

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM

PRESENT: Tmt. S.SUGANIYA SRI B.A.B.L (Hons), M.L., PGDAML

ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM

MONDAY, 8th DAY OF APRIL 2024**IA.307/2023 IN OS.NO.8/2020**

- 1.Meenakshi
- 2.Rani
- 3.Balathandayutham
- 4.Pachayappan

..... Petitioners/Defendants 5 to 5

/Vs/

1. Nagarajan
2. Sivakumar
3. Mala
4. Sheela Rajendar

.... Respondents/ Plaintiffs

5. Sub - Registrar
Sub- Registrar's Office
Chidambaram
6. Tamizharasi
7. Sengundhar podhu
Chidamabram North
Represented by its president
8. Ashok kumar

....Respondents/ Defendants 1 to 4

For Petitioners	Thiru.R.Gururaj Advocate
Respondent No.1 to 4	Thiru.K.Ramadoss Advocate
Respondent No.5	K.S.Elangovan Advocate/Government pleader
Relief Claimed	Petition filed under Order 14 Rule 2 of CPC praying that the issues relating to the maintainability of the suit for non-joinder of necessary parties, being barred by resjudicata and being a second suit for partition may be tried as preliminary issues.
Final Hearing	30.01.2024.

Upon hearing the arguments of the petitioner and respondent and on perusal of the entire records and having stood over for consideration till this day, this court delivers the following

ORDER

The case of petitioner:

1. The Petitioners are plaintiffs and respondents are defendants in the suit. One Veerabadra Mudaliar had 3 sons by name Thillaivanan, Kaliyaperumal and Vaidyanathan. Veerabadra Mudaliar had a daughter by name Lakshmi. Veerabadra mudaliar owned properties. Kaliaperumal alias Kaliyamurthy died without marriage. Lakshmi filed suit on 18.06.1997 in Principal District Court, Cuddalore, for partition and separate possession of the properties described thereunder. The suit was filed against her brothers Thillaivanan and Vaidyanathan. The 2nd defendant Vaidyanathan did not contest the suit which was transferred to the Additional District Court, Chidambaram and renumbered as O.S.1/2002. After contest, a preliminary decree was passed on 28.11.2002. Final decree has not yet been passed. There has been no division by metes and bounds so far. Thus, no sharer can claim absolute title to any property subject matter of O.S.1 of 2002.

2. The property subject- matter of this suit is a large extent and is item No.1 in O.S.No.1/2002. Thus, a preliminary decree has been passed granting Lakshmi 1/16 share in items 1 to 9 therein. Thus, there are 3 shares. Nobody can claim exclusive right to the suit property. Lakshmi's brothers had entered into a registered partition deed dated: 17.04.1991 between themselves and she was totally ignored. The partition could not bind her. The partition was put forward in O.S.1/2002 but was found not binding on Lakshmi. The partition deed stands superseded. Now the sisters of Thillaivana Mudaliar i.e. respondents 1 to 4/ plaintiffs 1 to 4 have filed the present suit upon the very same partition deed dated: 17.04.199. They have suppressed the suit O.S.1/2002. Not only that, they have even suppressed the fact that Lakshmi was the daughter of Veerabadra Mudaliar. Lakshmi is no more. They are the daughters and sons of Lakshmi and hence her legal heirs. They have succeeded to her estate.

3. But, the respondents 1 to 4 have filed this suit for a declaration that an indemnity is barred by time and for reliefs of even mandatory injunction to receive and register document. The suit is fraudulent and a collusive one. It is an attempt to overcome the decree in O.S.No.1/2002 and dispose off the suit property and deceive and defraud them. The reliefs are untenable. Moreover, in every suit where a government servant's is impleaded, the State represented by the Collector is a necessary party. They should have been made parties to the suit. The suit has been filed upon a superseded partition deed. As a matter of fact, the counsel A.Sambandam, who has appeared in this suit for 2nd defendant, appeared for the father of present plaintiffs in that suit while the counsel K.Ramadoss who has appeared for the plaintiffs was a family friend of our family and family advocate. They even filed case against him in the Consumer Forum and have alleged his antagonistic attitude towards petitioner's family in other proceedings.

4. The petitioner is an advocate practicing in this court. K.Ramadoss was present throughout the trial of O.S.No.1 of 2002 and knows all details about their family, petitioner's mother, brothers and the properties. Yet both advocates have suppressed the suit. An attempt is being made to obtain a collusive decree. Accidentally, the petitioner was present in court on the last hearing date and came to know about the suit, the petitioner appraised the court about the facts. Now considering that there is a decree in petitioner's favour and they are entitled to a share in the suit property and the title deed relied upon in this suit is itself invalid. A fraud has been played on the court by both sides and a fraud is likely to be perpetuated against me. This has to be prevented. Therefore, the petitioner filed suit in I.A.No.403 of 2021 in the suit to implead petitioner as parties. The application was allowed. The petitioners have been impleaded as defendants 5 to 8 in the suit and has already a suit for partition was filed in O.S.No.1 of 2002 and a preliminary decree was passed as far back as 28.11.2002. This has been suppressed. A second suit for partition will not lie. Apart from that,

the suppression amounts to a fraud. There cannot be a second preliminary decree even partially. Any remedy has to be obtained only in O.S.No.1 of 2002.

