

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

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

Thursday the 14<sup>th</sup> day of March 2024

**IA.21/2024**

**in**

**O.S.No.334/2017**

1. Subramaniam

2. Dharmaraj

...Petitioners/Defendants

/VS/

1. Mandiriappan

2. Nachimuthu (died)

3. Thangavelsamy

4. Smt.Subbulakshmi

5. Sri.Ramesh

6. Smt.Selvi

...Respondents/Plaintiffs

This petition is coming on 11.03.2024 for final hearing before me in the presence of Thiru.K.Gopalakrishnan, Advocate for the Petitioners and Ms.Krishnaveni, Advocate for the Respondents and upon perusing the records, and this court pronounced the following:

**ORDER**

Petition filed by the petitioners under section 45 of Indian Evidence Act and Section 151 of CPC to send the signatures and thumb impression of the vendors found in the plaintiffs sale deed dated 08.10.2001 marked as Ex.A.6 and the signatures of Mandhiriyapa gounder and Karuppusamy gounder found in the partition deed dated 22.10.1979 marked as Ex.B.3 for verification by the Expert opinion and his detail report.

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

1.1. The main suit 1<sup>st</sup> petitioner have deposed evidence in chief and cross

examined in part and the documents are marked on his side as Ex.B.1 to Ex.B.14. Thereafter the suit was posted for cross continuation.

1.2. The predecessors in title of the suit properties namely Muthugounder and Arunachalagounder both are sons of one Marappagounder were died without marriage. Therefore there is no legal heir to the above said brothers to succeed their estate. While the real fact is being so, the plaintiffs created the alleged sale deed dated 08.10.2001 in their favour by impersonation and cheating in illegal manner stating that the plaintiffs vendors are the legal heirs of the above said Muthugounder and Arunachalagounder. Therefore the sale deed dated 08.10.2001 is void-ab-initio not valid under law and no way convey any title to the plaintiffs in respect of the suit properties.

1.3. The defendants grandfather and father alone were enjoying the above properties from the year 1947 till his death and thereafter the defendants are in exclusive possession and enjoyment of entire suit properties. After the 2001 sale deed, the plaintiffs had mutated the revenue records without the knowledge and consent of the defendants in illegal manner and the same was seriously objected by petitioners.

1.4. Hence, it is just and necessary to prove the vendors of the plaintiffs are not the legal heirs of deceased Muthugounder and Arunachalagounder. The above said vendors had entered into a partition deed with one Palanisamy gounder and Kandasamy gounder to divide their other family properties by virtue of partition deed dated 22.10.1979. In the above said partition deed the father of the plaintiffs vendor is mentioned as Sellappa gounder. The verification of the signature and thumb impression of the vendors found in the plaintiffs sale deed dated 08.10.2001 and the parties namely Mandhiriyapa gounder and Karuppusamy gounder to the partition deed dated 22.10.1979 will enlighten the real facts that both parties are one and the same. Further it will enlighten that the plaintiff sale deed dated 08.10.2001 is created by impersonation and cheating in illegal manner. Therefore the plaintiffs are not entitled to claim title on the basis of above illegal sale deed.

1.5. In order to prove the plaintiffs sale deed dated 08.10.2001 by impersonation and cheating in illegal manner, without any other alternative come forward with this application as lost resort to send the signature and thumb impression found in the plaintiffs sale deed dated 08.10.2001 and partition deed dated 22.10.1979 for verification by the expert opinion, in the interest of justice. Hence, the petition.

**2. The brief averments of the counter statement filed by the respondents as follows:-**

2.1. The petition is false, frivolous, vexatious and unsustainable both in law and on facts. The predecessors-in-title to the suit property are Muthugounder and Arunachala gounder both sons of Marappa gounder is true. But it is false and incorrect to state that they died without any marriage. Actually, the vendors of the respondents are the legal heirs of Arunachala gounder and Muthu gounder.

2.2. it is for the petitioners to prove that on what basis they are claiming title to 2/ 3<sup>rd</sup> share in the suit property. Since they do not have any title deed, the petitioners have come forward with this false and vexatious application alleging that the vendors of the respondents are not the legal heirs of Muthu gounder and Arunachala gounder.

