

**IN THE COURT OF THE DISTRICT MUNSIF-CUM-JUDICIAL
MAGISTRATE
THIRUKALUKUNDRAM**

PRESENT: Thiru.A.Kadhiravan B.A.,B.L.,
District Munsif-Cum-Judicial Magistrate,
Thirukalukundram.

Wednesday, the 15th day of February 2023

I.A. No.1/2022

in

O.S.No.31/2021

CNR.NO.TNKP11-000106-2021

...

G.Shanmugam

...Petitioner/1st Defendant.

/Vs/

1. M. Baskaran

... 1st Respondent/Plaintiff.

2. S. Nirmala

3. G. Moorthy

4. M. Malarvizhi

...Respondent 2 to 4/Defendants 2 to 4.

This Petition coming before me on 07.02.2023 for final hearing in the presence of Mr.E.Maharajan, Mr.D.Marimuthu, Mr.R.Mukesh Kannah learned counsels for the Petitioner/1st Defendant and Mr.S.Theerthalingam learned counsel for the 1st Respondent/Plaintiff and service of summons is still pending for R2 to R4 in main suit. Upon perusal of documents and hearing arguments on both sides and having stood over for consideration till this date, this court delivers the following.

ORDER

The petitioner has filed this petition under Order VII Rule 11 of CPC to reject the plaint and to pass such further orders.

1. The averments in affidavit along with petition in brief:

The petitioner/1st defendant submitted that the 1st respondent has filed the main suit praying for bare injunction restraining the petitioner and other respondents from interfering with his peaceful possession of suit 'B' schedule property in which be stated that the 1st respondent/plaintiff along with his father C.Mani had sold the suit property to the petitioner vide registered sale deed dated 13.11.2000. That since then, the said property is in possession of the Petitioner and electricity service connection in suit property stands in the name of petitioner's brother the 3rd respondent. That eventhough the petitioner has applied for patta transfer in the year 2009 itself, due to various reasons patta was not yet transferred in his name. That the 1st respondent himself admitted in para 4 of the plaint about execution of sale deed dated 13.11.2000. This being so, the 1st respondent by suppressing those material facts had prayed for injunction as if he has perfected title over B schedule property by way of adverse possession, which is not permitted under law. That as such, this suit has no cause of action and hence this petition.

2. The averment in counter in brief :

The 1st Respondent/plaintiff in his counter denied the petition averments and stated that in his plaint it is clearly stated that even after execution of sale deed dated 13.11.2000 the 1st respondent/plaintiff is in open and continuous possession of B schedule property hostile to the rights of petitioner and Patta No.915 still stands in the name of 1st respondent. As such the plaint discloses valid cause of action and hence prays for dismissal.

3. Now the point for consideration is whether this application is to be allowed or not?

1. Heard both sides. Perused entire records. While considering the above rival submissions on both sides, it is the settled position of law that while deciding an

application under order VII Rule 11 of CPC, the averments in plaint alone has to be taken in to consideration. As such on perusal of plaint in O.S.No.31/2021, it is clearly stated in para 4 of plaint that even after execution of sale deed dated 13.11.2000 in the name of petitioner/1st defendant, the 1st respondent is in open and continuous possession of 'B' schedule property hostile to the rights of petitioner and patta still stands in the name of 1st respondent, and alleged that on 24.05.2021 the 1st defendant along with other defendants attempted to interfere with the possession of plaintiff. As such, in opinion of this court, the plaint discloses a valid cause of action. On further perusal, eventhough the 1st respondent has claimed title over the suit property by way of adverse possession, he has not prayed for declaration of title and filed the main suit for injunction simplicitor. But in opinion of this court, the above issue cannot be decided in this application under order VII Rule 11 of CPC. As such the Judgments of Hon'ble Supreme Court of India relied on the side of 1st Respondent in the cases of **1. Ravinder Kaur Grewal /vs/ Manjit Kaur DOJ 07/08/2019**, **2.Channabasayya /vs/ Vijendra DOJ 02/06/2022**, **3.Darshan Kaur Bhatia /vs/ Ramesh gandhiDOJ 28/02/2022**, **4. Sri Uttam Chand (D) The LRS /vs/ Naturam (D) The LRS DOJ 15/01/2020** in which cases the maintainability of praying for declaration of title based on adverse possession was decided, are in humble opinion of this court not applicable to the facts of the present case.

2. As in opinion of this court, the plaint in O.S.No.31/2021 discloses a valid cause of action, the judgments of Hon'ble Supreme Court of India relied on the side of petitioner in the cases of **1. T.Arivanandam /vs/ T.V.Satyapal & Another (1977 AIR 2421)**, **2.Rajendra Bhajoria and others /vs/ Hemant Kumar Jalan and others (2021 SCC online SC 764)**, **3.Dahiben /vs/ Arvindbhai Kalyanji Bhanusali (Gajra) (D) The LRS & ORS** in civil Appeal No.9519 of 2019, **4. Sopan Sukhdeo & Ors. /vs/ Assistant Charity Commissioner & Ors**, in Civil Appeal No.448 of 2004, are in humble opinion of this court not applicable to the facts of present case.

3. For above discussed reasons, as the plaint in O.S.31/2021 discloser a valid cause of action, this court comes to the conclusion that the petition is to be dismissed.

4. In the result, this petition is dismissed. No costs.

Dictated to the Steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open Court this the 15th day of February 2023.

District Munsif-cum-Judicial Magistrate,
Thirukalukundram.

PETITIONER SIDE WITNESSES AND EXHIBITS:-

- NIL -

RESPONDENT SIDE WITNESSES AND EXHIBITS:-

- NIL -

District Munsif-cum-Judicial Magistrate,
Thirukalukundram.