5. Apart from that, when the 1st defendant, a government servant is impleaded, the State of Tamil Nadu represented by the Collector of the District is a necessary party. Without the State, the suit is bad for non-joinder of necessary party. Thus, the suit is barred by principles of resjudicata, non-joinder of necessary parties and will not lie in view of the fraud played. These are legal aspects covered by records. No oral evidence is required. A trial will be redundant. It will prolong the pendency of the suit for no reason. The issues have to be taken up as preliminary issues and the suit has to be disposed off. Hence this petition.

The case of 2 to 4 Respondents:

6. The respondent vehemently oppose the petition filed by the petitioner and put the petitioner to the strict proof of the same. The suit is filed for declaration that the indemnity created under the sale deeds dated: 18.7.1976, 22.4.1998 and 25.3.1991 have become time barred and unenforceable and for mandatory injunction directing the 1st defendant to receive and register any document executed, signed and presented to the 1st defendant by plaintiffs for transfer of suit property and for other reliefs. As already stated it is not a suit for partition and hence question of suppression will not arise. In the suit on the side of plaintiffs, 4th plaintiff was examined as PW1 and cross examined by counsel for 1st defendant. Defendants 2 to 4 remain exparte. The plaintiffs side was closed and the case was posted for defendant side evidence. 1st defendant's counsel made an endorsement stating that he has no oral evidence for 1st defendant and 1st defendant's side evidence was closed and the case was posted for arguments. In order to harass the respondents to blackmail and to extract money, this petition came to filed. Since the evidence is closed and it is posted for arguments, this petition as framed at this stage is not legally maintainable. Question of maintainability of the suit and resjudicata has no application at this stage. Even as per the case

of petitioner, preliminary decree was passed in favour of petitioner mother on 28.11.2002. Even during the life time of Lakshmi, she has not chosen to file a petition for passing of final decree. Till her death, no action was taken by her. Even after the death of Lakshmi, her heirs have not chosen to file a petition for passing of final decree. This proves the conduct of parties. This respondent's counsel has no idea about the earlier suit. Therefore, the respondent prays to dismiss this petition with costs.

7. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

8. On the side of petitioner, Ex.P1 to Ex.P4 documents were marked. On the side of respondents, no oral and documentary evidence produced.

Points for consideration:

9. Heard both sides Learned Counsels. Material records perused. This is the suit filed for the relief of declaring the indemnity bond created under sale deed dated: 18.7.1976, 22.4.1985 and 25.3.1991 as time barred and unenforceable and for mandatory injunction directing the defendant to receive and register any document executed presented by plaintiffs in respect of suit property. This is the petition filed under Order 14 Rule 2 of CPC praying that the issues relating to the maintainability of the suit for non-joinder of necessary parties, being barred by resjudicata and being a second suit for partition may be tried as preliminary issues. According to the petitioner, the Petitioners are impleaded parties, respondents are plaintiffs and defendants in the suit. One Veerabadra Mudaliar had 3 sons by name Thillaivanan, Kaliyaperumal and Vaidyanathan. Veerabadra Mudaliar had a daughter by name Lakshmi. Veerabadra mudaliar owned properties. Kaliaperumal alias Kaliyamurthy died without marriage. Lakshmi filed suit on 18.06.1997 in Principal District Court, Cuddalore, for partition and separate possession of the properties described thereunder. The suit was filed against her brothers Thillaivanan and Vaidyanathan. The 2nd defendant Vaidyanathan did

not contest the suit which was transferred to the Additional District Court, Chidambaram and renumbered as O.S.1/2002. After contest, a preliminary decree was passed on 28.11.2002. Final decree has not yet been passed. There has been no division by metes and bounds so far. Thus, no sharer can claim absolute title to any property subject matter of O.S.1 of 2002.

10. The petitioner further alleges that subject- matter of this suit is a large extent and is item No.1 in O.S.1/2002. Thus, a preliminary decree has been passed granting Lakshmi 1/16 share in items 1 to 9 therein. Thus, there are 3 shares. Nobody can claim exclusive right to the suit property. Lakshmi's brothers had entered into a registered partition deed dated: 17.04.1991 between themselves and she was totally ignored. The partition could not bind her. The partition was put forward in O.S.No.1/2002 but was found not binding on Lakshmi. The partition deed stands superseded. Now the sisters of Thillaivana Mudaliar i.e. respondents 1 to 4/ plaintiffs 1 to 4 have filed the present suit upon the very same partition deed dated: 17.04.199. They have suppressed the suit O.S.1/2002. Not only that, they have even suppressed the fact that Lakshmi was the daughter of Veerabadra Mudailar. Lakshmi is no more. They are the daughters and sons of Lakshmi and hence her legal heirs. They have succeeded to her estate.

