

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM.

PRESENT: Selvi. M.S. Varalakshmi, B.A.,B.L.,
District Munsif, Madurantakam.

Thursday the 31st day of January 2019.

I.A. No. 1537/2018

in

O.S. No. 115/2017.

1. M.R.Gunasekaran

2. M.R. Balasubramanian

3. M.R. Ramesh

...Petitioners/Defendants 5,6&9.

-vs-

1. S. Nagarathinammal

2. K.S. Shanmugham

3. S. Tamilselvan

4. S. Senthilnathan

5. S. Rajasekar

...Respondents/Plaintiffs

6. The State of Tamil Nadu, repte by its District Collector,

Kancheepuram

7. The RDO, Madurantakam

8. The Thasildar, Madurantakam

9. P.S. Sekar

...Respondents/Defendants 1 to 4.

10. M.R. Jaya

11. M.R. Prema

...Respondents/Defendants 7,8.

This Petition is coming before me for final hearing on 21.12.2018 in the presence of Thiru.S.Subramanian counsel for Petitioner/Defendants 5. 6&9 and Thiru.R.S.Renganathan counsel for Respondents/Plaintiffs and 6 to 10 Respondents suit against exparte and Thiru.S.Subramanian counsel for 11th Respondents and upon hearing the both sides and upon

perusal of records and having stood over for consideration till this date, this court delivered the following.

ORDER

The Petition filed Under Order VII Rule 11 of CPC to reject the Plaintiff and to grant such other suitable orders.

2.The Petition mentioned averments is as follows:

The Petitioners/Defendants 5,6 & 9 submit that the Somasundara Mudaliar sold the land and building of Alankar Theatre to 4th Defendant P.S.Sekar on 14.09.2006. In the sale deed there is no recital about alleged balance of sale consideration . At the time of sale, the said Somasundara Mudaliar also executed a 'C' form application in favour of 4th Defendant P.S.Sekar. His father was bonafide purchaser. Hence the Defendants 5 to 9 no way connected with the transaction between Somasundara Mudaliar and 4th Defendant P.S.Sekar. There is any due by P.S.Sekar and not bind the L'Rs of Ramakrishna Chettiar.

Further his father Ramakrishna Chettiar was bonafide purchaser. Once the land and building of Alankar Theatre purchaser by his father, they are in lawful possession and enjoyment. The petitioners entitled to 'C' form to run Theatre from Government. His father already applied before District Collector Kancheepuram for 'C' form to run Theatre. But the District Collector not pass orders. Thereafter the petitioners file writ before Hon'ble High Court Madras and the Hon'ble High Court directed the District Collector to decide the matter on merits within 12 weeks. Thereafter the District Collector conducted enquiry, the Plaintiff and Defendant 5 to 9 by due process of law and passed order and issued C form to Defendant's 5 to 9 for period till 31.12.2018. Hence the suit itself is not maintainable. Hence he is filing

petition to reject the Plaint. There is statutory body under Tamil Nadu cinemas (Regulation) (Act 9/1955). The District Collector is the competent authority and there is appellat authority. Hence Civil Court cannot interfere and the suit is barred under sec 9 CPC. Hence suit is not maintainable and liable to reject the Plaint. Hence it is therefore prays to reject the Plaint and to grant such other suitable orders.

3. The Counter filed by the 5th Respondent/5th Plaintiff and adopted by the 1 to 4th Respondents/Plaintiffs is as follows:

The Petition filed by the Petitioners/Defendants 5, 6 and 9 to reject the Plaint and affidavit allegations of the 1st Petitioner/5th Defendant filed in support to petition under order 7 rule 11 of CPC. are all not maintainable in law and on facts. The 5th Respondent/5th Plaintiff does not admit any of the allegations and averments set out in the affidavit of the 1st Petitioner/5th Defendant and he specifically denies all those allegations and averments as false and incorrect one. .

The 5th Respondent/5th Plaintiff humbly submits that the District Collector Kancheepuram did not conduct any enquiry and due process of law. In fact the 5th Respondent/5th Plaintiff gave and sent objection letter dated 06.06.2018 to the District Collector at Kancheepuram to stop the enquiry posted on 11.06.2018 and requested to the Office of the District Collector not to conduct any enquiry till the final disposal of O.S.No.115/2017 on the file of this Hon'ble Court. Even on 11.06.2018 the 5th Respondent/5th Plaintiff in person gave petition in District Collector Office to defer the proposed enquiry. Therefore the allegation the District Collector after due enquiry transferred and issued the "C" Form to the Defendants 5 to 9 till 31.12.2018 is highly false and incorrect one.

