

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.**

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,**
Principal District Judge, Chengalpattu.

Friday the 25th day of August 2023

I.A.No.1388/2018

in

O.S.No.159/2018

S.Vithyanandhan . . . Petitioner / 1st Defendant.

/Vs/

1. P.Kannan . . . Respondent / Plaintiff.

2. J.Bala Ganesh . . . Respondent/2nd Defendant

This petition came up before me in this court for final hearing on 4.8.2023, in the presence of Tvl.K.Murugamamtham and M.Jegan, Advocates for the petitioner and Tvl.R.Rajesh Vivekananthan and R.Samithurai, Advocates for the 1st respondent, the 2nd respondent set exparte in the main suit itself, upon perusing the entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition is filed by the petitioner / 1st defendant under Order 7 Rule 11 CPC, praying to reject the suit in O.S.No.159/2018.

2. The case of the petitioner in brief :

The petitioner is 1st defendant in the suit. The plaintiff filed the suit and its relief pending disposal of the suit in O.S.No.1010/2012 before the Additional District Munsif Court, Alandur, as relief the sale deed

in document No.2263/2011 is null and void. The plaintiff had chosen the fresh suit and alleged cause of action at Chengalpattu District Court for trying to escape from the defence of the earlier suit as O.S.No.1010/2012 which is controversial of the present suit. The plaintiff's suit and its relief against the earlier suit in O.S.No.1010/2012 and the same is against the Civil Rules of Practice and the relief (a) is against the earlier suit as declaration the sale deed document No.2263/2011 is null and void and the present suit O.S.No.159/2018 and the relief as declaration the legal ownership in the present suit is not maintainable due to the reason of the plaintiff's relief is time barred due to reason of the earlier suit is pending. The plaintiff's suit in this court becomes resjudicata. The necessary parties were not added in the suit. The plaintiff not valued the suit properly. The plaintiff filed the present suit suppressing the facts as per para 14 (i.e.) O.S.No.1010/2012 was dismissed for default but the suit relief, parties and the suit nature were not discussed so the above suit come under the non-deciding the facts. Hence, prayed for rejection of plaint.

3. The brief averments of counter filed by the respondent :

The respondent is the plaintiff in suit. If the averments of the plaintiff read wholly the prayer for declaration is only a consequential relief and the main relief sought for is recovery of possession. The respondent issued notice to the petitioner after the suit which was filed by his wife

against him as well as against the respondent was dismissed for default. Even after receipt of the said notice the petitioner has not handed over the suit schedule property to the respondent. He did not give any reply by disputing the title. Even then suit filed by one party will not deprive the right of another party to sue. The relief claimed in both the suits were different. The cause of action of the suits are different. the petitioner did not know the meaning of resjudicata. The petitioner impleaded necessary parties to the suit and the non-joinder of necessary parties is the triable issue and not the ground for rejection of plaint. The question of possession, and mesne profits are triable issues. The suit is not barred by limitation. The suit is property valued. The above petition is only to delay the suit as far as possible. Hence, prayed for dismissal of petition.

4. The point that arises for determination is whether the suit has to be rejected.

5. Point :

This petition is filed under Order 7 Rule 11 CPC to reject the suit. The petitioner is the 1st defendant. He filed this application that the suit is not maintainable for the reason the plaintiff himself has filed a suit in O.S.1010/2012 before the Additional District Munsif, Alandur for a relief that the sale deed in document No.2263/2011 as null and void. The petitioner / 1st defendant states that the respondent / plaintiff chosen to file this suit

trying to escape from the defence of the earlier suit which is contradictory of the present suit. The petitioner alleges in view of the earlier suit the relief sought in the suit is against the earlier suit therefore the suit is liable to be dismissed.

6. The petitioner herein not filed the plaint in the earlier suit. But the plaintiff states that the suit schedule property originally belonged to mother of 1st defendant one Mrs.Saraswathy ammal having purchased the same from one Mrs.Saroja through a registered document 625/1981. The said Saraswathy died on 13.6.1997 and her husband Santhanakrishnan died on 30.8.2003 leaving behind the 1st defendant as their legal heir. After the death of the father and mother of 1st defendant had executed general power of attorney deed in favour of 2nd defendant under a registered document dated 4.2.2006.

7. It is alleged on 28.1.2009 the 1st defendant represented by 2nd defendant executed an agreement of sale by a registered document No.135/2009 in favour of plaintiff. The sale consideration is fixed as Rs.33,00,000/-, out of which the plaintiff alleged to have paid a sum of Rs.3,00,000/-.

8. The plaintiff states the defendants promised to execute a sale deed after cancelling mortgage deed dated 29.5.2006 which was executed by 1st defendant in favour of one Gopikannan under document

No.1824/2006. The plaintiff states on 24.6.2011 the 1st defendant paid the mortgage amount thereafter the 1st defendant who represents the 2nd defendant executed a sale deed dated 27.7.2011 in favour of plaintiff for a sale consideration of Rs.57,50,000/- and registered under document No.2263/2011. It is alleged the 1st defendant sought time to vacate and hand over the schedule of property.

9. The plaintiff further states he permitted the 1st defendant to reside for a period of nine months as permissive occupier. It is alleged the 1st defendant not vacated the premises. It is alleged when the plaintiff insisted the 1st defendant to vacate, he alleged to have absconded and his wife filed HCP.2110/2012 before the Hon'ble High Court against the plaintiff and on investigation by the police, it was found that the allegations are not true.

10. The plaintiff alleges thereafter the 1st defendant instigated his wife and children to file a suit against him as well as the plaintiff herein and the 2nd defendant and one Mr.Salal in OS 1010/2012 before the Munsif Court, Alandur, to declare the sale deed dated 27.11.2011 as null and void and permanent injunction from alienating the suit property.

11. The petitioner /1st defendant filed this application contending the suit is not maintainable for the reason earlier suit in O.S.No.1010/2012 was filed by the plaintiff, therefore this suit is against and contrary to the

earlier suit. The said suit was alleged to have dismissed for default on 30.11.2015. Further the plaintiff states after the dismissal of O.S.1010/2012, the plaintiff issued notice to handover possession. But it is alleged the possession is not handed over by the petitioner / 1st defendant nor he gave reply. It is stated the relief claimed in both the suits are different, cause of action in both the suits are different, therefore plaintiff contended that the suit is liable to be dismissed.

12. It is true that O.S.No.1010/2012 was filed by the petitioner / 1st defendant. The above suit was filed for a relief of declaration that the sale deed in document No.2263/2011 as null and void. The suit property was sold to the plaintiff by the 1st defendant is not disputed. The possession of the suit property is not handed over by 1st defendant even today. Only to avoid handing over possession which is claimed in the present suit this application is filed.

13. There are triable issues in the suit. The suit cannot be rejected as prayed by petitioner / defendant. The contention of the petitioner / 1st defendant is not true, therefore this petition is liable to be dismissed.

13. **As the result, petition is dismissed. No costs.**

Dictated by me to the steno-typist, computerized by her

directly, corrected and pronounced by me in open court, on this the 25th day of August 2023.

Principal District Judge,
Chengalpattu.

Both side witness and exhibit :
Nil.

Principal District Judge,
Chengalpattu.