

**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 26th day of February 2024

I.A.No.3/2023

in

O.S.No.80/2021

CNR No: TNKP01-000795-2021

1.B.Malini
2. B. George

...Petitioners/Defendants

-Vs.-

1.Beulah Vinothini
2.Reena Christy Rajakumari
3.Sheeba Selvarani

...Respondents/Plaintiffs

This Petition coming before this court on 22.2.2024 for final hearing in the presence of M/s.S.Parthipan, R.Manivel and S.Karthikeyan, Counsel for the Petitioners/defendants and Thiru. P.R.Krishnaraj, Counsel for the Respondents/plaintiffs 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 has been filed under Order 7 Rule 11(a & d) r/w.Sec.151 of CPC to reject the plaint filed by the plaintiffs in OS No.80/2021 on the file of this court.

2. The petition averments in brief is as follows:-

The 1st petitioner is the 1st defendant in the suit and has filed the petition for herself and on behalf of other petitioner also. The respondents have filed the

above false suit for partition of the suit property and for separate possession of 1/2 share to them for which they are not really entitled. The petitioner's paternal grandparents namely Mr.Murugan died intestate during 1970 and Annammal died intestate on 12.6.1972 and both of them were blessed with four children namely 1. Palayammal, 2. Kannan @ Joseph, 3. Govindammal and 4. Balraj. While so, the respondents have filed the suit by suppressing the names of Palayammal and Govindammal who are the daughters of late.Mr.Murugan and Annammal.

The petitioner's paternal aunt Palayammal out of wedlock with one Mr.Manickam was blessed with four children viz., 1. M.Vadivel, 2. M.Dakshinamoorthy, 3. M.Saroja and 4. M.Dhayalan. On 2.11.2001, the said Palayammal died intestate leaving behind her children as legal heirs and her elder son M.Vadivel predeceased his mother. Likewise, the petitioner's another paternal aunt namely Tmt.Govindammal out of her wedlock with Mr.Arumugam was blessed with three children namely 1. A.Subramani, 2. Kanaga and 3. Krishnan. The said Govindammal died intestate on 14.3.1985 leaving behind her children as legal heir and hence the surviving legalheirs of late. Palayammal and late. Govindammal and the legalheirs of M.Vadivel, s/o. Palayammal and also the legalheirs of Kanaga D/o.Govindammal are the necessary parties to the suit. The respondents cannot file the suit only against the petitioners alone and as such the suit is liable to be dismissed on the ground of non-joinder of necessary parties.

There is a discrepancy between the short cause title and long cause title of the plaint and as such the same ought not to have been numbered and is liable to be returned. The date of death of Late. Murugan and Annammal mentioned in the plaint are not true and correct. The year of death of petitioner's father late. Mr. Balraj as mentioned in the plaint is not true and correct and during the

year 1966, petitioner's father was alive. The respondents have no knowledge about the physical topography of the suit property and non mentioning of the boundaries of the suit property in the plaint schedule would crystal clear the said fact. The genealogical family tree filed by the respondents is not true and correct and some of the name of necessary parties were suppressed in the genealogical family tree. Thus, the plaint is to be rejected on the following grounds viz., due to discrepancy in short and long cause title of the plaint and non-joinder of necessary parties and incorrect mentioning of the date of deaths of Murugan and Annammal and non mentioning of boundaries of the suit property and for no cause of action and also the suit is barred by law.

3.The averments in the counter filed by the Respondents/Plaintiffs in brief as follows:-

The petition is liable to be dismissed as none of the legal ingredients required for filing of petition under Or.7, rule.11 of CPC. Except for the claim of No cause of action, none of the other points as averred in the petition creates a right on the petitioners to file this petition. Though the respondents deny the averments that there are more legal heirs for Mr.Murugan and that Mr.Kannan and Mr. Balraj are not only the two legal heirs of late.Mr.Murugan is denied as false and it is not a question of law to be decided at the threshold to suit the claim of the respondents. It is a decided law that non-joinder of parties is not covered under Or.7, rule.11 of CPC. Even if the claim of the petitioners that the description of property in the plaint is not correct, the plaint cannot be rejected on this ground. The present petition has been filed only to drag on the proceedings. The claim of the petitioners in their written statement cannot be looked into by this court while deciding present application. The respondents have a clear cause of action to file this suit as they are entitled to half share in the

property. There are no documentary evidence produced to establish petitioners claim as to legal heirs, but the respondents have evidence to prove that Mr.Murugan had only two issues as on date of his death. The suit is not liable to be rejected as claimed by the petitioners and the petition is liable to be dismissed.

