

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

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

Additional District Judge,
Chengalpattu.

Monday, the 8th day of April 2024
I.A.No.1061/2012 in O.S.No.213/2011
CNR No:TNKP01-000709-2011

1. A.Kannan (Died)
2. K. Indumathi
3. T.Thanusa
4. K. Prabhusankar
5. K. Gowri Sankar

(Amended as per order in IA.No.192/2019
dated 19.10.2019)

...Petitioners/defendants.1 and 6 to 9

-Vs.-

- 1.Vedagiri (Died)
2. Mallika
3. Anitha
4. Arunraj
5. Preetha

(Amended as per order in IA.5/2022
dated 21.4.2022)

....Respondents/Plaintiffs

This Petition coming before this court on 22.3.2024 for final hearing in the presence of M/s.M.B.Venkataperumal, J. Bhaskaran and R. Sugumar, counsels for the Petitioners and Thiru.M.Anandeeswaran, counsel for the Respondents 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

This petition filed under Order 7 Rule 11(d) and Sec.151 of CPC to reject the plaint in O.S.No.213/2011 as it is barred under Order 2 Rule 2 of CPC.

2. The Petition averments in brief as follows:-

The petitioners are the defendants in the suit. The plaintiff has filed the suit for partition. The respondent has already filed a suit in O.S.No.271 of 2007 before District Munsif Court, Chengalpattu for declaration that the sale deed

executed by father of plaintiff and defendants 1 to 5 in favour of 1st defendant in respect to 'B' schedule property therein i.e. Item No.2 of the suit property herein vide Doc.No.8095 of 2006 dated 11.09.2006 and sale deed executed by V.Arumugham in favour of 2nd petitioner /6th defendant herein with respect to schedule 'A' property therein i.e. Item No.1 of the suit property herein vide Doc.No.8096 of 2006 dated 11.09.2006 before Sub Registrar Office, Thiruporur as null and void and does not bind the plaintiff and for consequential relief of permanent injunction from in any way interfering with his alleged peaceful ploughing in the agriculture in the suit properties. The plaintiff has no manner of right, title or interest in or over the suit properties. The Item Nos.1 and 2 of the suit properties were purchased by plaintiff through registered sale deeds in Doc.Nos.387/1967, dated 27.3.1967 and 1028/1981 dated 25.6.1981 respectively. Thus, the suit properties are the absolute and exclusive property of the respondent's father and patta was also granted in his favour.

The plaintiff has failed to obtain any leave at the time of filing the said suit in O.S.No. 271 of 2007 in the District Munsif Court, Chengalpattu as required by law.

Since the respondent has not filed this suit when the suit was filed in O.S.No.271/2007 before District Munsif Court at Chengalpattu and omitted to claim partition, he is not entitled to file the subsequent suit on the same cause of action. Moreover, the cause of action for both the suits are one and the same. Hence, the suit is barred under Order 2 Rule 2 of CPC and the plaint is liable to be rejected under order 7 Rule 11(d) of CPC.

3. Brief averments of the counter filed by 2nd Respondent/ 2nd Plaintiff:-

The petition is not maintainable in law and on facts. All the allegations

in the affidavit are hereby specifically denied except those that are specifically admitted. The suit properties were purchased by her late father from and out of the amount paid by his wife's house and also sold some jewels of his wife and paid the sale consideration and the plaintiffs and defendants have been in continuous possession and enjoyment of the same by carrying on agriculture in the said Nanja land for several years. The plaintiff's father died on 16.11.2006 at the age of 94. The 2nd plaintiff came to understand that on 11.9.2006, the 1st and 6th defendants have taken her father to Sub Registrar Office, Thiruporur and make him to execute two sale deeds with respect to 'B' schedule property for a sale consideration of Rs.1,57,500/- in favour of 1st defendant and with respect of 'A' schedule property in favour of 6th defendant for a sale consideration of Rs.22,500/-. At the time of alleged sale deeds, the plaintiff's father was in the age of 94 and he could not move from one place to another without somebody's help. He is not in good state of mind and taking advantage of the old age of plaintiff's father, the 1st and 6th defendants fraudulently manipulated two sale deeds in respect of suit properties. There is no need to execute two sale deeds in favour of defendants 1 and 6 and the said sale deeds have no legal sanctity and will not confer any title in favour of defendants 1 and 6. No consideration was passed in favour of plaintiff's father. At the time of death, the plaintiff's father did not have any money with him or in Bank. The 2nd plaintiff caused legal notice to 6th defendant on 16.10.2006 and thereby called upon him to handover plaintiff's due share. The 6th defendant had issued reply notice dated 10.11.2006. In the sale deed, the 2nd plaintiff's father's age was fraudulently mentioned as 86 years. Taking advantage of the fraudulent sale deeds, the defendants 1 and 6 have been preventing the

