

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

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

Monday the 22nd day of July 2024

I.A.No.1/2023
in
O.S.No.162/2017

V.Amutha . . . Petitioner / Defendant.

/Vs/

1. Venkatesan

2. Krishnaveni . . . Respondents / Plaintiffs.

This petition came up before me in this court for final hearing on 7.6.2024, in the presence of Tvl.V.J.Latha, D.Arun Kumar and S.Veeramani, Advocates for the petitioner, and Thiru.J.Bhaskaran and R.Venkatesh, Advocates for the respondents, 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 under Order 7 Rule 11 CPC to reject the suit and strike of the plaint filed in O.S.No.162/2017.

2. The case of the petitioner in brief :

The petitioner is the defendant in the suit. The respondents herein have filed above suit in O.S.No.162/2017 for declaration of title to

the suit property and for permanent injunction and to declare the decree and judgment in O.S.No.493/2008 dated 2.3.2010 as null and void and for consequential relief of permanent injunction. The above suit is vexatious and fraudulent without any cause of action. The petitioner filed a suit in O.S.No.493/2008 on the file of Principal District Judge at Chengalpattu, for declaration of title and for recovery of possession of the suit property. This court was pleased to pass an exparte decree on 2.3.2010 in favour of petitioner. The respondent herein, who were well aware of the proceedings in the above suit, engaged a local counsel and vakalat was filed, but failed to file the written statement, on account of which they were set exparte. After securing the decree in the above suit, the petitioner filed execution proceedings in EP No.10/2011 before this court. The respondents after receipt of notice in the above EP on 27.4.2011, entered their appearance in EP 10/2011 through their counsel and the matter was posted for filing their counter. The respondents did not file their counter in the EP inspite of granting sufficient time. Hence, this court was pleased to set the respondents exparte and ordered for delivery of possession of the schedule property in EP No.10/2011. After the EP was ordered for delivery of possession, the respondents filed the petition in IA 214/2012 for condoning the delay of 750 days in seeking to set aside the exparte decree. The learned Judge without properly appreciating the recalcitrant attitude of the

respondents passed an order allowing the application on terms by directing the respondents to pay a sum of Rs.5,000/-. The learned Judge passed an order stating that though the medical certificate is not produced to prove the ailment, the allegations contained in the petition cannot be discarded as untrue. The learned Judge did not consider the fact that the respondents were set exparte as early as 2010. Challenging the order made in IA 214/2012 the petitioner filed CRP 2890/2013 on the file of Hon'ble High Court. The Hon'ble High Court by an order dated 18.1.2016 in the said CRP was pleased to set aside the order in IA 214/2012 and thereby confirmed the judgment and decree made in OS 493/2008 and allowed the CRP filed by the petitioner. Challenging the order passed in CRP, the respondents filed an appeal before the Hon'ble Supreme Court in SLP (CC) 19758/2016 and the same was dismissed on 24.10.2016. The respondents who have failed in all their endeavours once again have filed a fresh suit for declaration of title and to set aside the decree made in OS 493/2008. The District Judge has also entertained the plaint and has ordered notice. The suit is false, frivolous, vexatious suit and it is an abuse of process. The suit has been filed after a period of 11 years of the denying of title of the respondents by the petitioner. There is no issue. There is no fresh cause of action. Challenging the suit under Order 7 Rule 11 of CPC, the petitioner filed revision petition under Art.227 of the Constitution of India in CRP

No.2812/2017 to strike of the plaint in OS 162/2017. The Hon'ble High Court disposed the CRP holding that there is an alternative remedy under Order 7 Rule 11 of CPC for rejection of plaint. Hence, the petition for rejection of plaint.

3. The averments of counter filed by the respondents in brief :

The petitioner seeks two prayers in one application, the same is an inconsistent one and the same is against the Order 7 Rule 11 of CPC, hence on this ground alone the petition is liable to be thrush-hold in limini. Unfortunately due to the illness of the father of the 1st respondent / 1st plaintiff, the respondents / plaintiffs could not follow the said suit and they failed to file their written statement in time, hence on 28.1.2010 the present respondents / plaintiffs are called absent and set exparte and then on 2.3.2010, this court passed an exparte decree in the said suit OS 493/2008. The respondents / plaintiffs later came to know that this court has verified the court fee and 19.4.2010 this court called the petitioner / defendant to pay the deficit court fee and then only i.e., on 30.4.2010 the petitioner / defendant has paid the deficit court fee in the said suit. Based on the exparte decree, the defendatn filed an execution petition in EP 10/2010 before this court. When the notices in the said EP served to the respondents / plaintiffs, only then they came to know that they were set exparte in the said suit in OS 493/2008. Immediately on 21.3.2012 the