4. The point for consideration:-

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

5. POINTS:-

The petitioners sought for rejection of plaint based on following grounds which are discrepancy in Short and Long cause title of the plaint and Non-joinder of necessary parties suppressing the names of other legal heirs of Late Murugan and the legal heirs of deceased children of Late Murugan and incorrece mentioning of the date of deaths of Murugan and Annammal and Balraj and non-mentioning of boundaries of the suit schedule property and no cause of action for the respondent to file the suit against the defendants and the suit is barred by law. The learned counsel for the petitioner argued that the respondents are not entitled to ½ share in the suit properties as the petitioners are the surviving legal heirs of Late. Palayammal and legal heirs of Late. Govindammal and legal heirs of Kanaga are entitled to share in the suit property. The learned counsel for the petitioners placed reliance on a citation reported in **2023 (6) BLJ (SC) 148; 2023 0 INSC 964; 2023 (7) Supreme 387; 2023 0 Supreme (SC) 1097** of Hon'ble Supreme Court of India in a case reported between Geetha and

others ..Vs.. Nanjundaswamy and others. Thus, the respondent approached the court with unclean hands and suppressing the true facts to the court and thus prays to reject the plaint on the above said grounds.

The respondents contended that the suit cannot be rejected for non-joinder of parties and further non-joinder of parties is not covered under order 7 rule 11 of CPC. It is argued that the suit cannot be rejected for the reason the description of property in the plaint is not correct. At this juncture, the learned counsel for the petitioner relied on decision reported in Bishwanath Pal Vs Sanyasi Charan Karmakar reported in 2004 AIHC 4556. Apart from that all the facts stated in the petition are requires oral and documentary evidence and thus suit cannot be rejected based on facts narrated in the petition. Further, Limitation point raised by the petitioner side also unsustainable since it is a mixed question of fact and law and the same can be decided after producing oral and documentary evidence. Hence, the petition is liable for dismissal.

Considering the arguments of both sides and perusal of plaint and written statement averments this court finds that the petitioners/plaintiffs have elaborately narrated the events took place from the year 1942 till the filing of the suit and several cause of action have been set out in the plaint. As far as the petition u/o.7, rule.11 of CPC is concern, the Hon'ble Supreme Court was pleased to hold that the application for rejection of plaint can be decided by the

court on the basis of averments made in the plaint and filing of written statement by contesting defendants is not necessary. Moreover, when the plaint discloses joinder of number of causes of action on some of which a decree could be passed and some of which is liable to be rejected, it cannot be held that the plaint did not disclose cause of action. The statement averred in the plaint is probable and believable whenever an ordinary prudent man reads the said statement. The said statements are subject to proof only after the elaborate trial. Moreover, the plaintiffs have narrated several events which were all prima facie supported by the documentary evidences. As per pleadings there is a cause of action for the suit. Therefore, the case of the plaintiffs at the first instance is acceptable and not rejectable. When the plaint discloses the arguable case, the plaint cannot be rejected.

6. On perusal of plaint, the plaintiffs have specifically stated about the cause of action in para.13 of the plaint. Cause of action is the bundle of facts and the same could be proved after elaborate trial based on the Material facts/records and other related issues. Hence, at this stage, the plaint cannot be rejected on the ground of non-disclosure of cause of action. As such, the plaint cannot be rejected for non-joinder of parties, wrong mentioning of boundaries and incorrect mentioning of date of deaths of Murugan and Annammal and there is no ground to reject the plaint in the provision under Order 7, rule.11 of CPC with regard to

the same and thus, all the facts to be decided only after full-fledged trial through oral and documentary evidence let in by both the parties. Therefore, the plaint normally cannot be rejected at the inception without having evidence.

7. As far as the point of limitation is concerned, the plaintiffs have stated several events and disclosed several cause of actions. The question of limitation can be reckoned only after perusing the relevant records, during trial. The question of limitation is a mixed question of law and fact and hence the suit cannot be rejected at this stage on the point of limitation.

Therefore, any ground is available to attract the provision of Order 7 Rule 11 of CPC. Thus, this court has considered that this application is devoid of merits and thereby this petition is dismissed.

In the result, 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 **26th day of February 2024.**

sd/-K.Kayathri

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

List of exhibits and witnesses on both sides: Nil

sd/-K.Kayathri

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Draft/Fair Order
I. A.No.3/2023 in
O.S.No.80/2021
Dated:26.02.2024
ADJ/CPT