plaintiff to do the agriculture which is the only source of income and she is the only breadwinner of the family. This plaintiff has filed a suit for declaration and injunction to declare the sale deeds as null and void and permanent injunction against the defendants 1 and 6 from disturbing her peaceful possession and enjoyment before District Munsif Court, Chengalpattu in O.S.No.271/2007 and the same is pending. The plaintiff have valid right in the schedule mentioned lands when the property has been purchased out of the funds of plaintiff's mother house. During 2006, the real estate business is in its peak stage and at that time, the value of one cent of the suit property would be more than one crore. Hence there is no necessity to sell the property at the partly price of Rs.1,57,500/- and Rs.22,000/-. Even now, the market place of one cent is Rs.1,00,000/-.

The earlier suit has been filed for declaration to declare the sale deeds as null and void as against the 1st and 6th defendants only. Since the defendants 1 and 6 have committed fraud by creating fraudulent sale deeds, the earlier suit in O.S.271 of 2007 was filed for declaration. However, the other defendants have not come forward for amicable partition. Therefore, the plaintiff has filed the present suit for partition against her brothers and sisters. Therefore, the cause of action mentioned in O.S.No.271 of 2007 and O.S.No.213 of 2011 are entirely different. Under the above said circumstances, the petition is liable to be dismissed.

4. The points for consideration:-

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

5. Points:-

Heard. This court perused the entire records and written arguments of Respondent's side.

The present petition is filed under Order 7 Rule 11(d) and Sec.151 of CPC to reject the plaint on the ground that the suit is barred under Order 2, rule.2 of CPC. According to petitioners, the respondent has already filed a suit in O.S.No.271 of 2007 before District Munsif Court, Chengalpattu for declaration and for consequential relief of permanent injunction from in any way interfering with his alleged peaceful ploughing in the agriculture in the suit properties.

The main contention of the petitioners is that plaintiff has no manner of right, title or interest in or over the suit properties. The Item Nos.1 and 2 of the suit properties were purchased by Arumugam through registered sale deeds in Doc.Nos.387/1967, dated 27.3.1967 and 1028/1981 dated 25.6.1981 respectively. Thus, the suit properties are the absolute and exclusive property of the respondent's father and patta was also granted in his favour. The plaintiff has failed to obtain any leave at the time of filing the said suit in O.S.271 of 2007 in the District Munsif Court, Chengalpattu as required by law.

It is the further contention of the petitioners that the cause of action for both the suits are one and the same. Hence, the suit is barred under Order 2 Rule 2 of CPC and the plaint is liable to be rejected under Order 7 Rule 11(d) of CPC as the suit is not maintainable.

6. On the other hand, the respondents contended that the suit properties were purchased by her late. father from and out of the amount paid by his wife's house and also sold some jewels of his wife and paid the sale consideration and the plaintiffs and defendants have been in continuous possession and enjoyment of the same by carrying on agriculture in the said Nanja land for several years.

The respondents further contended that this plaintiff's father died on 16.11.2006 at the age of 94 and she came to understand that on 11.9.2006, the 1st and 6th defendants have taken her father to Sub Registrar Office, Thiruporur and make him to execute two sale deeds with respect to 'B' schedule property for a sale consideration of Rs.1,57,500/- in favour of 1st defendant and with respect of 'A' schedule property in favour of 6th defendant for a sale consideration of Rs.22,500/-.

It is the further contention of the 2nd plaintiff that at the time of alleged sale deeds, the plaintiff's father was in the age of 94 and he could not move from one place to another without somebody's help. He is not in good state of mind and taking advantage of the old age of plaintiff's father, the 1st and 6th defendants fraudulently manipulated two sale deeds in respect of suit properties. There is no need to execute to sale deeds in favour of defendants.1 and 6 and the said sale deeds have no legal sanctity and will not confer any title in favour of defendants.1 and 6. No consideration was passed in favour of plaintiff's father.

