

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam.**

Monday, this 6th day of January 2025

I.A.No.7/2024

in

O.S.No. 18/2024

(CNR.No.TNCG13 – 000021-2024)

J.Sumithra

...Petitioner/ 5th defendant

..Vs..

1. K.Sumathi

...1st Respondent/ Plaintiff

2. Thukkaram Reddy

3. C.H.Sumathi

4. Rousario Mervin

5.S.Archana

...Respondents 2to5/Defendants1to4

This petition coming up for final hearing on 11.12.2024 in the presence of Mr.D.Kanagasundaram, Mr.R.Ananth, counsels for petitioner, M/s.G.Saranya, Mr.K.Thenrajan, Counsels for the 1strespondent, and having heard the

I.A.7/2024 in O.S.18/2024, AFT, dated 06.01.2025, Sub Judge, Madurantakam

arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner under Order VII rule 11(a) and (d) r/w Section 151 of CPC to pass an order to reject the plaint and to pass such other suitable orders.

2. Petition in brief:

Present suit is neither maintainable in law nor on facts and liable to be dismissed in limine. A perusal of the copy of the Plaint would show that there is no cause of action for filing the present Suit. Even otherwise, in addition to the above the present Suit is liable to be dismissed for non-joinder of necessary parties and it is also further submitted that the present Suit is barred by Limitation.

Petitioner was looking for purchase of property and accordingly was informed of the Property situated at No.17, Parukal Village, Cheyyur Taluk, Chengalpattu District, in the Acharapakkam, bearing S.No.97A/4, measuring an extent of 0.21 Cents out of 0.74 Cents. After visiting the property, verifying the title deeds and other documents produced by Vendor for almost 30 plus years, the petitioner purchased aforementioned property under a registered sale deed dated 17.03.2020.

Originally the property bearing No.17, Parukal Village, Cheyyur Taluk, Chengalpattu District bearing S.No.97A/4, measuring an extent of 0.74 Cents (hereinafter property) belongs to one Arputham, and he was in possession and enjoyment of the property. Arputham had executed a General Power of Attorney

dated 23.06.1986, registered as Doc. No.7 of 1986 in favour of ThukkaramReddiar (2nd Respondent herein). Thereafter, Mrs. C.H. Sumathi (3rd Respondent herein) purchased the property under the sale deed dated 03.06.2013. Thereafter, patta was also issued in favour of the said C.H. Sumathi.

Out of the total extent of 0.74 Cents, the 3rd Respondent herein offered to sell 0.21 cents and accordingly a sale deed dated 17.03.2023 was executed by the C.H. Sumathi in favour of the petitioner. S.No.97A/4 was purchased by the petitioner and hence he became the absolute owner and in possession of the same. The petitioner purchased the property morefully described in the schedule by sale deed dated 17.03.2023 and hence he is the absolute owner and in possession of the property.

While that being so, the 1st Respondent herein who has no right over the property, all of a sudden without even showing any title documents to the property started creating problems and eventually issued legal notice and has filed the present suit, seeking for declaration, injunction and other reliefs. A perusal of the copy of the Complaint filed in the present Suit would show that the 1st Respondent herein has not pleaded as to how the 1st Respondent herein is the owner of the Property morefully described in the schedule to the Complaint. It is further pertinent to note that the 1st Respondent herein in addition to not pleading as to how the 1st Respondent has title, has not even filed any documents to show how the 1st Respondent claims to be the owner. Even the Patta which is stated by the 1st Respondent herein has been cancelled vide order dated 22.01.2024 by the Revenue Divisional Officer. Hence, there is no cause of action for the suit.

The 1st Respondent herein has no title and no documents with regard to the said property. Even the 1st Respondent has not stated anywhere in the Complaint and also no documents are also filed to show the same. Hence, it is respectfully reiterated that there is no cause of action for the present suit and further even otherwise, in addition, the suit is also barred by Limitation. Hence, the present Application is being filed praying to Reject the Complaint.

Hence the petitioner has filed this application to reject the complaint.

3. Counter of 1st respondent in brief:

The respondent denies the allegations set out in the complaint. Petitioner herein filed the above application on the ground of no cause of action and limitation. Both the grounds have deserved to be rejected because the petitioner had filed the above suit seeking declaration of documents created by this petitioner and other respondents based on fraud, misrepresentation and forgery. Further the respondent had pleaded in paragraph no. 3 and 4 of his complaint as follows:

"3. The Plaintiff states that she is the absolute owner of the property in No. 17, Parukal Village, Cheyyur Taluk, Chengalpattu District, Acharapakkam Sub Registration District, in Survey No. 97A/4 total extent of 0.74 cents herein after called a suit property and she is in continuous possession and enjoyment over the same for the past 30 Years and doing agriculture in the above suit schedule property till now and all the revenue records stands in the name of the Plaintiff to show the possession and enjoyment of the suit property".

And

"4. The Plaintiff states that while so, some of the strangers had approached the revenue authorities for issuance of Patta for the suit property and further it was came to the Plaintiff's knowledge through local villagers, immediately she applied online EC and to her shock and surprise she found that the 1st Defendant by way of forged General power of attorney in Document no. 7/1986 executed by one Arputham S/o Chinnapaiyan and the 1st Defendant alleged that he had administered certain properties of one Aruputham, but actually the said Aruputham was a female who was the adjacent land owner of the Plaintiff namely Arputham W/o Chinnapaiyan. During the time of UDR Correction her name was wrongly mentioned and subsequently, according to the possession and enjoyment of the Plaintiff in suit property the Patta was issued in the name of the Plaintiff as per Patta No. 390.