2.3. The petitioners have further alleged that the respondents created the sale deed dated 08.10.2001 in their favour by impersonation and cheating in illegal manner. The only persons to dispute the sale deed dated 08.10.2001 is the legal heirs of Sellappa gounder and not the petitioners, since they are only entitled to 1/ 3<sup>rd</sup> share in the suit property by virtue of sale deed dated 25.08.1947.

2.4. The petitioners are put to strict proof on what basis they enjoyed the entire property, when 2/ 3<sup>rd</sup> share belongs to the vendors of the respondents and later to the respondents. As per the sale deed dated 08.10.2001, the respondents have mutated their names in the revenue records and they are in joint possession and enjoyment of the suit properties along with the petitioners.

2.5. The alleged partition deed dated 22.10.1979 was effected between the sons of Sellappa gounder and his brother Palanisamy gounder. Actually, the above

said Palanisamy gounder is not the brother of Sellappa gounder at all.

2.6. Neither the petitioners nor the vendors of the respondents are parties to that deed. Hence, at this juncture and in these circumstances, the alleged partition deed dated 22.10.1979 cannot be a valid document to be compared with the sale deed dated 08.10.2001. The parties to the alleged partition deed dated 22.10.1979 had no relationship with the vendors of the sale deed dated 08.10.2001. The affidavit is totally silent about the relationship between the parties to both the alleged partition deed dated 22.10.1979 and the sale deed dated 08.10.2001. The petitioners have not offered any explanation as how they got the custody of the alleged partition deed dated 22.10.1979 and who are they to the vendors of the plaintiffs. Neither the petitioners nor their family members are in no way connected with the alleged partition deed dated 22.10.1979. Hence, the petitioners are not entitled to claim any relief, as prayed for.

2.7. If at all assuming but not admitting the averments in the affidavit, the parties to the alleged partition deed dated 22.10.1979 has to be examined to prove the same and they are the parties to explain the same beyond reasonable doubts regarding the alleged partition deed dated 22.10.1979. Only then the same can be sent for expert opinion. Before entertaining this application, first of all it has to be decided what is the nexus between the parties to the alleged partition deed dated 22.10.1979 and the sale deed dated 08.10.2001. Teh parties to the alleged partition deed dated 22.10.1979 has to enter into the witness box and depose what is the relation between them and the vendors of the sale deed dated 08.10.2001. Without doing so, there is no use for the opinion of the expert.

2.8. Moreover the real parties who has to challenge the sale deed in favour of the plaintiffs are the legal heirs of the deceased Sellappa gounder son of Marappa gounder who is the brother of Muthu gounder and Arunachala gounder.

2.9. The petitioners till date have invoked several provisions contemplated under the Civil Procedure code and Civil Rules of Practice to prolong the case. The petitioners had not offered any valid reason in their affidavit, why this petition has

been filed after 20 years from the date of filing of the written statement. The petitioners had not filed any separate suit or counter claim for declaration of their alleged title and against the sale deed dated 08.10.2001 within the stipulated time. Hence, the petitioners have no locus standi to question the sale deed dated 08.10.2001. On this ground alone, the petition is liable to be dismissed in limini.

2.10. The petitioners had been going on continuously alleging right from the beginning in all their counter statements, affidavits and written statements that they have filed criminal complaint before the District Crime Branch. But so far, the respondents have not received any summons.

2.11. In any event, there is no necessity to send for the signatures and the thumb impressions of the sale deed dated 08.10.2001 to be compared with the alleged partition deed dated 22.10.1979, who are in no way connected with the parties in the suit. The petitioners are put to strict proof to prove as to how the parties to the alleged partition deed dated 22.10.1979 have nexus with the vendors of the plaintiffs. The alleged partition deed dated 22.10.1979 are in no way connected with this suit.

2.12. The petitioners of their written statement has admitted that Karuppusamy is the son of Muthu gounder and Mandhiriappa gounder is the son of Arunachala gounder. Hence, the petitioners are now ESTOPPED under section 115 of the Indian Evidence Act from denying that Muthu gounder and Arunachala gounder died as bachelor. Hence, the petition ought to be dismissed.

### **3. Points for Consideration:-**

Whether the petition filed by the petitioners under section 45 of Indian Evidence Act and Section 151 of CPC is to be allowed?

