

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

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

Tuesday, the 11th day of April, 2023

I.A.No. 8/2023
in
O.S.No. 63/2011

G.Neelakandan

...Petitioner/ 5th Defendant

-vs-

1. Thiyagarajan

...1st Respondent/Plaintiff

2. Lakshmiammal (died)

3. Kanniammal

4. K.Mani

5. G.Rani (died)

...Respondents 2 to 5/Defendants 1 to 4

This petition coming up before me on 23.03.2023 for final hearing in the presence of, Thiruvalargal.S.Selvanandam, S.Vasudevan and D.Hariprasad, counsel for the Petitioner/ 5th Defendant and Tmt.ArunaMunusamy, counsel for 1st Respondent/ Plaintiff and Thiruvalargal.S.Selvanandam, S.Vasudevan and D.Hariprasad, counsel for 4th Respondent/ 3rd Defendant, and Respondents 2 and 5/Defendants 1 and 4 having been died and 3rd Respondent/ 2nd Defendant having been called absent and 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/ 5th Defendant under Order VII Rule 11 (a) of Code of Civil Procedure, to reject the plaint as there is no cause of action as against the Petitioner/ 5th Defendant.

2.The averments stated in the petitions in brief:

The 1st Respondent/Plaintiff had filed the above suit originally against Lakshmiammal, Kanniammal, Mani and Rani for injunction. Subsequently, the said Lakshmiammal and Rani died and the Petitioner/ 5th Defendant was impleaded as legal representatives of the said Rani. The case of the 1st Respondent/Plaintiff is that the suit property originally belongs to one Nataraja Naicker, having purchased the same from the Defendants for valuable consideration in the year 1986 and subsequently in the year 2000, the said Nataraja Naicker had divided the property into 10 plots and the present suit property was allotted as Plot No.6. The said Nataraja Naicker settled the suit property in favour of 1st Respondent/Plaintiff under a Settlement Deed dated 12.07.2002 and since there is threat of interference from the Defendants 2 to 4, the suit for bare injunction has been filed.

3. The mother of the Petitioner/ 5th Defendant namely Rani had filed an application to reject the plaint for the above suit and the same was dismissed by this court. Challenging the same, Civil Revision petition in CRP.No. 1075/2020, was filed before the Hon'ble

High Court of Madras and the same is pending. While so, the mother of the Petitioner/5th Defendant, Rani died on 26.12.2021 and therefore the Petitioner/ 5th Defendant was impleaded as 5th Defendant in the above suit. As per the plaint, the original cause of action arose on 1st week of February 2011, when the Defendants 1 to 3 had interfered with the 1st Respondent/Plaintiff's possession. Neither the deceased 4th Defendant nor the Petitioner/ 5th Defendant have interfered with the possession in the suit property at any point of time. Except in the short and long cause title, there is no specific pleadings in the plaint to the effect that the Petitioner/ 5th Defendant had interfered the 1st Respondent/ Plaintiff's possession. There is no cause of action against the Petitioner/ 5th Defendant and hence the suit is to be rejected under Order VII Rule 11 of Code of Civil Procedure.

4. There are several judgments of the superior court on this point, holding that in a suit for bare injunction the cause of action dies with the person and the legal representatives cannot be made as parties unless and otherwise, the 1st Respondent/ Plaintiff herein is able to bring about the fact that, there was interference by the Petitioner/ 5th Defendant. The 1st Respondent/ Plaintiff has not established any continuous cause of action against the Petitioner/ 5th Defendant and hence this suit is liable to be rejected. Hence this petition.

5.The averments stated in the Counter filed by the 1stRespondent/Plaintiff in brief:

This petition is not maintainable on law and on facts. The Petitioner/ 5th Defendant's mother had filed similar petition Under order VII Rue 11 of Code of Civil Procedure, and it was dismissed by this court. Aggrieved over the same, the Petitioner/ 5th Defendant has come up with the similar petition in order to protract the proceedings. The Petitioner/ 5th Defendant's grand mother Lakshmiammal had lodged false complaint against the 1st Respondent/Plaintiff and it was registered as CC.No. 177/2012 and the 1st Respondent/Plaintiff was acquitted as not found guilty, by judgment dated 30.12.2020. Having defeated in the attempt to grab the suit property by hoisting a criminal case, the Petitioner/ 5th Defendant has come up with this vexatious petition, to grab the suit property.

