

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

Present : **Tmt.N.Renuga**, B.A., B.L.,

District Munsif, Sulur

Wednesday, the 16th day of October 2024

I.A.No.6/2024

in

O.S.No.146/2023

1. Saraswathy
2. Raj
3. Subramanian
4. Geetha
5. Easwari
6. Rathinam
7. Vasu
8. Karthy

...Petitioners / Defendants

/ Vs /

R.P.Sakthi

...Respondent / Plaintiff

This petition is came on 06.11.2023 for final hearing before me in the presence of Thiru.A.Rajesh, Advocate for the Petitioners and Thiru.S.Manoharan, 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 of CPC to reject the plaint.

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

1.1. The The suit property originally belongs to 1st defendant's mother Kandammal through the sale deed in doc.No.2347/1937. The 1st defendant's mother

is in need of money of Rs.2,00,000/- and she obtained loan from one Chinnayan. Further the 1st defendant's mother executed sale agreement in favour of the Chinnayan in doc.No.2385/2003 and the Kandammal died on 23.07.2005 leaving behind the 1st defendant. After her death, the 1st defendant enjoyed the suit property. The 1st defendant discharged the said loan and executed the cancellation of sale agreement deed on 07.11.2007 and it was registered as doc.No.12651/2007.

1.2. Further the 1st defendant got loan from Velusamy and Thangavel had executed a general power deed in favour of them in doc.No.12653/2007 and till 2009 they paid the interest for the said loan, subsequently the 1st defendant and the 5th and 6th defendants had executed a another sale agreement in doc.No.397/2009 in favour of Thangavel and Velusamy.

1.3. Further to discharge the loan obtained from Thangavel and Velusamy, the 1st defendant approached one Manickamoorthy and Kaliappan and as per their advise they discharge the debt of Thangavel and Velusamy on the condition and the 1st defendant has to execute sale deed in respect of the suit properties in favour of Manickamoorthy and Kaliaapan as agreed the 1st defendant executed the cancellation of sale agreement in doc.No.210/2011 and executed sale deed in doc.No.211/2011. Further the 1st defendant continued be in possession of the suit properties and has paid interest for the loan obtained from the said Manickamoorthy and Kaliappan till June 20.20.2023. The said Manickamoorthy and Kaliappan has denied the execution of cancellation of sale deed by stating one or other blamable executes and the 1st defendant taken encumbrance certificate for the suit property on 14.08.2023 and had learnt that the said Manickamoorthy and Kaliappan, on the basis of sham and nominal sale deed they have executed a sale deed in favour of one Kandasamy on 09.04.2012 in doc.No.7461/2012. Again the said Kandasamy has sold the suit property on 18.01.2016 in doc.No.443/2016 to one P.Kandasamy. The said P.Kandasamy again sold the property to one Vankalathal and Kandasamy. Further the said persons has sold the suit property to one Vijayakumar and Chandrasekaran in doc.No.21669/2022. Further the said Vijayakumar and

Chandrasekaran executed sale deed in favour of plaintiffs on 24.05.2023 in doc.No.9422/2023. By knowing these alleged sale deeds, the 1st defendant filed a suit for declaration before the Hon'ble Principal Subordinate Court, Coimbatore in OS.No.1189/2023 and this plaintiffs appeared through their counsels. Hence, the 1st defendant alone in possession and enjoyment of the suit property. They had appear before Hon'ble Principal Subordinate Court, Coimbatore, after that urgent, the plaintiff filed this case before this court. The cause of action alleged by the plaintiff is not correct, it is created one for the purpose of filing of this suit. The plaintiff have not approached the court with clean hands. Hence, there is no cause of action for the suit hence, this plaint has to be rejected under order 7 rule 11(d) of CPC. Further the plaintiff have suppressed many mandatory facts and the suit is abuse of process of law.

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

2.1. The petition is baseless frivolous, false, vexatious and unsustainable under law and on facts. This petition is not maintainable, the averments in the plaint are the facts to be decided only after examining both side oral and documentary evidences. Hence, the plaint cannot be rejected under order 7 rule 11(d) of CPC. The affidavit filed by the petitioners/defendants are self explanatory as to some other facts which dispute between litigants herein and indicates other two civil suits pending before other court for that ground alone the plaint can not be rejected.

2.2. The averments in the plaint indicates the present facts in dispute and the subsequent facts after filing of their written statement which can be only redress before this court, by granting of permanent injunction. It cannot be done before Panchayatars. The said relief can be claimed only approaching through court of law. The plenty of cause of action has been stated in the plaint hence, this petition has to be dismissed with cost.

3. Point for Consideration:-

Whether the petition to reject the plaint under Order 7 Rule 11 of CPC is to be allowed?

4. Points:-

4.1. Heard both side. Perused records. The plaintiff's case is the plaintiff purchased the suit property on 24.05.2023 from one Chandrasekaran and Vijayakumar and while, they are trying to put fence in the suit property, and defendants are tried to disturb the plaintiff's possession and enjoyment. The respondent/plaintiff filed complaint before Police Station on 28.08.2023. Then, the plaintiff filed this suit for permanent injunction.

4.2. The defendants filed the present petition for rejection of plaint under the ground of no cause of action arose to file the suit under order 7 rule 11(d) of CPC. The petitioners/defendants contents the 1st defendant executed a sham and nominal sale deed document in favour of one Manickamoorthy and one Kaliappan on 05.01.2011 and they fraudulently executed subsequent sale deeds and the respondent/plaintiff is the last purchaser of the suit property. The petitioners/defendants have challenged the said documents before Hon'ble Principal Sub Judge, Coimbatore in OS.No.1189/2023 and it is still pending. Here the petitioners/defendants admitted the execution of sale deed in favour of Manickamoorthy and Kaliappan in the year 2011. But alleged the said sale deed has been executed only as a security for the loan obtained from Manickamoorthy and Kaliappan is the matters are to be proved by the petitioners/ defendants through substantial oral and documentary evidences in trial. The petitioners/defendants are filed other suit before the Hon'ble Principal Sub Judge, Coimbatore in August 2023. After that the respondent/ plaintiff here in has filed this present suit in December 2023 before this court. The respondent/ plaintiff stated that the cause of action for the suit was arosed by the complaint given by the respondent/plaintiff and alleged an incident have been took place on 28.08.2023. But the petitioners/defendants stated that, the present suit have been filed after the knowledge of the suit filed by the petitioners/defendants in OS.No.1189/2023 before the Hon'ble Principal Sub Judge, Coimbatore and alleged that the plaintiff without cause of action filed this suit.

4.3. Hence, the defendants filed present petition by stating there is no cause

of action for the present suit and the plaintiff has not approached this court with clean hands, the plaintiff filed the present suit with abuse the process of law.

4.4. On perusal of records the plaintiff's title is questioned in OS.No.1189/2023 before Hon'ble Principal Subordinate Judge, Coimbatore the property being the vacant land, this main suit is for bare injunction filed by the plaintiff by stating some cause action hence, whether the cause of action is true or not are the facts to be decided after examining oral and documentary evidences. Whether there is merit in the cause of action have to be decided only after full trial. Under this circumstances the present petition to reject the plaint for non discloser of cause of action under order 7 rule 11(d) is not maintainable.

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 16th day of October 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondent side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.6/2024 in
O.S.No.146/2023
Dated : 16.10.2024
DMC, Sulur.