

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

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

Wednesday the 5th day of March 2025

I.A.No.6/2023
in
O.S.No.55/2023

C.Krishnan . . . Petitioner / 2nd Defendant.

/Vs/

1. Kousalya Srinivasan . . . Respondent / Plaintiff.

2. C.Ramadurai

3. C.Seshadri

4. C.Subadra . . . Respondents / Defendants 1, 3 & 4.

This petition came up before me in this court for final hearing on 20.2.2025 in the presence of Thiru.R.Sugumar, Advocate for the petitioner, and TvI.Rajesh Ramanathan, S.Sriraman, P.J.Bency Switesingh Dhas, S.Diwakar and M.Anandeeswaran, Advocates for the 1st respondent, the other respondents are formal parties, upon hearing the arguments of both side counsel, 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 / 2nd defendant under Order VII Rule 11 CPC, to reject the plaint (i) on the ground of suppression

of material facts, (ii) without prayer to set aside the release deed executed by the 1st respondent / plaintiff in favour of petitioner, (iii) on the point of limitation, (iv) non-payment of court fee under Section 40 of the TNCF Act, (v) improper valuation under Section 37(1) of TNCF Act, (vi) not properly valued the relief under Section 37(1) of TNCF Act, (vii) want of real cause of action.

2. The case of the petitioner in brief :

The petitioner is the 2nd defendant in the above suit. The 1st respondent/plaintiff, who is sister of petitioner filed the above suit for partition of her alleged share in the suit schedule property and to declare the release deed dated 13/12/1996 registered as Document No. 1097 of 1997 on the file of Sub Registrar, Alandur, as null, void, non-est and not binding on her. The petitioner's father Chakrapani purchased the following properties in name of the 1st respondent/plaintiff and respondents 2 to 4/defendants 1, 3 and 4 and no property was purchased in petitioner's name. Petitioner's father purchased the suit property out of his own funds under a sale deed dated 26/04/1958 registered as Document No. 1650 of 1958 in the office of Sub Registrar, Alandur. Since, no property was purchased in petitioner's name, while in his sound disposing state of mind, petitioner's father S.Chakrapani had executed his Last Will and Testament dated 15/07/1983. Under the said Will, petitioner's father had bequeathed the suit schedule property in favour of petitioner. The said S. Chakrapani died on

27/04/1996 leaving behind the petitioner, his wife Jayalakshmi and his children the 1st respondent/plaintiff and the respondents 2 to 4 defendants 1, 3 and 4 herein as his legal heirs. Since they could not trace the said will left behind by petitioner's father, on 30/05/1996, the 1st respondent / plaintiff and the respondents 2 to 4/defendants 1, 3 to 5 along with petitioner's mother Jayalakshmi executed a letter affirming the said Will and petitioner's possession and enjoyment of the suit property as per the wish of petitioner's late father. The 1st respondent/plaintiff's husband and others have attested as witness in the said letter. Thus the 1st respondent/plaintiff is fully aware of the Will executed by petitioner's father in his favour on 30/05/1996 and the 1st respondent/plaintiff has not challenged the same. On the death of Mr.S.Chakrapani, the Will came into force and acted upon. To give full effect to intention of petitioner's father since their effort to trace the Will of petitioner's father turned futile, the 1st respondent/plaintiff and the respondents 2 to 4/defendants 1, 3 and 4 their mother Mrs. Jayalakshmi have voluntarily executed the release deed dated 13/12/1998 registered as Document No. 1097 of 1997 in the office of Sub Registrar, Alandur in favour of petitioner in respect of the suit property. In the said release deed also the said Will has been affirmed. Patta No. 116 was granted to petitioner in respect of the suit property. House tax and electricity service connection were transferred in petitioner's name, the petitioner is paying house tax, electricity service connection and other public charges to the

Government in respect of the suit property. The petitioner also mortgaged the suit property to State Bank of India, Commercial Branch, Guindy by way of memorandum relating to deposit of title deeds dated 09/03/2010 registered as Document No. 539 of 2010 in the office of Sub Registrar, Alandur. The said mortgage was duly discharged by petitioner and the said bank executed a discharge a receipt dated 13/11/2018 registered as Document No. 2411 of 2018 in the office of Sub Registrar, Alandur, in favour of petitioner. Thus the petitioner has been in continuous to be in exclusive possession and enjoyment of the suit property in his own right without any let or hindrances in petitioner's absolute right without any demur from anyone. After execution of release deed, the 1st respondent/plaintiff and other shares have no manner of right, title or interest in or over the suit property and she is not entitled to any relief much less the alleged relief of partition. The 1st respondent/plaintiff is a party to the said registered release deed. Hence she cannot seek any relief by feign ignorance of the same. Hence, the plaint is liable to be rejected. After lapse of 26 years of execution of the release deed on 13/12/1996, and affirming the Will in my favour, the present suit has been filed which is hopelessly barred by limitation as per Article 59 of the limitation Act. Thus the 1st respondent/plaintiff has suppressed the above said material facts, documents and chosen to file vexatious suit, alleging that her signature has been forged and that she has been impersonated, which is untrue. She fully