6. Pending the above suit, the 4th Defendant died and therefore the Petitioner/ 5th Defendant was impleaded as the legal heirs of 4th Defendant. The Petitioner/ 5th Defendant has not made any objection while impleading him as party and while amending the plaint. The above suit has been filed against the Defendants, their men, agents and since the Petitioner/ 5th Defendant is the men of deceased party, there is continuous cause of action against him. There are other Defendants contesting the suit and the suit is in the stage of evidence of DW-1. Hence the petition is liable to be dismissed with costs.

7. The learned counsel for the 4th Respondent/ 3rd Defendant had endorsed no counter.
8. The point for determination is whether this petition is to be allowed or not?
9. No Exhibits marked and no witnesses were examined on both sides.
10. Heard both sides and perused the records.
11. The Petitioner/ 5th Defendant had filed this petition to reject the plaint in the above suit, on the ground that there is no cause of action against him. The 1st Respondent/ Plaintiff had resisted the petition stating that, the Petitioner/ 5th Defendant is the legal heirs of deceased party and therefore there is continuous cause of action.
12. The learned counsel for the Petitioner/ 5th Defendant had filed following the judgments in support of his contention:
 1. *T.Arivandandam vs. T.V. Satyapal and another* [(1977) 4 SCC 467]
 2. *V.O.Duraisamy Mudaliar and Ors vs. Parijathammal and Ors.*
[*Manu/Tamil Nadu/ 0019/2016*]
 3. *Asha Batra and other vs. Dharam Devi*, [2004 (109) DLT 852]
 4. *Ravindra Kishore Sinha vs. Smt.Manjula Bhushan* [2010 (166) DLT 121]
 5. *Ambuja Narasimhan and others vs. Maxworth Home Ltd., rep. by its Authorised Signatory Mr.U.Sivakumar* [2016 (3) MLJ 541]
 6. *Smt. Venkubai vs. The Assistant Commissioner, Sedam* [1999 (1) Civ CC 119]
 7. *M/s Asian Paints (India) Limited vs. M/s Macneil and Magor Limited and others* [2008 (3) LW 707]
 8. *Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal representatives and others*[2020 (7) SCC 366]

9. *Swamy Atmananda and others vs. Sri Ramakrishna Tapovanam and others*
[2005 (10) SCC 51]

10. *A. Ganesh vs. Javeed Hussian (died), The Commissioner Vellore
Municipality and Ors.* [2022 (5) CTC 225]

13. In the case of *T.Arivandandam vs. T.V. Satyapal and another* [(1977) 4 SCC 467], *Dahiben vs. Arvindhbai Kalyanji Bhanusali (Gajra) Dead Through Legal representatives and others* [2020 (7) SCC 466] and *Swamy Atmananda and others vs. Sri Ramakrishna Tapovanam and others* [2005 (10) SCC 51], relied upon by the learned counsel for Petitioner/ 5th Defendant, the Hon'ble Supreme Court had held that, on meaningful reading of the plaint, if it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, and there is no cause of action, the suit has to be rejected by exercising power under Order VII Rule 11 of Code of Civil Procedure. In the present case, perusal of the plaint reveals that the settlor of the 1st Respondent/ Plaintiff had purchased the suit property from the Defendants for valuable consideration and the 1st Respondent/Plaintiff had alleged that the suit property has been divided in to plots and the Defendants are attempting to block the way of the suit property. The 1st Respondent/ Plaintiff had alleged specific cause of action against the Defendants. Hence as per the above judgment the meaningful reading of the 1st Respondent/Plaintiff discloses the cause of action in the above suit.