The respondent further contended that in the sale deed, the 2nd plaintiff's father's age was fraudulently mentioned as 86 years. Taking advantage of the fraudulent sale deeds, the defendants 1 and 6 have been preventing the plaintiff to do the agriculture which is the only source of income and she is the only breadwinner of the family. This plaintiff has filed a suit for declaration and

injunction to declare the sale deeds as null and void and permanent injunction against the defendants 1 and 6 from disturbing her peaceful possession and enjoyment before District Munsif Court, Chengalpattu in O.S.No.271/2007 and the same is pending. The plaintiff have valid right in the schedule mentioned lands when the property has been purchased out of the funds of plaintiff's mother house. Further the value of one cent of the suit property would be more than one crore. Hence there is no necessity to sell the property at the partly price of Rs.1,57,500/- and Rs.22,000/-. Even now, the market place of one cent is Rs.1,00,000/-.

The respondent's further contention is that since the defendants 1 and 6 have committed fraud by creating fraudulent sale deeds, the earlier suit in O.S.271 of 2007 was filed for declaration and the present suit has been filed for partition against her brothers and sisters. Therefore, the cause of action mentioned in OS.No.271 of 2007 and OS.No.213 of 2011 are entirely different.

7. In these rival contentions, on careful perusal of records it reveals that the present suit has been tried jointly along with the suit in O.S.264/2014 of this court. Admittedly, the suit in O.S.271/2007 was filed by deceased A.Vedagiri who is the father of respondents/plaintiffs in the present suit in O.S.213/2011. During the pendency of suit in O.S.271/2007, as per order passed by Hon'ble Principal District Judge, Chengalpattu in Tr.O.P.No.58/2012, Dated 2.7.2014, the said suit in O.S.271/2007 was transferred to this court and re-numbered as OS.264/2014 to try along with suit in O.S.213/2011 of this court. Admittedly, both the suits are pending for trial. At this juncture, the present petition is filed. It has been admitted by both the parties that the suit in O.S.264/2014

(O.S.No.271/2007 of District Munsif Court, Chengalpattu) has been filed for the relief of Declaration to declare the sale deeds as null and void and for consequential injunction and the connected suit in O.S.213/2011 has been filed for the relief of preliminary decree of partition. The main contention raised by the petitioners is that the cause of action for both the suits are one and the same. Hence, the suit is barred under Order 2, Rule 2 of CPC. Per contra, the respondents contended that since the defendants 1 and 6 have committed fraud by creating fraudulent sale deeds, the earlier suit in O.S.271 of 2007 was filed for declaration and the present suit has been filed for partition against her brothers and sisters. Therefore, the cause of action mentioned in O.S.No.271 of 2007 and O.S.No.213 of 2011 are entirely different. Hence this suit is not barred by Order.2, Rule 2 of CPC or the principles of resjudicata. Apart from that O.S.271/2007 has been filed against his brothers whereas the present suit is for partition as against brothers and sisters. Therefore, the cause of action for each case is different and thus there is no valid point to reject the suit. Moreover, both the suits have been tried jointly. It is a settled law that in a petition for rejection of plaint, only the averments of the plaint could be taken into consideration. Even if the pleadings are undisputed if the plaintiff is not entitled to a decree then alone the plaint can be rejected. This is the case in which several aspects has to be looked into in trial by letting in oral or documentary evidence in that regard and these aspects cannot be decided at this juncture under the present petition. Under these circumstances, it is a premature stage to decide the point which has to be consider only at the time of disposal of the suit and that too the contention which

is raised in the petition is also to be tried and decided along with other Issues during the trial stage after letting an oral evidence. Hence, there are no valid reasons and merits to reject the plaint and thereby, this court dismiss the petition.

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 **8th day of April.2024.**

sd/-K.Kayathri

Additional District & Sessions Judge
Chengalpattu.

Both sides Exhibits and Witnesses: Nil

sd/-K.Kayathri

Additional District & Sessions Judge
Chengalpattu.

Draft/Fair Order
I. A. No.1061/2012 in
O.S.No.213/2021
Dated :8.4.2024
ADJ/CPT
