

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

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

Additional District Judge,
Chengalpattu.

Thursday, the 16th day of November 2023

I.A.No. 2/2022 in O.S. 258/2009

CNRNo: TNCG01-000278-2009

R.Bhavani

...Petitioner/Plaintiff

..Vs..

1. M.Karunakara Pandian

2. R.Divya

3. S.Karthik

4. S.Vivek

5. S.Deepak

...Respondents/Defendants

This Petition coming before this court on 15.11.2023 for final hearing in the presence of M/s. M.B.Venkataperumal and J.Bhaskaran, counsels for the Petitioner and Thiru.Venkataraman, counsel for the 1st Respondent and Thiru. David George, counsel for the 2nd Respondent and Thiru. R.Kumaresan, counsel for the Respondents 3 to 5 and upon hearing the arguments of both sides and perusing the material records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

The petition filed under Order VI Rule 17 of the CPC to amend the plaint as detailed in the petition.

2. The petition averments in brief:-

The petitioner is the plaintiff in the suit and has filed for declaration of petitioner's title to the suit 'B' schedule property and for consequential relief directing the 1st defendant to deliver possession of the same after removing the illegal construction put up by 1st defendant in 'B' schedule property and to direct the 1st defendant to pay a sum of Rs.10,000/- per month towards future damages for use and occupation and for declaration of her title to the suit 'C' schedule property and for consequential relief directing the 2nd defendant to deliver possession of the same after demolishing the illegal compound wall put in the suit 'C' schedule property and to direct the 2nd defendant to pay a sum of Rs.5,000/- per month towards future damages for use and occupation of 'C' schedule property.

Pending suit, the respondents 3 to 5 have filed petition in I.A.No.201 of 2019 to implead them as parties as they purchased the property measuring an extent of 2400 sq.ft., in Plot No.5, comprised in survey No.77/2C2, under a registered sale deed dated 06/12/2018 under document No.8739/2018 and the same was allowed on 25/03/2019. The respondents 3 to 5 are not bonafide purchasers for

value since, they purchased the said property during the pendency of the suit.

The property purchased by the respondents 3 to 5 is the part of suit property which has been trespassed by the 2nd respondent. Moreover, pending suit, with an evil intention, the 2nd respondent in collusion with the respondents 3 to 5 have created the alleged sale deed 06/12/2018 which is not binding on the petitioner. Hence, the respondents 3 to 5 are liable to vacate and hand over vacant possession of 'C' schedule property. Hence, it is just and necessary to add the respondents 3 to 5 as parties to the suit as defendants 3 to 5. The cause of action survives on the respondents 3 to 5 and the declaratory relief in respect of the said sale deed dated 06/12/2018 in respect of the 'C' schedule property also survives on them. Hence the petition.

3. No counter has been filed by Respondents 1 and 2.

4. The counter averments in brief (filed by 3rd Respondent and adopted by defendants 4 and 5):

The 3rd respondent denies each and every averments in the petition except those that are specifically admitted. It is an admitted

fact the respondents 3 to 5 have jointly purchased the property bearing Plot No.5, comprised in Survey No.77/2C2, measuring an extent of 2400 sq.ft. bearing Patta No.2536 (As per Patta Survey No.77/2C2D) situated at Okkiam Thoraipakkam Village, Customs Colony Main Road, Sholinganallur Taluk, Kanchipuram District by virtue of a registered sale deed dated 06/12/2018 under Document No.8739 of 2018 from the 2nd defendant. It is also an admitted fact that as soon as they got knowledge about the pendency of suit, they filed implead petition. The respondents have purchased the above said property through bank loan and the antecedents of the said property had been thoroughly analyzed and after confirming the title and measurements of the said property, the bank authorities (M/s Karur Vysa Bank, Perungudi Branch) had extended loan facility to them and subsequently they entered into Mortgage with the said bank through Deposit of Title Deeds registered under Document No.8740 of 2018, dated 06/12/2018. The revenue authority had issued patta and mutated the revenue documents viz., Chitta, Adangal records with respect to the said property in favour of respondents 3 to 5.

The petitioner is the actual trespasser and attempting to grab

portion of these respondents property. It is the bounden duty of the petitioner to prove her case as against the respondents 3 to 5. Based on their perfect title and possession, the respondents 3 to 5 had already obtained building permission and sanction from CMDA and the bank authorities had also granted loan facility for construction of the building.