14. In the judgment relied upon by the learned counsel for the Petitioner/ 5th Defendant

in the case of *V.O.Duraisamy Mudaliar and Ors vs. Parijathammal and Ors. [Manu/Tamil Nadu/ 0019/2016]* it was discussed with regard to the rights of the subsequent purchaser. Admittedly the Petitioner/ 5th Defendant is not the subsequent purchaser and hence this judgment is not applicable to this present case.

15. In the case relied upon by the learned counsel for the Petitioner/ 5th Defendant in the case of *Asha Batra and other vs. Dharam Devi, [2004 (109) DLT 852]*, there was mere threat by the Defendants therein. But in the present case, the 1st Respondent/Plaintiff had alleged that the Defendants are blocking the way of the suit property. The Petitioner/ 5th Defendant is the one of the legal heir of the vendor of the settlor of the 1st Respondent/Plaintiff. Therefore the fact whether the Petitioner/ 5th Defendant had attempted to block the way could not be decided at this stage and can be decided only after trial. The fact in the above case is different to the facts in the present case and hence the above judgment is not applicable to this present case.

16. In the case relied upon by the learned counsel for the Petitioner/ 5th Defendant in the case of *Ravindra Kishore Sinha vs. Smt.Manjula Bhushan [2010 (166) DLT 121]*, the suit therein has been filed for specific performance of contract and there was a subsequent conduct by the parties defeating the earlier cause of action. In the present case, the Petitioner/ 5th Defendant had not pleaded any subsequent conduct by the 1st Respondent/ Plaintiff, defeating the earlier cause of action. Hence this judgment is not applicable to the present case.

17. In the case relied upon by the learned counsel for the Petitioner/ 5th Defendant in the case of, *Ambuja Narasimhan and others vs. Maxworth Home Ltd., rep. by its Authorised Signatory Mr.U.Sivakumar [2016 (3) MLJ 541]*, the suit therein has been filed based on the agreement which has been entered between the parties in personal capacity. The fact of the above judgment entirely different to the facts of the present case. Hence the above judgment is not applicable to the facts of the present case.

18. In the case relied upon by the learned counsel for the Petitioner/ 5th Defendant in the case of, *Smt. Venkubai vs. The Assistant Commissioner, Sedam [1999 (1) Civ CC 199]*, it was held that, injunction that has been already granted against the Defendants will not bind his legal representatives. In the present case whether the Plaintiff is entitled for permanent injunction or not is not decided yet. Hence the above judgment is not applicable to this present case.

19. In the case relied upon by the learned counsel for the Petitioner/ 5th Defendant in the case of *M/s Asian Paints (India) Limited vs. M/s Macneil and Magor Limited and others [2008(3) LW 707]*, the suit therein was filed for recovery of money based on agreement. In the facts and circumstances of the said case, it was held that there must be pleading as to the liability of impleaded parties. Hence the above judgment is not applicable to the present case.

20. In the case relied upon by the learned counsel for the Petitioner/ 5th Defendant in the case of *A. Ganesh vs. Javeed Hussian (died), The Commissioner Vellore Municipality and Ors. [2022(5) CTC 225]*, the suit therein was filed based on the license issued to a person by the Municipality and hence it was held in the above case that the said license comes to an end on the death of the person based on the principle *actio personalis moritur cum persona*. Therefore the above judgment is not applicable to the present case.

21. It is well settled principle that while deciding the petition under order VII Rule 11 of Code of Civil Procedure, the averments in the plaint and the documents filed along with the plaint, alone has to be taken into consideration. In the present case, perusal of plaint reveals that, there is cause of action for the above suit. Further, the 1st Respondent/ Plaintiff had filed the above suit against the other Defendants also and he is contesting the above suit. Hence for the foregoing reasons, this court is not inclined to allow this petition.

22. 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 11th day of April, 2023

District Munsif
Madurantakam

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Petitioners side witnesses and documents:

Nil

Respondents side witnesses and documents:

Nil

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