

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

District Munsif, Sulur

Wednesday, the 19th day of July 2023**I.A.No.4/2023****in****O.S.No.192/2021**

1. S.V.Palanisamy

2. S.V.Easwaran

...Petitioners/ Defendants

/ Vs /

M.Kandhasamy

...Respondent/Plaintiff

This petition is coming on 23.06.2023 for final hearing before me in the presence of Thiru.E.Gopalakrishnan, Advocate for the Petitioners and of Thiru.S.Anandraj, Advocate for the Respondent and 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 and section 151 of CPC to reject the plaint in OS.No.192/2021 on the ground of jurisdiction and for non joinder of necessary party.

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

1.1. The respondent/plaintiff filed the main suit for declaration and permanent injunction. The petitioners property situated in S.F.No.797 and later it was subdivided into 21 parts and as per partition deed No.1312/1997 with an extent of 0.11 acres was allotted to 1st petitioner. As per doc.No.1313/1995 with an extent of 0.11 acres was allotted to the 2nd petitioner. Hence the petitioners totally owned a extend of 0.22 acres and their property are sub divided as S.F.No.797/13. The respondent property situated at S.F.No.797/18.

1.2. The suit property originally belongs to Urumandagounder by way of partition deed No.839 of 1973 registered before SRO Sulur. As per partition deed C schedule property was allotted to said Urumandagounder with an extend of 0.12-1/2 acres in S.F.No.797. Later on as per partition deed No.1521 of 1997 legal heirs of the said Urumandagounder had manipulated the extend of 0.12-1/2 acres of land into

0.15 acres as per doc.No.1521/1997.

1.3. The said Urumandagounder wife and his only son Palanisamy and on behalf of his Minor sons sold an extend of 0.15 acres to one Prabalakshmi as per doc.No.2143/1997 and as per doc.No.4495/1998 the respondent/plaintiff has purchased the suit property the extend as 0.15 acres by adding of 0.2-1/2 acres excessively in S.F.No.797/18 in which he has no right or title. The said Urumandagounder and respondent are not in possession for entire extend 0.15 acres in S.F.No.797/18. The petitioners has placed a complaint before RDO, South Coimbatore.

1.4. The DRO conducted a brief enquiry in ஈ.மு.18987/2018/இ 1 after perusing the both side documents and found that respondent has mutated the patta as 0.15 acres ie., by adding 0.2-1/2 acres excess as compared to partition deed No.839/1973 and DRO has passed an order dated 18.06.2021 to rectify the patta extend of respondent land as of 0.2-1/2 acres. Hence, by suppressing the previous document i.e., partition deed doc.No.839/1973 the respondent filed this frivolous suit.

1.5. This Hon'ble court has no jurisdiction to try this present suit. Appeal against order of DRO has to be filed before the Commissioner for Land Administration but this respondent has filed this suit before this Hon'ble court. The present suit is barred by law. The respondent has no added their vendors are party to the suit. Hence the suit is barred for non joinder of necessary parties. Hence, the suit is ought to be dismissed.

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

2.1. The petition filed for reject the plaint is false, frivolous, vexatious and not maintainable in both law and facts of the case. The suit mention property along with some other property was allotted to one Urumandagounder through doc.No.1521/1997 dated 17.04.1997. From the legal heirs of Urumandagounder, Prabalakshmi was purchased the suit mention property vide doc.No.2143/1997 dated 11.06.1997. Right from the beginning till the purchase of above said of

Prabalakshmi the suit mention property was mentioned as 0.06.0 hectare i.e., 0.15 acres in S.F.No.797/18.

2.2. From the above said Prabalakshmi, the plaintiff purchased suit mentioned property vide doc.No.4495/1998 dated 04.11.1998 schedule of property mentioned as 0.15 acres. The patta number 128 in the name of plaintiff reveals the extent is 0.15 acres in S.F.No.797/18 and the FMB also reflects that in S.F.No.797/18 having 6 acres in other words 0.15 acres.

2.3. After filing the suit number 1897/2016 on the file of Principal District Munsif of Coimbatore the petitioner preferred DRO proceedings against the respondent were the respondent properly attended each and every enquiry and replied. Further the DRO has not passed any orders in favour of the petitioner as of knowledge to the respondent. This respondent also not seeking any relief against the DRO.

2.4. In field S.F.No.797/18 have 0.15 acres which was absolute rights comes to the respondent through the sale deed. Further the commissioner for land administration is having jurisdiction regarding between the dispute related to lease and tenancy. The jurisdiction of title disputes must be comes under this Hon'ble court only. Moreover the respondent purchased the property from his vendor and after his purchase the chitta also reflects the name of respondent with an extend of 0.600 are in S.F.No.797/18 dated 02.02.2001. Later the chitta was tampered with the help of some corrupted officers for the benefit of petitioner with undue influence. There is no justifiable reason given by the petitioners to reject the plant. Hence, the petition ought to be dismissed.

3. Point for Consideration:-

Whether the petition under Order 7 Rule 11 and 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. Here the plaintiff filed the main suit for declaration and permanent injunction to the suit property about 15 cents that he is the absolute owner. The defendants are filed the

petition under order 7 rule 11 to reject the plaint stating that the sale deed which her purchased through doc.No.4495/1998, in which the plaintiff excessively purchased 0.2-1/2 cents in S.F.NO.797/18. Hence, he has no right over the total 15 cents in the suit property. The plaintiff having right only 12-1/2 cents in S.F.No.797/18. Hence the petitioners/defendants filed this petition to reject the plaint under the ground suppression of facts, no jurisdiction to this court to proceed with trial.

4.2. On perusal of the affidavit and the plaint the plaintiff have claiming right over the suit property through a doc.No.4495/1998. The defendant is questioning the said document that the extent in that sale deed has been excessively mentioned as 15 cents including 2-1/2 cents. Hence this matter can be decided only after verifying the both side oral and documentary evidence. Under order 7 rule 11 of CPC substantial question of fact cannot be decided. 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 19th day of July 2023.

District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondent side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.4/2023 in
O.S.No.192/2021
Dated : 19.07.2023
DMC, Sulur.