

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

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

District Munsif, Sulur.

Thursday, the 2nd day of January 2025

I.A. No.10/2024

in

O.S. No.212/2017

1. Chandrasekar

2. S.Prakash

3. S.Santhamani (Died)

4. S.Kalaiselvi

5. M.Muthulakshmi

6. S.Sakunthala

7. Sumathi

...Petitioners / 8th to 14th Defendants

//Vs//

M.Shanmugam

...Respondent/Plaintiff

This petition coming on 06.12.2024 for final hearing before me in the presence of Mr.K.Vijayakumar, Advocate for the Petitioners and Mr.S.Vivekanandan, Advocate for the Respondent and upon perusing the records, and this court made the following:

ORDER

This petition filed by the petitioners/defendants 8 to 14 under section 151 of CPC to seeking joint trial of the suit in O.S.No.212/2017 along with O.S.No.346/2007 which is pending in final decree proceedings before this court in IA.No.1/2024.

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

1.1. The present petitioners are the 8th to 14th defendants in the main suit in O.S.No.212/2017. The parties in O.S.No.212/2017 and O.S.No.346/2007 on the file of this court which is pending in final decree proceedings are one and the same. The description of property in both the cases are also one and the same. The suit in O.S.No.346/2007 filed by the parties for partition and IA.No.2/2024, IA.No.3/2024 and IA.No.4/2024 are pending in enquiry. The present respondent/plaintiff filed the O.S.No.212/2017 for seeking declaration of the partition deed and settlement deed is null and void on the strength of exparte preliminary decree for partition in O.S.No.346/2007.

1.2. Further the present petitioners/defendants also filed petition to set aside the exparte preliminary decree in O.S.No.346/2007 and the same also is pending. Hence, it is necessary to try the both suits jointly and otherwise the decision of both cases will be affected. Hence, this petition.

2. The brief averments of the counter filed by the Respondent/Plaintiff as follows:

2.1. The petition is false, frivolous, vexatious and unsustainable in law and on facts. It is true that the parties to the suit in O.S.No.212/2017 and O.S.No.346/2007 and the properties in the both suits are all one and the same. But the cause of action for the suit in O.S.No.346/2007 is totally different from the suit in O.S.No.212/2017 which is pending before this court. The suit in O.S.No.346/2007 filed by the respondents' brother and the preliminary decree was passed by this court. After knowing the decree, by suppressing the said decree, the petitioners/defendants have created fraudulent documents like partition deed dated 02.09.2013 and settlement deeds dated 12.09.2013. Hence, on the strength of the preliminary decree in OS.No.346/2007 and to set aside the said documents, the respondents/ plaintiffs filed the present suit for declaration. The said O.S.No.346/2007 is pending now in final decree proceedings. The present application is not maintainable. Hence, this petition is to be dismissed.

3. Points for consideration:

Whether the petition under section 151 of CPC for seeking joint trial of the suit in O.S.No.212/2017 along with O.S.No.346/2007 which is pending in final decree proceedings before this court in IA.No.1/2024 is to be allowed?

4. Points :

4.1. Heard the counsels for both the parties. On perusal of records the suit in OS.No.346/2007 filed by the Sadhasivam, who is the brother of the present plaintiff against all other brothers and other legal heirs for partition. The said suit was expartely decreed on 24.04.2010, by following the same the final decree proceedings has been pending now before this court in IA.No.1/2024. The present petitioner/defendant is the 8th to 14th defendants have presently filed petition to set aside the exparte decree in O.S.No.346/2007 the same is pending in IA.No.1/2024. After the preliminary decree passed in O.S.No.346/2007, the another brother of the present plaintiff the Sadhasivam who is the 6th defendant in the present suit have executed a partition deed on 02.09.2013 and after the same there was execution of settlement deeds on 12.09.2013. By challenging the said partition deed and settlement deeds, the present respondent/plaintiff filed the present suit for declaration of the said deeds are null and void and not binding upon the respondent/plaintiff and it is against the preliminary decree in O.S.No.346/2007.

4.2. Admittedly the final decree proceedings is pending in OS.No.346/2007. The exparte decree against the present petitioners/ defendants has not been set aside by the court and the same is pending. Now the petitioners/ 8th to 14th defendants have filed the present petition to try the suit in O.S.No.212/2017 jointly along with final decree petition in O.S.No.346/2007. Considering the nature of both cases and stages in both cases that are different and one of the case is pending in final decree proceedings on the preliminary decree dated 24.04.2010. The another suit in O.S.No.212/2017 is in the stage of PW.1 cross. Hence, the cause of action for the both suits are not same, without set asiding the exparte decree in O.S.No.346/2007

the petitioners/ defendants cannot seek for joint trial of both the cases at present. 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 2nd day of January 2025.

District Munsif,
Sulur.

List of witnesses and document on petitioners side:

Nil

List of witnesses and documents on Respondent side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.10/2024 in
O.S.No.212/2017
Dated : 02.01.2025
DMC, Sulur.