### **4. Points:-**

4.1. Heard the counsels for both the parties. The suit filed for the relief of partition by one Mandiriappan and Natchimuthu who is initially purchased the suit property from Karuppasamy and Mandiriappan under the sale deed dated 08.10.2001 and they are having 2/ 3<sup>rd</sup> share in the suit property. Subsequently, the 3<sup>rd</sup> plaintiff has purchased the suit property from the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and he impleaded as party to

the case. The defendants in his written statement has pleaded that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs i.e., Mandiriappan son of Kumarasamy and Natchimuthu son of Arumugasamy are purchased the suit property from one Muthugounder son of Karuppasamy and Arunachala gounder son of Mandiriappa gounder on 08.10.2001. Originally the Mandiriappa gounder and Karupasamy gounder are not sons of Muthugounder and Arunachala gounder as mentioned in the document. They are the sons of one Chellappa gounder. They fraudulently impersonated their father name and executed the sale deed in favour of 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs.

4.2. Further, the persons who sold the suit property to the plaintiffs Muthugounder, Arunachala gounder are not the real owners of the suit property. Hence, the defendants as petitioners filed this petition to compare the thumb impression on the sale deed dated 08.10.2001 which is marked as Ex.A.6 through the PW.1 with the document alleged by the petitioners as a partition deed dated 22.10.1979 which is executed between Mandiriappa gounder and Karuppasamy gounder who are sons of Chellappa gounder with one Palanigounder which is marked as Ex.B.3 through DW.1.

4.3. The respondents/plaintiffs by way of their counter objections have stated the said Ex.B.3 has not relevant documents to the plaintiffs' vendor. Further the defendants have to prove their custody of the Ex.B.3.

4.4. The plaintiffs contents the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs vendor namely Mandiriappan and Karuppasamy are the respectively sons of Muthugounder and Arunachala gounder. The defendants contents the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs vendor namely Mandiriappan and Karuppasamy are the sons of one Chellappa gounder having impersonated their father name as Mandiriappa gounder son of Arunachala gounder and Karuppasamy gounder son of Muthugounder have executed the Ex.A.6 sale deed in favour of 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. Further the defendants alleged that the said vendors of 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs Mandiripaana and Karuppasamy along with his brother Kandasamy three are sons of one Chellappa gounder have partitioned their property with one Palanisamy gounder son of Nachimuthu gounder under Ex.B.3

dated 22.10.1979. If the thumb impression compared by sending it to the expert opinion, the main issue in this case will be solved. If the plaintiffs' vendors Mandiriappa gounder and Karuppasamy gounder are not sons of Chellappa gounder as mentioned in the Ex.B.3 definitely the thumb impression stated in the both applications will be not identical one. Hence, if sending the both documents for the expert opinion the result will be helpful for disposal of this 23 year old pending case. Further the defence case is only the adverse possession whether the claim of adverse possession maintainable or not is the matter to be decided on the merits. Hence, further the main suit is filed in the year of 2001, the Ex.A.6 has been brought before this court in the year of 2001 itself. But the defendants filed this petition with delay of 23 years. But in the interest of justice to arrive a just decisions in this case this court inclined to allow this petition.

***In the result, this petition is allowed. This court appointed Mr.S.Murugesan, MS.No.867/2013, Mobile No.9524844323 Advocate as Advocate Commissioner to take custody of the Ex.B.3 registered partition deed dated 22.10.1979 and the Ex.A.6 registered sale deed dated 08.10.2001 and in a shield cover with authorization of this court to the finger print and thumb impression expert, Chennai and to get report after comparing the thumb impression between the Ex.B.3 and Ex.A.6 which is admitted by the defendants and disputed by the plaintiffs. The Advocate Commissioner fee is fixed as Rs.15,000/- directly to be paid by the petitioners side to the Advocate Commissioner. The Advocate Commissioner is directed to get the report as soon as possible, since the suit is pending more than 23 years.***

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 14<sup>th</sup> day of March 2024.

Sd/N.Renuga

District Munsif,  
Sulur.

**List of witnesses and documents on petitioners side:**

Nil

**List of witnesses and documents on Respondents side:-**

Nil

Sd/N.Renuga

District Munsif,  
Sulur.

Draft/ Fair Order  
I.A.No.21/2024 in  
O.S.No.334/2017  
Dated : 14.03.2024  
DMC, Sulur