Further, the respondent had pleaded that the suit property was an agricultural property and further pleaded his title by continuous and uninterrupted possession and also pleaded that based on the forged and fabricated power of attorney and further based on the forged and fabricated Pattas in Patta No.4 and Patta No.702 all the other forged documents were created in collusion with other respondents/defendants including the petitioner and the same are under challenge before this Hon'ble Court and therefore the suit is filed with proper cause of action and the claim of the Petitioner was a counter claim to the Pleadings of the Plaint and the same has to be determined by the trial. Further the issue of limitation is mixed question of law and fact and it also determined by the trial.

Cause of action is bundle of facts and further the revenue authorities have no right to cancel the patta even after the competent civil court seized the issue

and further the review is pending before the District Revenue Office. Further, the grounds relied on by the Petitioner are all disputed question of facts and law and the same has to be determined by the trial.

Hence the respondent prays for dismissal of the application.

4. **Point:**

“Whether this application can be allowed and plaint can be rejected?”

5th defendant came up with this application for rejection of plaint under clause (a) and (d) of the Order VII Rule 11 of CPC as such there is no cause of action for the suit and the suit is barred by limitation. Respondent/plaintiff defend the same as such the cause action is bundle of facts and that the suit is well within the period of limitation.

In respect of cause of action the petitioner contends that the 1st respondent failed to plead that how she derive title to the suit property and that she had no title over the suit property. Learned counsel for the 1st respondent defend that the 1st respondent has produced the patta and adangal extracts for the suit property and hence she had title to the suit property. No doubt that the revenue records will not create title, as it is only evidence of title. It is true that the 1st respondent didn't plead that how she derive title to the suit property. Mere there is no pleading about derivation of title, a plaint cannot be rejected.

Next the learned counsel for the petitioner argued that the patta issued in favour of the 1st respondent was cancelled by the revenue authorities on 22.01.2024. For the reasons best known to the petitioner the said order of cancellation was not produced. Further the suit was filed on 18.01.2024 itself. So, the dispute was sub-judice before the court and the cancellation order of revenue records will not have any impact in respect of title of the suit property.

So, mere the revenue records in the name of 1st respondent was cancelled will not be held that there is no cause of action muchless she had no title over the suit property.

It is settled law that cause of action is bundle of facts. Here the 1st respondent has clearly pleaded that she is the absolute owner of the suit property. This material fact was clearly pleaded in the plaint. How she derive title to the suit property is evidence, which need not be pleaded. 1st respondent can very well evidence her title in her chief examination. It is not necessary for the 1st respondent to plead about the derivation of title to the suit property. Apart from that the 1st respondent has filed the patta, A- register and adangal extracts in respect of the suit property in her name. If it so, the petitioner cannot say that the 1st respondent didn't produce any documents to substantiate her title. Learned counsel also relied upon a decision of our Hon'ble Apex Court in ***Dahiben Vs Arvinbhai Kalyanji Bhanusali and others***, where the learned counsel highlighted the para 12.8 where it is held that,

“12.8 If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 of CPC”

In support of the same the learned counsel vehemently argued that the 1st respondent failed to produce any document to show her title and that it lacks in pleadings also. It is pertinent to note that the plaintiff has clearly pleaded that she has title to the suit property. It itself enough to bring cause of action for the suit. Furthermore as rightly contended by the learned counsel for the 1st respondent, she had filed the revenue documents in the name of the 1st

respondent, which will show the prima facie title over the suit properties. Hence mere there is lacking of pleading about derivation of title and non filing title documents would not be ground to reject the plaint under clause (a) of Order VII Rule 11 of CPC.

Next the petitioner contends that the suit is barred by limitation and the plaint ought to be rejected under Order VII Rule 11(d) of CPC. Unfortunately there is no pleading in the affidavit filed in support of the application about the question of limitation. If it so, the petitioner cannot seek the relief of rejection of plaint on the ground of limitation. Even as per plaint pleadings in respect of declaration of deeds as null and void the 1st respondent has clearly pleaded that she came to knowledge of the said transactions only when he applied encumbrance before filing of suit. The said encumbrance certificate was also produced into court as document no. 19. If it so, the petitioner cannot say that the petitioner was well aware of the transactions earlier. Apart from that question of limitation is mixed question of law and facts. Whether the suit is barred by limitation can be seen only after adducing evidence and not in premature stage. Furthermore on bare reading of plaint there is no doubt that the 1st respondent had knowledge of the transaction only after she verifying the encumbrance. If at all the said fact is false, then it can be decided only after adducing evidence. Hence the plaint cannot be rejected on the ground of limitation as the question of limitation can be decided only after adducing evidence.

In summation of above said discussions there is no doubt that the case of the petitioner will not attract both grounds under Order VII Rule 11 (a) and (d)

of CPC and that the petitioner is not entitled to the relief of rejection order. Hence this point is decided accordingly.

5. Result:

In the result, this application is dismissed as devoid of merits. No costs.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 6th day of January 2025.

Subordinate Judge,
Madurantakam.

I. Petitioner side evidence and Exhibits : Nil

II. Respondents side Evidence and Exhibits : Nil

Subordinate Judge,
Madurantakam.

Fair / Draft order
IA No.7/2024
in
OS No.18/2024
D.D: 06.01.2025,
Subcourt, MKM