aware that she said allegations are false to the best of her knowledge made with a malafide intention to arm-twist me and force make a windfall given her financial predicaments. The petitioner is in exclusive possession and enjoyment of the suit property with absolute right. Thus the plaintiff is excluded from the joint possession after the release deed. Hence, the valuation of the suit and Court fees paid under Section 37 (2) of the suit property, is incorrect. To avoid payment of higher court fee under Section 37 (1), the plaintiff has falsely alleged that she is in joint possession and paid Court fee under Section 37(2) is incorrect. There is no cause of action for the suit itself and the alleged one is in illusory one and not available in law and on facts and it is based on clever drafting of the plaint. Hence on, this ground also, the plaint is liable to be rejected. Hence, the petition.

3. The averments of counter filed by the 1st respondent in brief :

The 1st respondent is the plaintiff in the suit. She filed the above suit seeking reliefs of declaration that the release deed dated 13.12.1996 bearing document No.1097/1997 on the file of Sub-Registrar of Alandur, as null, void, non-est and not binding on the 1st respondent / plaintiff and a preliminary decree of partition declaring her 1/5 share in the suit schedule property. Nothing contained in the present counter affidavit may be construed as admission unless it is expressly admitted herein. It is true that the 1st respondent / plaintiff's father purchased the properties specified therein. Apart from the same he also purchased the properties at

No.391, North Parade Road, in the names of the respondents 2 and 3. He also purchased various parcels of land including but not limited to C7, Industrial Estate, SIDCO, Guindy, factory premises at Arulampet, Saidapet, lands at Kilkattalai, movable assets, share in partnership forms and companies carried on under the brand name "ESSEE" and others. To the knowledge of 1st respondent / plaintiff, her father never left and Will before his demise, nor did he execute any document that might indicate his intention to bequeath the suit schedule property in favour of the petitioner. The petitioner's story that he was unable to trace the Will is completely false and fabricated. The 1st respondent / plaintiff deny that she executed any letter to and in favour of the petitioner herein affirming her father's alleged Will or the petitioner's possession or enjoyment of the suit schedule property. The 1st respondent / plaintiff reiterate that her father did not execute any Will nor was she aware of the same since 30.5.1996 as alleged or otherwise. The petitioner failed to produce any such document and therefore, the petitioner's allegation is liable to be disregarded in toto. the 1st respondent / plaintiff came to know about the release deed only when she received letter dated 17.12.2022 issued by the petitioner and 2nd respondent. Immediately thereafter the 1st respondent / plaintiff applied for and obtained certified copy of the alleged release deed said document and was shocked to find that her signature therein was forged by someone as the 1st respondent / plaintiff did not sign such document. Further it was

also clear that the 1st respondent / plaintiff has been impersonated by someone at the Sub Registrar's office, as she never visited the Sub-Registrar's Office in relation to registration of any release deed. The petitioner through such falsification and fabrication, has got the property transmitted to his name and consequently effected mutation of revenue records and the records at electricity board and water board. All the claims of petitioner qua payment of house tax or electricity service connection or other public charges to Government or mortgage, stem from the fact that the suit schedule property has been wrongly transmitted in favour of the petitioner through a forged and fabricated document and therefore has no legal bearing whatsoever. The 1st respondent / plaintiff deny that the petitioner has any exclusive absolute right over the suit schedule property. The 1st respondent / plaintiff did not file the present suit previously since she was not aware of the fraud and fabrication committed by the petitioner and immediately upon becoming aware. Hence, she filed the present suit. The 1st respondent / plaintiff filed application seeking to appoint expert commissioner for confirming the veracity of the signature found in the release deed and to that end, has also produced samples containing her signature. The 1st respondent / plaintiff is ready to face the trial in the suit and prove that she did not sign the so called release deed and the petitioner in an attempt to shirk from trial, has filed the present petitioner on technicalities. The said document is null and void with regard to the 1st

respondent / plaintiff. Hence, the relief has been rightly valued under Section 25(d) of the TNCF Act. After the demise of her parents, the 1st respondent / plaintiff's main focus was to ensure the welfare of her daughters and immediate family. In spite of her attempts to enquire about the status of various properties acquired by her late father, the petitioner and 2nd respondent had a habit of giving evasive and vague responses, all the while enjoying the rent and other emoluments coming from those properties amongst the two of the alone. However since the 1st respondent / plaintiff did not release her share in the property or relinquish her rights over the property in any manner whatsoever, she continues to retain an unequivocal right over her late father's entire estate as such she is in notional joint possession of the same as co-sharer. Hence, even on this ground, the valuation of the relief for partition is correctly calculated under Section 37(2) of TNCF Act. The plaintiff discloses cause of action that is liable to be put to trial for the court to either decree or dismiss the suit. No amount of clever drafting could bring to life a non-existent cause of action. On the other hand, the present suit has been filed on very specific rights that gives provides cause of action for the plaintiff to seek various reliefs against the defendants. The petitioner understanding that they have no case on merits, has filed this frivolous petition in an attempt to short circuit the process of law. The rejection of plaint could be done only under the specific provisions of Order VII Rule 11 CPC and not under the frivolous grounds

