

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga.,** B.A., B.L.,
District Munsif, Sulur

Tuesday the 31st day of October 2023

I.A.No.4/2022

in

O.S.No.195/2017

1. S.Vijayalakshmi

2. S.Banumathi

... Petitioners/Plaintiffs

/VS/

1. R.Senthilkumar

2. K.S.Gopalsamy

3. G.Aruna devi

4. G.Dharini

5. Kalaiselvi

...Respondents/defendants

This petition coming on 07.02.2023 for final hearing before me in the presence of Thiru.S.Jagadheesan, Advocate for the Petitioner and Thiru.M.Ganeshkumar, Advocate for the 1st respondent and upon perusing the records, and this court made the following:

ORDER:

This petition filed Under Order 18 rule 1 and section 151 of CPC direct the defendants to begin the trial.

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

1.1. The 1st petitioner is the 2nd petitioner's sister. The petitioners/plaintiffs filed the main suit for the relief of delivery of possession and permanent injunction. The 1st respondent/defendant in his written statement has alleged that the suit property in S.F.No.423/2 has been allotted to the father of the 1st defendant namely Ramasamy by way of WILL dated 23.03.1976, and after the demise of Ramasamy the said property came to the share of 1st defendant.

1.2. Hence, it is just and necessary to direct the defendants to begin their evidence to prove alleged WILL. Hence, the petition ought to be allowed.

2. The brief averments of Counter filed by the 1st Respondent as follows:

2.1. The petition is false and unsustainable both in law and on the facts of the case. The respondent in his written statement has alleged that the suit property in S.F.No.423/2 has been allotted to the father of the 1st defendant namely Ramasamy by way of a Will dated 23.03.1976 and hence the defendant will have to begin the trial of the above case is not correct.

2.2. The plaintiffs has come forward with the above case alleging that the defendants had encroached into the property of the plaintiff and has sought a relief for delivery of possession of 'B' schedule property after removing the encroachment. It is for the plaintiffs prove whether the defendants have encroached into the suit property or not. Therefore it is for the plaintiff to begin the trial of the case. The above petition lacks bonafide and the same is liable to be dismissed.

3. Point for consideration:-

Whether the petition under Order 18 Rule 1 and section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard both side perused the records. The plaintiffs filed this petition to direct the defendants to begin the trial first. On perusal of records the plaintiffs filed this suit for recovery of possession of S.F.No.423/2, which is mentioned in the B schedule to the suit property from the defendants. Further the defendants also stated that they are also having land in S.F.No.423/2 by way of WILL dated 23.03.1976 from their father Ramasamy. The main suit is for the relief of recovery of possession from the defendant, both parties are having land in S.F.No.423/2 here the matter to be decided is whether the defendants encroached the plaintiffs' property and whether plaintiffs proved the same. Hence, the initial burden on the plaintiffs to prove their case that they having property in S.F.No.423/2 and that has been encroached by the defendants. Hence, the right to being the trial is only upon the plaintiffs. Hence, this

petition is dismissed.

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

Dictated to the Steno-typist and directly typed by her, corrected and pronounced by me in open court this the 31st day of October 2023.

District Munsif,
Sulur.

List of witnesses and documents on petitioners side:

Nil

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.4/2022 in
O.S.No.195/2017
Dated : 31.10.2023
DMC, Sulur