

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
KANCHEEPURAM DISTRICT AT CHENGALPATTU**

Present: Tmt.K.Kayathri, M.A.B.L.

Additional District Judge,
Chengalpattu.

Tuesday, the 13th day of December 2022

I.A.No.1/2022 in

O.S.No.524/2008

M.Krishnan

..Petitioner/Plaintiff

-Vs.-

1.Govindaraj

2.Durairaj

3.Vijayakumar

4. Jayaprakash

5.Chandrasekaran

6.Mohan dos

....Respondents/Defendants

This Petition coming before this court on 9.12.2022 for final hearing in the presence of Thiru.Jayaprakash Hariram Counsel for the Petitioner/plaintiff and Thiru.D.Palanichamy Counsel for the Respondents/Defendants and upon hearing the arguments of both side and perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

This Petition filed by the Petitioner/plaintiff under order XIII Rule 2 of CPC to reject the documents which was marked as Ex.B2, Ex.B10, Ex.B11, Ex.B12, Ex.B15, Ex.B16 and Ex.B18 as the documents attracts stamp penalty and it cannot be taken even as secondary evidence without verification of originals.

2. The petition averments in brief as follows:-

The suit was posted for DW1 Cross examination and the 4th respondent was examined as DW1 and he has marked certain documents without producing the original and the certain documents pertaining to Stamp duty penalty which could not be even taken as secondary evidence. Ex.B2 is the notice by Special Thasildhar and Ex.B10 and Ex.B11 are the Ration card of the deceased Maduraimuthu and Ex.B12 is the ration card of 2nd plaintiff and Ex.B15 and Ex.B16 are the Driving licenses but original has not been produced by the 4th respondent. Ex.B18 is the Partition deed which is compulsorily to be registered and Ex.B18 requires Stamp duty penalty. The Respondents claiming partition and these documents are in the hands of the respondents. Hence the petitioner prays to reject the documents marked as Ex.B2, Ex.B10, Ex.B11, Ex.B12, Ex.B15, Ex.B16 and Ex.B18 as the documents attracts stamp penalty and it cannot be taken even as secondary evidence without verification of originals and are all not maintainable.

3.The averments in the counter filed by the respondents/defendants in brief as follows:-

All the allegations in the petition are denied. The documents marked are only the documents which filed in OS No.438/2006 and this petitioner/plaintiff has also filed his written statement and in which he did not averred anything about the said plaint document and the said OS NO.438/2006 filed by this respondent and others for the relief of partition pertaining to the above suit schedule mentioned property against this petitioner who is none other than the brother of this respondent and others whereas this petitioner filed the above suit for Permanent injunction in respect of the same property against this respondent and others and he sought for joint trial of both suits and the same was allowed and

joint trial started and the petitioner side evidence completed and posted for defendants side evidence and this respondent has filed his proof affidavit and marked exhibits B1 to Ex.B18 and posted for cross of DW1 and in this stage, the petitioner came after thought with this petition and same is not sustainable and liable to be dismissed.

The petitioner and the respondents are brothers and resided as joint family up to their father Maduramuthu Naicker death under one roof where the petitioner residing now. After the death of his father the petitioner has intentionally quarrelled with the respondents and thrown out them including his Mother and he had taken all the documents and which is already stated and further all the documents are in his custody only and knowing pretty well only to harass the respondents – brothers, he has filed such a frivolous petition.

Ex.B2 is concerned the petitioner himself admitted in cross that notice given to him and all his brothers and hence the admitted facts need not be proved further that document also in his custody. The other documents are also in the custody of the petitioner and he knows very well and he has suppressed all the real facts and filed the present petition and those documents also marked only to prove the joint family and which is also admitted by the petitioner in his cross further he is none other than the brother of the respondents. Ex.B18 is not the Partition deed and it is the Family arrangement and which need not be registered and not attract any stamp duty penalty as alleged. The original is also in the custody of the petitioner and which was pleaded in the list of document in OS NO.438/2006.

The schedule mentioned properties in both the suits are ancestral properties and hence the admitted facts need not to be proved. The respondents have never stated that those documents are in their custody as alleged but they have stated that all the documents are in the custody of the petitioner so that

allegations also utter false.

The documents are already marked and it cannot be rejected as alleged further it is only subject to proof and relevancy. Moreover the petitioner has not at all given any objection at the time of marking of the documents and only after thought he has filed this petition without any base. There is no cause of action for this petition and hence the petition is liable to be dismissed.

4. The point for Consideration :

1. Whether the petition is to be allowed or not?

5. Point:-

Upon hearing the submissions and perusal of alleged Exhibits mentioned in the petition this court finds that pertaining to Ex.B2 notice by Special Tahsildar, the said notice given to the petitioner and all his brother and the petitioner also admitted the same during the cross examination and thus admitted facts need not be proved. Regarding Ex.B10 and Ex.B11 are the ration card of their father Maduraimuthu Naicker and the said documents is filed to prove that the petitioner and the respondents lived together along with their father and the said fact also admitted by the petitioner. Further Ex.B12, Ex.B15, Ex.B16 originals are in the custody of the petitioner and the above said documents also marked only to prove the joint family and it is also admitted by the petitioner during his cross examination. Regarding Ex.B18 on perusal of the document it is a family arrangement and thus it does not requires any stamp duty penalty and but it does not requires to be registered. Therefore, the alleged Exhibits B2, B10, B11, B12, B15, B16, B18 original documents are in the custody of the petitioner. Furthermore the respondents are not claiming the partition on those documents. In this situation, alleged documents are already marked as exhibits and the same cannot be rejected.

Further, the admissibility and the relevancy of the documents would be decided at the time of conclusion of the case. Hence, this court finds that the petitioner is the brother of the respondents and suppressed the real facts regarding custody of the original documents and filed this vexatious petition only to protract the proceedings and thus, there is no merit in this petition and this court is declined to allow the petition and accordingly, this petition is dismissed.

Finally, this petition is dismissed. No cost.

Dictated to the Shorthand writer and directly typed by her and corrected and pronounced by me in open Court, this the **13th day of December 2022.**

Sd/-K.Kayathri,

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Both sides Exhibits and witnesses: Nil

Sd/-K.Kayathri,

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

/TRUE COPY/

Draft/Fair Order
I. A.No.1/2022 in
O.S.No.524/2008
Dated :13.12.2022
ADJ/CPT