The 5th Respondent/5th Plaintiff humbly submits that the Petitioners/Defendants 5, 6 and 9 submitted the Xerox copy of the alleged letter of the District Collector at Kancheepuram dated 20.06.2018 in Na.Ka.No.12376/2018/M1. On perusal the same it is clear that the District Collector at Kancheepuram did not transfer the "C" Form in the name of Petitioners/Defendants 5, 6 and 9 as alleged by them. But the District Collector affirmed that the "C" Form license is only renewed from 01.01.2013 to 31.12.2018 subject to the validity of building stability certificate. Further the District Collector affirmed that such a renewal of license is subject to and bind by or to the decision of the Hon'ble Court in the suit in O.S.No.115/2017 filed by this Respondent and other Respondent before this Hon'ble Court. The Petitioners suppressed the real and true facts in their affidavit filed with petition to reject the Plaint. The affidavit allegations are nothing but wrong and misleading. No bonafide reasons are given in the Petition to reject the Plaint. The present petition is vexatious. The Petitioners/Defendants 5, 6 and 9 adopt dilatory tactics by filing petitions one after another to stop the enquiry in the injunction petition. The present Petition amounts to abusing the process of law. The present petition is liable to be dismissed as there is no merit and bonafideness in it. The 5th Respondent/5th Plaintiff pray to pass an order to dismiss the Petition with cost. .

4. Now the point for determination is

Whether the petitioner is entitled for the relief sought for?

No witnesses and documents on both sides.

5. Heard and perused the records. The petitioner herein filed the present application to reject the plaint as the suit barred under section 9 of CPC. For which the Petitioner herein had stated that the Petitioner's father Ramakrishna Chettiar was bonafide purchaser of the land and

building of Alankar Theatre . Thereby they are in lawful possession and enjoyment of the suit property. Therefore they applied for the 'C' form to run the theatre from the District Collector Kancheepuram. Whereas the District Collector has not passed any order for a long time. Thereby the petitioners filed writ petition before the Hon'ble High Court Madras and the Hon'ble High Court directed the District Collector to decide the application on merits within 12 weeks. Thereafter the District Collector, Kancheepuram conducted enquiry at a village after following due process of law and passed order and issued 'C' form in the name of Defendants 5 to 9 for the period 31.12.2018. Thereby the present suit is not maintainable and the same is liable to be rejected. The District Collector is the competent authority to decide the dispute with regard to the dispute under Tamil Nadu Cinemas Regulation Act 9/1995. Thereby this plaint squarely liable to be rejected under Section 9 of CPC.

The Respondent herein had denied the allegations stating the fact that the District Collector, Kancheepuram conducted the enquiry with the Petitioners as well as the Respondent by following due process of law and passed order to issue 'C' form in favour of the Respondents 5 to 9 till 31.12.2018. The 5th Respondent further stated that the District Collector, Kancheepuram had not conducted any enquiry as the 5th Respondent gave an objection letter dated 06.06.2018 to the District Collector at Kancheepouram to stop the enquiry on 11.06.2018 and requested the District Collector, Kancheepuram not to conduct any enquiry till the final disposal of O.S.No. 115/2017 without considering the same. The District Collector, Kancheepuram had conducted enquiry on 11.06.2018. The 5th Respondent further stated that the District Collector, Kancheepuram had not issued the 'C' form in the name of the Petitioners. On the other hand the District Collector renewed the 'C' form 01.01.2013 to

31.12.2018 in the name of the deceased person, subject to the validity of building stability certificate and further stated that such a renewal of licence is subject to the decision of the Hon'ble Court in O.S.No. 115/2017. The Petitioner herein had suppressed the real and true facts and filed this petition to reject the plaint as there is no bonafide reason were given in the petition to reject the Plaint. Thereby the 5th Respondent herein prayed for dismissal of the petition.