respondents / plaintiffs filed an application in IA 214/2012 for condoning the delay of 750 days in filing the set aside exaparte decree dated 2.3.2010 along with on application to set aside the exparte decree dated 2.3.2010. On 15.11.2012, the said IA 214/2012 was allowed by this court and the delay of 750 days was condoned on payment of cost of Rs.5,000/-. Then the application for set aside exparte decree has been taken on file and the same has been numbered as IA 1004/2012. Meanwhile the petitioner / defendant has preferred CRP No.(NPD) No.2890/2013 before the Hon'ble High Court of Madras against the order in IA 214/2012 passed by this court. At the time of filing CRP (NPD) No.11890/2013 by the petitioner / defendant, she was well known about the respondents / plaintiffs are residing at No.93, New Kumaran Nagar, Sholinganallur Village and Taluk, Kancheepuram District, hence the notices duly served to the respondents/ plaintiff in the said matter to the said address. Thereafter on 18.1.2016 the CRPj No. (NPD) 2890/2013 was allowed by the Hon'ble High Court of Madras and the order in IA 214/2012 passed by this court was also set aside based on the said order by the Hon'ble High Court of Madras the said application in IA 1004/2012 has been duly dismissed by this court. Immediately the respondents / plaintiffs have preferred a petition for special leave to appeal SLP (CC) No.19758 of 2016 before the Hon'ble Supreme Court of India, against the order in CRP No.(NPD) No.2890/2013, dated 18.1.2016 passed

by the Hon'ble High Court of Madras and on 24.10.2016 the said special leave to appeal SLP (CC) No.19758 of 2016 was dismissed by the Hon'ble Supreme Court of India. The SLP (CC) No.19758 of 2016 was dismissed on 24.10.2016. The plaintiff have no other option to prove their title to the suit property, within the period of three years from the date of said order, they filed the said suit for declaring their title to the suit property and for other reliefs. Hence, the suit is filed with the period of three years thus the suit is perfectly maintainable. The petitioner / defendant has played fraud, misrepresentation and conspired collusion with said D.Kumarasamy and Arumugam and created the invalid, illegal, sham and nominal documents in respect of the suit property and filed the suit in OS 493/2008 and fraudulently obtained the decree and judgment in her favour. The respondents/ plaintiffs are the true owners of the suit property and they are not the parties to the said sale deed dated 10.11.1993 hence, the same is not binding on the respondents / plaintiffs. The suit in OS 493/2008 is filed only to defeat the respondents / plaintiffs' legitimate right and to swindle them. EP No.102/2016 before this court for executing the alleged and invalid decree in OS 493/2008 the same is pending before this court. Hence, prayed for dismissal of petition.

4. The point that arises for consideration is whether the plaint is liable to be rejected as prayed for.

5. Point :

This petition is filed under Order 7 Rule 11 CPC for rejection of plaint. The suit is filed for declaration of title and permanent injunction. According to the petitioner, the suit is vexatious, fraudulent and without cause of action. It is contended that the suit is filed without title. According to the petitioner/defendant, he filed another suit in OS 493/2008 before the Principal District judge, Chengalpattu, and the same was decreed exparte since the respondents / plaintiffs failed to file written statement.

6. The petitioner further states that he filed EP 10/2011 in which the respondent/ plaintiff entered appearance. It is alleged thereafter the respondents / plaintiffs failed to contest the EP, consequently delivery was ordered. Thereafter IA 214/2012 was filed by the respondents / plaintiffs to condone the delay of 750 days, which was condoned by payment of cost of Rs.5,000/-. Thereafter, the petitioner herein filed CRP 2890/2013 against the order in IA 214/2012 which was allowed and the order in IA 214/2012 was set aside by the Hon'ble High Court.

7. According to the petitioner the Judgment and Decree in OS 493/2008 was confirmed by the Hon'ble High Court. Thereafter the respondents / plaintiffs filed SLP before the Hon'ble Supreme Court in SLP 19758/2016 which is alleged to have dismissed. The petitioner states having failed all their attempts, fresh suit was filed by the respondents

herein to declare the title and to set aside the decree made in OS 493/2008. According to the petitioner the suit is frivolous and vexatious, as the suit is filed 11 years after denying the title of the respondents by the petitioners. Hence, the petitioner contends there is no cause of action.

8. The petitioner further states that he approached the Hon'ble High Court under Article 227 of Constitution in CRP 2812/2017 to strike off the plaint. But it is stated the Hon'ble High Court directed to seek the remedy under Order 7 Rule 11 of CPC. The petitioner contends that the suit filed by the respondents / plaintiffs is a 2nd round of litigation for the issue already decided, thereby it is contended that it is an abuse of process of law, and re-litigation on the same issue. Therefore the petitioner prays for rejection of plaint.

9. It is true that the respondent and one Krishnaveni are the plaintiffs in the suit. The suit is filed for declaration of title to the property and the consequential permanent injunction restraining the defendant from interfering the peaceful possession and enjoyment in the suit property. The further relief to declare the decree and judgment in OS 493/2008 dated 2.3.2010 as null and void and consequential injunction restraining the defendant from enforcing the decree, claimed to be void and invalid.

