

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V. Devapriya, B.Sc.,M.L.,
District Munsif, Madurantakam

Thursday, the 27th day of October, 2022

I.A.No. 6/2022

in

O.S. No. 83/2020

Elumalai

...Petitioner/ 1st Defendant

-vs-

1. Jeevapriya

...Respondent/ Plaintiff

2. The Sub-Registrar, Acharapakkam

...Respondent/2ndDefendant

This petition coming up before me on 11.10.2022 for final hearing in the presence of, Thiru.V.Agoram, counsel for the Petitioner/ 1st Defendant and Thiru.B.Rajesh, counsel for the 1stRespondent/ Plaintiff and the 2nd Respondent/ 2nd Defendant having been set exparte in the main suit and after hearing the arguments of both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioner/ 1st Defendant under Order VII Rule 11 (a) and (d) of Code of Civil Procedure, to reject the plaint.

2.The averments stated in the petition in brief:

The 1st Respondent/Plaintiff had filed the above suit for mandatory injunction to

rectify the S.No.82/2C1 as 82/2C2 is not maintainable. The Sale Deed has been executed on 06.12.2006 and after lapse of 14 years the suit has been filed. Therefore the suit is barred by limitation . The Petitioner/ 1st Defendant had not sold the S.No.82/2C1 and he is not the owner of the suit property. The 1st Respondent/Plaintiff wrongly included another Survey number in the Sale deed dated 06.12.2006. The Petitioner/ 1st Defendant had received the sale consideration amount only for Ac. 0.70 cents. The S.No.82/2C2 was partitioned along with other properties and the children of the Petitioner/ 1st Defendant are also entitled for the suit property. Therefore this suit is bad for non joinder of necessary parties. There is no cause of action. The alleged typographical error is denied and the 1st Respondent/Plaintiff is not entitled for any relief. The alleged sale with regard to the S.No. 82/2C1 is non-est in the eye of law. The suit ought to be filed for declaration with regard to S.No. 82/2C2 and the court fee ought to have been paid on the market value. The court fee paid is incorrect and the suit is barred by limitation and there is no cause of action. Hence this petition.

3. The averments stated in the Counter filed by the 1st Respondent/ Plaintiff in brief:

The Petitioner/ 1st Defendant had not stated proper and lawful reasons in the affidavit to invoke the principles of Order VII Rule 11 of Code of Civil Procedure. The Petitioner/ 1st Defendant had filed this present petition after the 1st Respondent/ Plaintiff

was examined in chief and after the documents have been marked. This petition has been filed at the stage of cross examination of PW-1, only to drag on the proceedings and to harass the 1st Respondent/Plaintiff. The Petitioner/ 1st Defendant has stated false and frivolous allegations in this petition. Immediately when the 1st Respondent/Plaintiff came to about know typographical error made in the registered Sale Deed dated 06.12.2006, she had filed the above suit. The Petitioner/ 1st Defendant had not objected at the time of marking of documents and he had filed the petition belatedly with false and frivolous allegations. The suit is not barred of any law and the reasons stated in the affidavit is not bonafide. Hence this petition is liable to be dismissed with costs.

4. The point for determination is whether this petition is to be allowed or not?

5. No Exhibits marked and no witnesses were examined on both sides

6. Heard both sides and perused the records.

7. The Petitioner/ 1st Defendant had filed this petition on the ground that, there is no cause of action and the suit is barred by limitation. The 1st Respondent/Plaintiff resisted the petition stating that, immediately when the 1st Respondent/Plaintiff had the knowledge of the typographical error, she had filed the above suit and therefore the suit is not barred by limitation and there is cause of action to be adjudicated.

8. The learned counsel for the 1st Respondent/Plaintiff had filed the Judgment of the Hon'ble Supreme Court of India in the case of *H.S. Deekshit and another vs M/S*

Metropoli Overseas Limited and ors [SLP (c) No. 2177/2022 dated 16.08.2022] wherein the Hon'ble Supreme Court had held that, while considering an application under Order 7 Rule 11 of the Code, the averments in the plaint alone are to be examined and no other extraneous factor can be take into consideration.

9. The case of the 1st Respondent/Plaintiff is that, the survey Number in the Sale Deed dated 06.12.2006, has been wrongly mentioned as S.No.82/2C1 instead of 82/2C2. The fact whether the Petitioner/ 1st Defendant had sold the S.No.82/2C1 or S.No.82/2C2 can be decided only after trial. Therefore even on perusal of the plaint there is cause of action to decide, whether the 1st Respondent/ Plaintiff had purchased the S.No.82/2C2 from the Petitioner/ 1st Defendant and whether the Survey number in the Sale deed dated 06.12.2006 was wrongly mentioned or not.

10. The 1st Respondent/Plaintiff had filed the above suit for mandatory injunction to rectify the survey number in the Sale Deed dated 06.12.2006. Accordingly to 1st Respondent/Plaintiff, she had filed the above suit immediately when the above typographical error came to her knowledge. The question of limitation is a mixed question of fact and law. The 1st Respondent/ Plaintiff alleges that she had found the error only at the time of applying for patta to obtain loan, which fact can be elucidated through evidence and hence the question of limitation can be decided only after trial. Hence for the foregoing reasons this court is not inclined to allow this petition.

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

Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 27th day of October, 2022

District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

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