On perusal of records, the Respondent/Plaintiff herein filed the present suit for the relief of permanent injunction against the Respondents 1 to 3 restraining them from in any way transferring and changing the 'C' form issued by the Government to run movies in the Alankar Theatre at Madurantakam town in the name of N. Somasundara Mudaliar, S/o Natesa Mudaliar or in the name of any one of the Respondents 5 to 9 except due process of law and also pass a decree of Mandatory injunction by directing the 4th Respondent to deliver and handed over the 'C' form issued by the Government to this Respondent within the stipulated time granted, failing which the same through due process of law. On perusal of records neither the petitioners nor the Respondents filed any document to prove the claim. On careful perusal of the Section 9 of CPC the Civil court is having the jurisdiction to try all suits of a civil nature excepting the suits of which their cognizance is either expressly or impliedly barred. The explanation of Section 9 of CPC makes it clear, that the suit in which the right to property or to an office is contested is a suit of a civil nature. In the present suit the Plaintiff herein had sought the relief that the 'C' form shall not be transferred in other other name until it is by the due process of law. The petitioner herein had not filed any document to prove the fact that the District Collector, Kancheepuram had conducted the enquiry by following the due process of

law. On further perusal of Photocopy of the 'C' form it is renewed only in the name of the deceased person that too till 31.12.2018 on the application made by the present Petitioners. The Respondent herein filed the present suit stating that they sold only the building and not the 'C' form, the license to Exhibit the movie in the theater. The Possession of 'C' form and its validity would be decided after letting the evidence. The 'C' form is the License granted in the particular person and the same could be transferred at the instance of the parties. In this present case, the holder of 'C' form is died. In spite of the fact, the 'C' form is renewed in the name of the present Petitioner. The present suit raised the query of right to property, thereby this court is having the Jurisdiction to try the present suit. In view of above this court comes to the conclusion that the Civil court Jurisdiction is not barred under Tamil Nadu Cinemas Regulation Rules 1957. In finality this court comes to the conclusion of dismissing this application.

6. In the result, the Interim Application is dismissed without costs.

7. Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 31st day of January 2019.

**District Munsif,
Madurantakam.**

Both sides witness and documents:

-Nil -

**District Munsif,
Madurantakam.**

Draft/Fair/Order

I.A. No. 1537/2018 in

O.S. No. 115/2017

D.D.: 31.01.2019.

DMC, MKM.

tition averments is as follows:

The petitioner is the 13th defendant in the suit and the petitioner submits that collusion with the defendants 1 to 12 tiled the suit for partition. According to plaint allegations the defendant's 13 to 15 are strangers and not entitled to property and further allegations in plaint that I have filed earlier suit in O.S.No.336/1996 on the file of Hon'ble court against the defendants 1 to 4 and

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succession. The present plaint allegation that the respondents/plaintiffs are not parties and the Judgement, Decree is not binding. Then as per plaint allegation it is title dispute. I am not claiming under the plaintiffs or their predeceasors and without declaration of title, the present suit is not maintainable. Further allegation that their father has not properly conducted the case and hence the Judgment to be set-aside. Hence proper court fee has not been paid and suit has to be filed under section 25(b) of CF Act. If the suit property valued and proper court fee paid under section 25(b) this Hon'ble court may not have jurisdiction to try the suit. Further the plaint allegations is that the suit properties were purchased by Rangaswamy (i.e.) grandfather of the plaintiff under document No.1 and 2 of plaint. Then the plaintiffs have no right to claim partition. Only the defendants 1 to 4 will get equal share as per law of succession. It is not ancestral property as per plaint allegations. Hence the claim of partition is unfounded, opposed to law and it is only an abuse of process of law. Hence the above suit is liable to dismissed on the ground that as per plaint allegations the plaintiffs are not entitled to claim share. Hence this application is filed to reject the plaint.

3.Counter averments is as follows:

The respondent/plaintiff does not admit any of the allegations set out in the affidavit and petition. The respondent submits that as per the plaint allegation that the suit is maintainable. The suit properties are ancestral property. The plaintiff's grandfather got through ancestral nucleus. The plaintiff is entitled the suit for partition the allegation that the suit to be valued under section 25(b) of TNCF ACT is not valid. The suit is for partition hence the suit is valued property and proper court fee had been paid. Whether the plaintiffs are entitled the share in the suit property are alone to be decided. Hence the present application to reject the plaint is not all maintainable. There is no allegation in the petition to reject the plaint as per order 7 rule 11 of CPC. Hence prays to dismiss the petition.

4. Now the point for determination is:

1. Whether the petitioner is entitled for the relief sought for?

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No witness on both sides. The petitioner side EX.P1 and EX.P2 were marked and no documents on the respondent side.