11. The petitioner further alleges that this suit is an attempt to overcome the decree in O.S.1/2002 and dispose off the suit property and deceive and defraud them. The suit has been filed upon a superseded partition deed. As a matter of fact, the counsel A.Sambandam, who has appeared in this suit for 2nd defendant, appeared for the father of present plaintiffs in that suit while the counsel K.Ramadoss who has appeared for the plaintiffs was a family friend of our family and family advocate. The said counsel completely knew about the suit in OS.No.1/2002. They even filed case against him in the Consumer Forum and have alleged his antagonistic attitude towards petitioner's family in other proceedings. Therefore, the petitioner filed I.A.No.403 of 2021 in the suit to im-

plead petitioner as parties. The application was allowed. The petitioners have been impleaded as defendants 5 to 8 in the suit and has already filed a suit for partition in O.S.No.1 of 2002 and a preliminary decree was passed as far back as 28.11.2002. Without the State, the suit is bad for non-joinder of necessary party. Thus, the suit is barred by principles of resjudicata, non-joinder of necessary parties and will not lie in view of the fraud played. These are legal aspects covered by records. No oral evidence is required. A trial will be redundant. It will prolong the pendency of the suit for no reason. The issues have to be taken up as preliminary issues and the suit has to be disposed off.

12. On the other hand, the respondent alleges that this is not a suit for partition and hence question of suppression will not arise. On the side of plaintiffs, 4th plaintiff was examined as PW1 and cross examined by counsel for 1st defendant. Defendants 2 to 4 remain exparte. The plaintiffs side was closed and the case was posted for defendant side evidence. 1st defendant's counsel made an endorsement stating that he has no oral evidence for 1st defendant and 1st defendant's side evidence was closed and the case was posted for arguments. In order to harass the respondents to blackmail and to extract money, this petition came to be filed. Since the evidence is closed and it is posted for arguments, this petition as framed at this stage is not legally maintainable. Question of maintainability of the suit and resjudicata has no application at this stage. Even as per the case of petitioner, preliminary decree was passed in favour of petitioner mother on 28.11.2002. Even during the life time of Lakshmi, she has not chosen to file a petition for passing of final decree. Till her death, no action was taken by her. Even after the death of Lakshmi, her heirs have not chosen to file a petition for passing of final decree. This proves the conduct of parties. This respondent's counsel has no idea about the earlier suit. Therefore, the respondent prays to dismiss this petition with costs.

13. On the side of petitions, Ex.P1 to P4 was marked. Ex.P1 is the copy of plaint in OS.No.50/1997. Ex.P2 is the copy of written statement in OS.No.50/1997. Ex.P3 is the copy of written statement in OS.No.50/1997. Ex.P4 is the copy of decree in AS.No.1/2002. On perusal of records, it is seen that the suit was commenced on 16.8.2021 and PW1 was examined, Ex.A1 to A7 was marked. When the suit was posted for further plaintiff side evidence, the petitioner has filed the petition in IA.No.403/2021 so as to implead them in this suit. The said petition was allowed on 23.10.2021 and additional issues were framed. Subsequent to which, the additional evidence of PW1 was adduced and at that stage, this petition was filed. The plaintiff side evidence was already closed, and the suit is in the stage of defendant side evidence. If this petition is allowed, then the same would amount to second round of litigation and also, it will amount to confusion in the suit as such the issue of res-judicata is an issue of fact and law. Thus, the plea of res-judicata cannot be determined as preliminary issue when it is a mixed question of law and fact. The non-joinder of necessary party was sought as the suit was filed without District Collector, in this regard, a specific issue was framed. Hence, it is for the plaintiff to prove his case. This court does not find any valid reason to frame preliminary issue and to decide it first when the plaintiff side evidence was completely over. Therefore, for the above-mentioned reason, this court is inclined to dismiss this petition.

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

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 8th day of April 2024.

(Sd/-S.Suganiasri)
Additional District Munsif,
Chidambaram.

List of witnesses on the side of the petitioners:

NIL

List of documents on the side of the petitioners:

Ex.P1	-	Copy of plaint in OS.No.50/1997
Ex.P2	-	Copy of written statement in OS.No.50/1997
Ex.P3	-	Copy of written statement in OS.No.50/1997
Ex.P4	-	Copy of decree in AS.No.1/2002

List of witnesses and documents on the side of the respondents:

NIL

(Sd/-S.Suganiyasri)
Additional District Munsif,
Chidambaram.