10. According to the respondents / plaintiffs they purchased the property jointly in the year 25.2.2002. According to the respondents /

plaintiffs they constructed a house in the suit property. It is also admitted that OS 600/2006 filed before Additional District Munsif, Alandur, and obtained an order of interim injunction in IA 2613/2006. According to the respondents / plaintiffs that some fraudulent deed was created by one Arumugam and one Kumarasamy created a sale deed in favour of the said Arumugam by a deed dated 22.1.1993 before Sub Registrar, Adyar, with respect to suit property. It is also alleged the petitioner/defendant has created another sale deed on 10.11.1993.

11. On perusal of the plaint, it is evident that some dispute with respect to the power of attorney which was given in favour of one D.Kumarasami. According to the respondents / plaintiffs the power of attorney has no power to execute any deed. It is alleged that the suit property was sold to one C.Soundari the vendor of the plaintiff in the year 1992. But it is alleged the said Arumugam and Kumarasamy and the defendant have collusively created alleged sale deed dated 22.1.1993 in favour of the said Arumugam. It is alleged the sale deed in favour of Arumugam was created after the cancellation of power of attorney deed dated 31.5.1987 which stood in favour Kumarasamy.

12. The plaintiff states later the plaintiffs nor his predecessor are the parties to the alleged sale deeds. Therefore it is claimed it is not binding on the plaintiffs. It is alleged that the said Arumugam and Kumarasamy

collusively and fraudulently created another sale deed dated 10.11.1993 in favour of the defendant. The plaintiff states the Arumugam has no right or title in the suit property. Therefore, the sale deed dated 10.11.1993 is not binding on the plaintiff. It is alleged the said Arumugam and Kumarasamy colluded with the defendant, created concocted document. The respondents / plaintiffs states against the order of interim injunction in IA 2613/2016 he filed CMA 5/2009 before Subordinate Court, Chengalpattu which he alleged to be allowed.

13. The respondents / plaintiffs state they are residing in the suit property and obtained adhaar card in that address. The respondents / plaintiffs state OS 600/2006 before Additional District Munsif, Alandur, was dismissed after contest. The respondents / plaintiffs allege when the suit in OS 600/2006 was pending before Alandur, OS 493/2008 was filed before the Principal District Court, Chengalpattu. The respondents / plaintiffs states when the petitioner / defendant filed OS 600/2006 he knows respondents / plaintiffs are residing in the suit property. But it is alleged wantonly the petitioner / defendant mentioned wrong address.

14. The respondents / plaintiffs admit the exparte decree was passed in OS 493/2008 since the respondents / plaintiffs failed to contest the suit. The respondents / plaintiffs state that their father was sick. Admittedly the petition filed to set aside the exparte decree was numbered

as IA 1004/2012 as the condone delay IA was allowed on payment of cost. Admittedly CRP 2890/2013 was filed by the petitioner / defendant herein, thereby the Honble High Court set aside the order passed in IA 214/2012 to condone the delay in filing set aside exparte decree application. The SLP 19758/2016 filed by the respondents / plaintiffs before the Hon'ble Supreme Court was also dismissed. Therefore the exparte decree passed in OS 493/2008 dated 2.3.2010 is confirmed not inclined to set aside by the Hon'ble Supreme Court of India.

15. The respondents / plaintiffs not filed the suit immediately after the dismissal of SLP 19758/2016, but the suit was filed after a year on 9.1.2017. Therefore, it is contended the issues which was already decided in OS 493/2008 cannot be re-agitated by the respondents / plaintiffs in the present suit. The petitioner / defendant filed the suit in OS 493/2008 against the respondents / plaintiffs herein. The plaintiffs herein having failed to contest the suit, viz., OS 493/2008 and allowed to pass exparte decree, has started a second round of litigation which will hit by the principle res-judicata. The issues already decided cannot be reopened for a 2nd round of litigation. Therefore the contention in the petition is accepted and the respondents / plaintiffs cannot re-agitate the issue already decided by this court. The respondents / plaintiffs have no cause of action to file the present suit as alleged by the petitioner / defendant.

16. The respondents / plaintiffs alleged to be remained exparte without filing counter in the execution petition filed by the petitioner / defendant in EP 10/2011 in OS 493/2008. Thereafter an order of delivery was passed. Therefore, the respondents / plaintiffs was totally lethargic, failed to protect their right if any on an appropriate time. The court cannot help a person who is sleeping over his right. Therefore, the suit is hit by res-judicata and there is no cause of action to file the suit, thereby petition is liable to be dismissed and the suit has to be rejected.

17. **As the result, this petition is allowed. Suit is rejected. No costs.**

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, this the 22nd day of July 2024.

Principal District Judge,
Chengalpattu.

Both side witnesses and exhibits :
Nil.

Principal District Judge,
Chengalpattu.