The act of petitioner seeking permission of this court to add imaginary and unsustainable prayers as against the respondents 3 to 5 is only to disrupt the due process of law. The petitioner has not approached the court with clean hands and the balance of convenience is only in favour of the respondents 3 to 5 who are the bonafide purchasers. Under the above said circumstances, the petition is liable to be dismissed.

5. The point for consideration:-

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

No witnesses were examined and no documents were marked on both sides.

6. Points :-

Heard both sides. Records perused. This Petition has been filed to permit the petitioner to amend the plaint as detailed in the petition

viz.,to add the respondents 3 to 5 as defendants 3 to 5 in the short cause title and long cause title and further to add the declaratory relief in respect of the sale deed dated 6.12.2018 ('C' schedule property) as against the respondents 3 to 5 and also to declare the said alleged sale deed as null and void.

According to petitioner, pending suit, the respondents 3 to 5 have filed petition in I.A.No.201 of 2019 to implead them as parties since they purchased the property measuring an extent of 2400 sq.ft., in Plot No.5, comprised in survey No.77/2C2, under a registered sale deed dated 06/12/2018 and the same was allowed on 25/03/2019. The respondents 3 to 5 are not bonafide purchasers for value since, they purchased the said property during the pendency of the suit.

It is the main contention of the petitioner that the property purchased by the respondents 3 to 5 is the part of suit property which has been trespassed by 2nd respondent. Moreover, pending suit, with an evil intention, the 2nd respondent in collusion with the respondents 3 to 5 have created the alleged sale deed 06/12/2018. Hence, the respondents 3 to 5 are liable to vacate and hand over vacant possession of 'C' schedule property.

The petitioner further contended that the cause of action survives on the respondents 3 to 5 and the declaratory relief in respect of the said sale deed dated 06/12/2018 in respect of the 'C' schedule property also survives on the respondents 3 to 5. Hence the petition is filed to amend the plaint pleadings and prayed to allow the petition.

7. Per contra, the respondents 3 to 5 contended that the respondents have purchased the above said property through bank loan and the antecedents of the said property had been thoroughly analyzed and after confirming the title and measurements of the said property, the bank authorities had extended loan facility and subsequently they entered into Mortgage with the said bank through Deposit of Title Deeds registered under Document No.8740 of 2018, dated 06/12/2018. The revenue authority had issued patta and mutated the revenue documents viz., Chitta, Adangal records with respect to the said property in favour of respondents 3 to 5.

The respondents 3 to 5 further contended that the petitioner is the actual trespasser and attempting to grab portion of these respondents property. Based on their perfect title and possession, the respondents 3 to 5 had already obtained building permission and

sanction from CMDA and the bank authorities had also granted loan facility for construction of the building.

These respondents further contended that act of petitioner seeking permission of this court to add imaginary and unsustainable prayers as against the respondents 3 to 5 is only to disrupt the due process of law and the petition is liable for dismissal.

8. In these rival contentions, on perusal of the records and facts put forth by both the parties it is evident that the petitioner has sought for amendment in the plaint with the contention that during pendency of the suit, the respondents 3 to 5 have purchased the part of suit property i.e. 'C' schedule property. If that be the case and in view of the contentions raised by the petitioner, the amendment sought for is just and necessary for the purpose of determining the real question arise between the parties.

Further, as far as the amendment sought for to amend the long cause title and short cause title regarding the impleadment of respondents 3 to 5 as defendants 3 to 5 is concerned, this is the consequential petition since the implead petition filed in I.A.No.201/2019 to implead the respondents 3 to 5 as defendants 3 to

5 was allowed by this court on 25.3.2019.

9. Thus, considering the entire facts and circumstances, the proposed amendments are not prejudicial to the respondents as the same does not introduce any new case or change the nature and character of the existing case and this court is of the considered opinion that for complete adjudication the proposed amendment could be allowed in the interest of justice.

Finally, this Petition is allowed. No cost.

Dictated to the Shorthand writer and directly typed by her in the Computer and corrected and pronounced by me in open Court, this the **16th day of November 2023.**

sd/-K.Kayathri

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Exhibits and witnesses on either side: Nil

sd/-K.Kayathri

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Draft/Fair Order
I. A. No.2/2022 in
O.S.No.258/2009
Dated : 16.11.2023
ADJ/CPT