mentioned by the petitioner. Viewed in any angle, the present petition is liable to be dismissed with exemplary costs. Hence, prayed for dismissal of petition.

4. The point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This application is filed by the petitioner under Order 7 Rule 11 of CPC to reject the plaint.

6. The suit is filed for partition and for declaration to declare the release deed dated 13.12.1996 as null and void. Suit property is a dwelling house situated at North Parade road, St.Thomas Mount. It is an undisputed fact, the plaintiff and the defendants are children of Late.Chakrapani. According to the plaintiff, the daughter of Late.Chakrapani is completely side lined by the defendants and enjoying the fruits of the estate left behind and unjustly enriching themselves.

7. This application is filed by 2nd defendant C.Krishnan the brother of plaintiff. He contends that his father during his life time allotted properties to his children which he listed in the petition. There is no dispute with regard to that properties. According to petitioner / 2nd defendant his father Late.Chakarapani purchased suit property out of his own funds under a sale deed dated 26.4.1958. Further he states since no property purchase in his name the Will dated 15.7.1983 was executed in his favour. His father

Chakarapani died on 27.4.1996 leaving behind his wife Jayalakshmi and his children, plaintiff and defendants herein.

8. The petitioner / 2nd defendant states since Will could not be traced, executed a letter affirming the said Will. The petitioner / 2nd defendants contends, the plaintiff's husband and others attested the said letter in his favour and the plaintiff not challenged.

9. The petitioner states his mother Jayalakshmi and plaintiff and other defendants executed a release deed dated 13.12.1996 affirming the 'Will'. The petitioner further states patta for suit property stands in his name and electricity connection mutated to his name and paying property tax.

10. He further states he mortgaged the property on 9.3.2010 and redeemed on 13.11.2018. According to the petitioner he continuously is in exclusive possession and enjoyment of suit property in his own right.

11. Further the petitioner states, the plaintiff is also a party to said release deed who has no manner of right to deny the same and not entitled for relief. Petitioner further states suit is barred by limitation as per Article 59 of Limitation Act.

12. Article 59 of Limitation Act of 1963 reads as follows :

"To cancel or set aside an instrument or decree or for the rescission of a contract, three years is the limitation. The limitation starts when the facts entitling the plaintiff to have the instrument or decree cancelled or

set aside or the contract rescinded first become known to him."

The petitioner further contends there is no cause of action for the suit and the court fee paid is erroneous as she is out of possession and ought to have paid court fee under Section 37(1) of Tamil Nadu Court Fee and Suits Valuation Act.

13. The contention of the plaintiff / 1st respondent is that the signature in the release deed dated 13.12.1996 is forged. Further the plaint is silent about the exact date when she came to know about the release deed. The plaintiff is one of the signatory in the release deed.

14. Further plaintiff contends, upon gaining knowledge she issued letter dated 12.12.2022 to 1st and 2nd defendants when they started demolishing the property. The plaintiff is not clear the source of information how she got the knowledge. The release deed dated 13.12.1996 is not disputed by the plaintiff but she claimed that she came to know by the encumbrance certificate.

15. The plaintiff not denied the release deed dated 13.12.1996 but claimed her signature in the release deed is forged one. The claim of the petitioner / 2nd defendant that his father allotted properties for all his children is not denied.

16. While so, the document dated 13.12.1996 is challenged in the year 2023 in the suit after 27 years. If the suit is allowed to continue

there would be unrest in the society, no one would enjoy the property peacefully if dragged for continuous litigation of this nature. If the suit allowed to be proceeded, then there would be a miscarriage of justice would cause severe hardship to the defendant. The valuable court's time would be saved from loosing in vexatious litigation. The plaintiff / 1st respondent having signed in the release deed cannot say it is forged one. The release deed is a family deed among the family members. There is nothing to be adjudicated in the suit spending valuable time of the court. Suit is vexatious, liable to be dismissed.

17. Therefore suit is barred by limitation and there is no cause of action. The court fee paid is also erroneous. Suit is liable to be rejected.

18. **As the result, petition allowed. Suit is rejected. No cost.**

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 5h day of March 2025.

Principal District Judge,
Chengalpattu.

Both side witnesses and exhibits :
Nil.

Principal District Judge,
Chengalpattu.