5. Heard both sides:

Records perused. According to the petitioner, contended that the petitioner already filed the suit against the defendants 1 to 4 in O.S.No.336/1996 on the file of this Hon'ble court and the petitioner is succeeded in the suit. The defendants 1 to 4 are prepared the appeal in A.S.No.18/2001 on the file of Subordinate Court, Madurantakam. That Appeal was also dismissed on 27.9.2001 so that is the filan. The plaintiffs are the sons of 1st defendant hence the earlier suit decree and Judgment are binding the respondents/plaintiffs the earlier suit is suit for permanent injunction the earlier suit issue that is the plaintiff is right over the suit

property is decided in the earlier suit. The respondents/plaintiffs is not possession of the suit property. He is not proved the case to show that the petitioner/13th defendant produced the earlier suit Judgment in O.S.No.336/1996 and Judgment in A.S.No.18/2001. The respondent contention that the earlier suit O.S.No.336/1996 is not binding upon the respondents/defendants because we are not party to the suit and the earlier suit is only for injunction. The earlier suit the father of the respondents/plaintiffs not properly conducted the suit properties are grandfather of the plaintiffs now the plaintiffs is entitled for partition and the present suit is maintainable. The earlier suit Judgment alone produced by the petitioner/13th defendant. The decree are not produced and plaint and written statement in O.S.No.336/1996 not produced the present suit property and the earlier suit property are one and the same. But not clear the petitioner/13th defendant and not produced the plaint and decree of the earlier suit and also the respondents/plaintiffs argued that the title disputed the earlier suit the title is not decided the possession alone is decided the present suit is maintainable and also the respondents/plaintiffs states that the suppression of material fact is not come under the order 7 rule 11 of CPC. The title of the suit property can be decided only at the end of

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the trial in the main suit. Therefore in view of the above reasons this court is not inclined to allow this petition.

6. In the result, petition is dismissed. No cost.

7. Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 11th day of September 2013.

Both sides witness:

-NIL-

Petitioner side document:

EX.P1 – Judgment in O.S.No.336/1996.

EX.P2 – Judgment in A.S.No.18/2001.

Respondant side document:

-NIL-

COMMON ORDER

I.A.No.1756/2014:

Petition filed under order 9 rule 7 of CPC to set-aside the exparte order passed on 26.8.2014 against the petitioner/2nd defendant in the above suit and for suitable orders.

I.A.No.1758/2014:

Petition filed under order 9 rule 7 of CPC to set aside the exparte order passed on 5.8.2014 against the petitioner/2nd defendant in the I.A.No.1010/2014 and for suitable orders.

2.Petition averments is as follows:

The petitioner states that he is the 2nd defendant in the main suit. The

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respondents/plaintiffs filed the suit for declaration and recovery of Possession. The suit was

posted on 26.8.2014 and I.A.No.1010/2014 posted on 5.8.2014 for his appearance. On the said date of hearing he could not able to attend this Hon'ble court, due to relative death. Further he came to know that on 26.8.2014 this Hon'ble court was called him and exparte order was passed against him in I.A.No.1010/2014 in O.S.No.356/2014. Now only he came to know about the exparte order. His absence and non filing of Vakalath on 26.8.2014 is neither willful nor wanton and bonafide one. He have got good case on merits. Hence he filing this application to set aside the exparte order dated 5.8.2014 passed against him in I.A.No.1010/2014 and O.S.No.356/2014. If the petitions are not allowed he will be put into heavy loss and hardship. On the other hand no prejudice will be caused to the other side. Hence these petitions.

3. Objection filed by the respondents/plaintiffs are as follows:

The respondent states that the reason stated by the petitioner is not true and no proof has been filed to prove the same. The allegations contained in affidavit filed in support of the petition are all in correct. The respondents submits that he was not able to appear to the court the death of his relative and set exparte on 26.8.2014 and now filing Vakalath are in correct. The present application is filed without filing written statement is not maintainable. As per amended CPC the exparte order cannot be set aside if it is filed without statement. There is no absolutely merits in the above application. The respondents states that the petitioner did not assign proper reason in his affidavit and now come with this petition to drag the proceedings. Hence prays to dismiss the petition.

4. Now the point for determination is:

1. Whether the petitioner is entitled for the relief sought for?

No witness and documents on both sides.

5. Heard both sides:

Records perused. According to the petitioner, he could not appear on 26.8.2014.

The

-3-

Exparte Order passed on the same day. But his absence is neither willful nor wanton. The only objection raised by the respondents is that the petitioner have not produced any documents to prove the reason for his absence and further that this petition is vexatious one and further there is no vehement objection raised by the respondents/plaintiffs and the reason stated by the petitioner is also acceptable. Hence this court is inclined to allow this petition.

