

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

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

Additional District Judge,
Chengalpattu.

Tuesday the 23rd day of August 2022

I.A.No.2/2019 in

O.S.No.326/2008

A.Mayandi

...Petitioner/1st defendant

-Vs.-

1.Raji

2.Shiva

...Respondents 1 and 2 /Plaintiffs

3.P.Jayalakshmi (died)

4.P.Murugesh (died)

5.P.Jaganathan

6.P.Umameshwari

..Respondents/Defendants 2 to 5

This Petition coming on 3.8.2022 for final hearing before this court in the presence of Thiru.K.Meenakshisundaram, Thiru.M.Anandheehwaran, Counsel for the Petitioner/1st defendant and Thiru.R.Jayaprakash, S.Rajkamal, Counsel for the Respondents 1 and 2/plaintiffs and upon hearing the arguments of both side and perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

The Petition filed under order 7 Rule 11 CPC to reject the plaint filed in OS No.326/2018.

2. The Petition averments in brief is as follows:

The plaintiffs mother Nagammal was originally holding 1/3rd undivided share in the suit property and she transferred her share during her lifetime on 2.4.2012 in favour of the petitioner by way of settlement deed and accordingly the petitioner holding 2/3rd undivided share in and over the suit schedule

property. There is no cause of action at all for the above suit in as much as no right is subsisting in favour of the said Nagammal not only on the date of filing of the suit, but also ever since the date of settlement deed. The Nagammal did not challenge the settlement deed during her life time. In the absence of any right or title there cannot be any cause of action for claiming partition. It is settled proposition of law that settlement deed duly registered with attestation cannot at all be revoked or cancelled. The above suit is not at all maintainable in the absence of any challenge against the settlement deed. There is no cause of action for the suit. The Nagammal died on 12.3.2016 and till her life time she has not challenged the settlement deed. The plaintiffs have also not challenged the settlement deed till date. Under the law of limitation any such challenge by way of declaration cannot be entertained by court of law as barred. Hence petition to reject the plaint.

3. The counter averments in brief : (The counter filed by 1st respondent is adopted by the 2nd respondent)

This petition to reject the plaint is neither maintained on law nor on facts. The petitioner who is none other than the 1st respondent's mother's brother who taking advantage of the illiteracy and the age of the mother had fraudulently registered the Settlement deed in his favour without the knowledge of her mother. The alleged settlement deed is sham and nominal and has not been acted upon at all. There is no necessity for the 1st respondent's mother to execute a Settlement deed in favour of the petitioner. The background on which the settlement was purported to be executed, whether the respondents are entitled for the partition of the suit schedule property is a matter for trial and not an issue to be decided in an application under order 7 Rule 11 CPC. On going through the entire plaint, prima facie there is a cause of action for the suit for the partition. The present application is only to drag on the proceedings.

The petitioner earlier had filed a suit for partition in OS No.113/2014, without impleading the respondents as parties. Once the application for impleadment was allowed, the petitioner let the suit to be dismissed for default and it was dismissed on 16.8.2019. Once the suit is dismissed for default, the respondents filed the present suit, seeking for partition. Hence the petition is liable to be dismissed.

4. The point for Consideration in the above petition is

Whether the petition is to be allowed or not?

5. Point:-

Both sides argued their case respectively and both sides no witnesses were examined and no documents were marked. Heard both sides and perused the records.

This petition has been filed to reject the plaint filed in OS No.326/2018 on the ground that there is no cause of action for the suit and the suit is barred by limitation. According to the petitioner/1st defendant that the plaintiffs mother Nagammal was originally holding 1/3rd undivided share in the suit property and she transferred her share during her lifetime on 2.4.2012 in favour of the petitioner by way of settlement deed and accordingly the petitioner holding 2/3rd undivided share in and over the suit schedule property. The Nagammal did not challenge the settlement deed during her life time. Further the plaintiffs have also not challenged the settlement deed till date. Thus, in the absence of any right or title there cannot be any cause of action for claiming partition. To support of his contention, the learned counsel for the petitioner has relied on the citations reported in

1. 1998 (III) CTC 165 - Held, Provisions of Order 7 Rule 11 are not exhaustive and Court has got inherent powers to see that vexatious litigations are not allowed to consume the time of the Court. Court can

reject plaint for allegations in Plaint reveals abuse of process of Law”

2. 2014 3 MLJ 666 (Madras) - Held, that cancellation of settlement deed is against public policy. If party who executed settlement deed is aggrieved can approach civil court to set aside settlement deed. Cancellation and registration is without jurisdiction.

3. LL 2021 SC 114 – Held, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

In the light of the above citations here also the court can reject the plaint for allegation in plaint reveals abuse of process of law and cancellation of settlement deed is against the public policy. Thus the petitioner prays to reject the plaint.

6. On the other hand, the respondents/plaintiffs contended that the petitioner who is none other than the 1st respondent's mother's brother who taking advantage of the illiteracy and the age of the mother had fraudulently registered the Settlement deed in his favour without the knowledge of her mother. The alleged settlement deed is sham and nominal and has not been acted upon at all. There is no necessity for the 1st respondent's mother to execute a Settlement deed in favour of the petitioner when the respondents/plaintiffs are alive. On going through the entire plaint, prima facie there is a cause of action for the suit for the partition. The present application is only to drag on the proceedings. Hence prayed to dismiss the petition.

7. Upon hearing the rival contentions of both side, this court finds that as to cause of action, it is the bounden duty of the court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with law applicable to them, given the plaintiff, the right to relief against the defendant. In other words, a bundle of facts which is necessary for the plaintiff to prove in order to succeed in the suit. It is mandatory that in order to get relief, the plaintiff has to aver all material facts, in other words, it is necessary for the plaintiff to aver and prove.

Thus the Hon'ble Apex court guides that the plaintiff be given enough opportunity to prove his claim of cause of action. In the right of the guideline of the Honble Apex Court, it is seen that the contention of the petitioner is inconsonance with the decision of the Hon'ble Apex Court delivered in this regard, could not be accepted and liable to be dismissed.

7. With regard to the cause of action for this suit the court could not be decided at this juncture as they could be answered only after considering and conducting detailed Trial based on the Material facts/records and other related issues. In other words, the above questions are required detailed enquiry/Trial. Furthermore, alleged settlement deed itself dispute and thus right or title in the suit property can be decided only after letting oral and documentary evidence adduced during the trial. At this stage, this court cannot come to a conclusion regarding the above aspects. Hence, for the above foregoing reasons, the decisions, guidelines laid down by the Hon'ble Supreme Court and High courts there are no valid reasons and merits to reject the plaint and this petition deserves dismissal as there is no merit in it

Finally, this petition is dismissed. No cost.

Dictated to the Shorthand writer and computerized by her and corrected

and pronounced by me in open Court, this the **23rd day of August 2022.**

Sd/-.K.Kaythri,

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Both side Witnesses And Exhibits : NIL

sd/-.K.Kayathrti,

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

/TRUE COPY/

Draft/Fair Order
I. A. No.2/2019 in
O.S.No.326/2018
Dated:23.8.2022
ADJ/CPT
