petitioner/ 1st defendant, his brothers and sisters in respect of the suit properties and the said oral partition was reducing in writing on 21.06.2006

for confirming the same by his family members. The forgoing facts would reveal that the suit properties had already been partitioned among the legal heirs of Periyathambi gounder. In addition to that the respondents had got some portion of the suit properties based on the said oral partition as their separate properties and thereafter and therefore, there is no title, interest are vested with them to question the Lok Adalath Decree by way of the present suit. Besides, the present suit is hit by Order II Rule 2 of CPC.

1.6. The respondents herein and their predecessors in title have knowledge about the said oral partition took place in respect of the suit properties. In other words, from the year 2006 onwards, they are well aware of the existence of the above said mutual and confirmation agreement in respect of the said oral partition. In spite of having knowledge about the existence of the said oral partition, the respondents have come forward with the present plaint belatedly after the lapse of 9 years and above for the reasons best known to them and therefore, the present suit is hopelessly barred by limitation in view of Art 58 and 59 of the Limitation Act, 1963. Consequently, the question of filing the present suit for setting aside Lok Adalath decree does not arise at all. Those facts would show that the respondents herein have not come to this court with clean hands. Therefore, the captioned suit is not maintainable in accordance with law.

1.7. The present suit is clearly an abuse of due process of law and court, and the same has been filed, only in order to defeat petitioner/ 1st defendant's legitimate right, title and interest over the suit properties and nothing else. Therefore, there is no cause of action for filing the present suit and the same is barred by law.

1.8. The present suit against the petitioner/ 1st defendant and other defendants has to be "struck down" on the threshold and this court has ample power to ascertain the motive and intentions of the respondents as to whether the present suit has been filed by the respondents/ plaintiffs in order to harass petitioner/ 1st defendant and as to for what purpose the respondents have approached this court and the same is whether hit by "abuse process of court" and law or not. On the basis of those

aspects also, the present suit is liable to struck down. Hence, the petition is to be allowed.

2. The breif avernments of counter statement filed by the Respondents as follows:-

2.1. The petition is false, frivolous, vexatious and unsustainable both under law and on facts. These respondents never admitted to their oral partition among their family members. The suit properties were not partitioned based on the petition mentioned oral partition. The petitioner suppressed the earlier facts and the 4th defendant filed a forged suit in O.S.No.121/2023 on the file of before this court colluded with this present petitioner alone. In the above mentioned O.S.No.121/2023 suit doc.No.11 was an unregistered partition deed dated 15.06.2006 was written in 21.06.2006 released the stamp paper.

2.2. Based on the forged and manipulated partition deed this present petitioner and 4th defendant obtained a compromise decree by way of misleading this court. The compromise decree was passed on 09.12.2023 based on that this present petitioner and 4th defendant were made some other transactions over the suit mentioned property in the name of their children. After the fraudulent transaction came to the knowledge of the respondents they filed this present suit in time. Hence, there is no point in being barred from the limitation of this suit. Knowingly the petitioner and other defendants were joint-hand colluded and created evidence for their bull and cock story of oral partition dated 15.06.2006.

2.3. The petitioner and the 4th defendant created the forged document dated 15.06.2006 on 21.06.2006 released stamp paper itself proves that with ill intention, they benefited illegally. The petitioner executed a release deed in favour of the 1st respondent on 10.02.2010 vide document no 3953/2011 regarding one of the suit mentioned property further the same S.F.No. And property also mentioned the alleged unregistered partition deed dated 15.06.2006 on 21.06.2006 released stamp paper. This proves the authentication of an unregistered partition deed. Regarding this illegal unlawful partition deed one of the respondent/ plaintiff moved to the concerned police to take criminal action against the petitioner. Initially the

petitioner executed the release deed later in order to grab the suit mentioned property the petitioner and the 2nd to 5th defendants created this unregistered partition deed. Hence, the petition ought to be dismissed.

3. Point for Consideration:-

Whether the petition to reject the plaint under Order 7 rule 11(a) and (d) R/W section 151 of CPC to reject the plaint is to be allowed?

4. Points:-

4.1. Heard learned counsels for both the parties and records perused. The main suit is filed by the plaintiff for declaration of compromise decree in O.S.No.121/2023 on the file of this court as null and void and consequentially relief of declaration of subsequent transaction in respect of suit property as null and void.

4.2. The plaintiffs contented that, suit property and other property originally belongs to Periathambi gounder he entitled the property through the suit in O.S.No.71/1960 dated 19.07.1966 and the property allotted to him by way of the decree. Further he had three wives namely Nanjakkal, Pappammal and Angammal. The 1st to 5th defendants are the issues of Nanjakkal, the Pappammal had no issues, the plaintiffs are the legal heirs of Angammal. Except the suit property other properties were sold out by the Periathambi gounder and his legal heirs.

4.3. The plaintiffs contented that, the suit property till remains unpartition and recently they came to know about the sub division of the suit property and they took encumbrance for the suit property and came to know about the compromise decree in O.S.No.121/2023 and came about the further transaction by the 1st and 2nd defendants and filed the present suit.

4.4. On the side of the defendants, after appearance filed this petition under order 7 rule 11 of CPC by stating that, already oral partition has been taken place between plaintiffs and defendants on 15.06.2006 and after that it was reduced in writing in subsequent deeds on 21.06.2006 after that, the defendants have dealt with the property. Further the defendants taken ground of no cause of action to file the suit and the suit is barred by limitation. Further the suit is hit under order II rule 2

of CPC and without claiming declaration of title the suit for other reliefs not maintainable and by the way the plaintiffs suit is fully abuse of process of law.

4.5. On perusal of records the grounds raised in the affidavit are all not the ground to reject the plaint under order 7 rule 11 of CPC. Further the said grounds are triable issues to be tried between the parties after perusing oral documentary evidences, alone decision can be given by this court in respect of the grounds raised in the affidavit. Hence, for the reasons mentioned in the affidavit this suit can't be rejected. Hence, this petition is dismissed.

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

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 24th day of March 2025.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on Petitioner side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.3/2024 in
O.S.No.85/2024
Dated : 24.03.2025
DMC, Sulur.