6. In the result, petition is allowed on payment of cost of Rs.250/- in each applications paid by the petitioner to the respondents on or before 22.1.2015. Call on 23.1.2015. Failing which these petitions will stand dismissed.

7. Dictated to the Stenographer and directly typed by her and corrected and pronounced by me in open court on this the 19th day of January 2015.

District Munsif,
Madurantakam.

Both sides witness and documents:

-NIL-

District Munsif,
Madurantakam.

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM.

PRESENT: THIRU.S.VIJAYALAGIRI, B.COM. B.L.,
DISTRICT MUNSIF.

Monday the 19th day of January 2015.

I.A.No.1756/2014 and 1758/2014 in

O.S.No.356/2014.

Murugan

.....Petitioner/2nd

Defendant.....

-vs-

1. Geetha
 2. Gunasekar
-Respondents/Plaintiffs.....

These petitions are coming before me for final hearing on 8.1.2015 in the presence of Thiru.K.S.Gopinathan counsel for petitioner/2nd defendant and of

Thiru.R.E.Charles, Thiru.C.Vengadesan, Selvi.K.Priya Ilavarasi counsels for respondents/plaintiffs and on hearing of both sides and on perusal of records and having stood over for consideration till this date and this court delivered the following.

COMMON ORDER

I.A.No.1756/2014:

Petition filed under order 9 rule 7 of CPC to set-aside the exparte order passed on 26.8.2014 against the petitioner/2nd defendant in the above suit and for suitable orders.

I.A.No.1758/2014:

Petition filed under order 9 rule 7 of CPC to set aside the exparte order passed on 5.8.2014 against the petitioner/2nd defendant in the I.A.No.1010/2014 and for suitable orders.

2.Petition averments is as follows:

The petitioner states that he is the 2nd defendant in the main suit. The

-2-

respondents/plaintiffs filed the suit for declaration and recovery of Possession. The suit was posted on 26.8.2014 and I.A.No.1010/2014 posted on 5.8.2014 for his appearance. On the said date of hearing he could not able to attend this Hon'ble court, due to relative death. Further he came to know that on 26.8.2014 this Hon'ble court was called him and exparte order was passed against him in I.A.No.1010/2014 in O.S.No.356/2014. Now only he came to know about the exparte order. His absence and non filing of Vakalath on 26.8.2014 is neither willful nor wanton and bonafide one. He have got good case on merits. Hence he filing this application to set aside the exparte order dated 5.8.2014 passed against him in I.A.No.1010/2014 and O.S.No.356/2014. If the petitions are not allowed he will be put into heavy loss and hardship. On the other hand no prejudice will be caused to the other side. Hence these petitions.

3. Objection filed by the respondents/plaintiffs are as follows:

The respondent states that the reason stated by the petitioner is not true and no proof has been filed to prove the same. The allegations contained in affidavit filed in support of the petition are all in correct. The respondents submits that he was not able to appear to the court the death of his relative and set exparte on 26.8.2014 and now filing Vakalath are in correct. The present application is filed without filing written statement is not maintainable. As per amended CPC the exparte order cannot be set aside if it is filed without statement. There is no absolutely merits in the above application. The respondents states that the petitioner did not assign proper reason in his affidavit and now come with this petition to drag the proceedings. Hence prays to dismiss the petition.

4. Now the point for determination is:

1. Whether the petitioner is entitled for the relief sought for?

No witness and documents on both sides.

5. Heard both sides:

Records perused. According to the petitioner, he could not appear on 26.8.2014.

The

-3-

Exparte Order passed on the same day. But his absence is neither willful nor wanton. The only objection raised by the respondents is that the petitioner have not produced any documents to prove the reason for his absence and further that this petition is vexatious one and further there is no vehement objection raised by the respondents/plaintiffs and the reason stated by the petitioner is also acceptable. Hence this court is inclined to allow this petition.

6. In the result, petition is allowed on payment of cost of Rs.250/- in each

applications paid by the petitioner to the respondents on or before 22.1.2015. Call on 23.1.2015. Failing which these petitions will stand dismissed.

7. Dictated to the Stenographer and directly typed by her and corrected and pronounced by me in open court on this the 19th day of January 2015.

District Munsif,
Madurantakam.

Both sides witness and documents:

-NIL-

District Munsif,
Madurantakam.

in

Draft/Fair/Order

I.A.No.1756/2014,
1758/2014

O.S.No.356/2014.

D.D.: 19.1.2015.

DMC, MKM.