

IN THE IV ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: J. Chandran,

IV Additional Judge.

This Wednesday, the 8th day of November 2023

I.A.No. 2 of 2022 in O.S.No.8379/2019

(C.S.No.465/2013)

C.N.R.No.TNCH01-TNCH01-038290-2019

1. Kamatchi

W/o.Mr. Ayyarappan

2. Saraswathi

W/o.Mr.Sreenivasan

3. Janaki

W/o.Mr.Deivendran

4. Chandrakala

W/o. Mr.Babu

..Petitioners/Defendants 1 to 4

/versus/

1. A. Vasudevan

S/o.Mr.Ayyarappan

2. A. Perumal

S/o. Mr.Ayyarappan

..Respondents No.1 and 2/

plaintiffs 1 & 2

3. A. Bhuvaneswaran

S/o. Mr.Ayyarappan

...3rd Respondent/5th defendant

This petition came up before me for final hearing on 08.09.2023 in the presence of M/s. Kavitha Singuluri and M.Kalpana Counsels appearing for the

petitioners/defendants and of M/s.G.Sumitra Counsel appearing for the respondents/plaintiffs, upon hearing the arguments from the counsels for both side, upon perusing the entire records of this case having stood over for consideration till this day, this Court passed the following

ORDER

This petition has been filed by the petitioners/defendants to reject the plaint filed in O.S.No.8379/2019 under Order VII Rule 11 (d) of CPC.

1. The averments found in the affidavit filed by the petitioners along with the petition are as follows:-

This affidavit has been filed by the 1st petitioner for herself and on behalf of the other petitioners/defendants. The respondents are the elders and wayward sons of the first petitioner who have filed the suit seeking declaration that her property described in the schedule is the joint family property and secondly for partition of the same and for injunction against the petitioners from interfering with their possession and enjoyment of the same. The suit is not maintainable either in law or on facts. The 1st petitioner is a fisher woman by profession and is acquired by the acquaintance of her father, that she got married to a daily wages worker and he gradually obtained a Government job as peon, that though they started their life at a poverty line since both of them were earning members they lead a planned and disciplined life sufficient for their family at their level. The first petitioner had six children though her late husband. The first plaintiff

is her eldest son that the 2nd plaintiff is her 2nd son and the 3rd plaintiff is her another son and the defendants No.2 to 4 are her daughters. They have gradually able to earn a reasonable income. With a view to have a permanent place of residence, the 1st petitioner spoke with one Mrs.S.Yashodammal regarding a hut in a small plot and she was willing to sell the same to her for a total sale consideration of Rs.20,000/-, that the 1st petitioner has paid an advance amount of Rs.5,000/-. A month later she paid Rs.7,500/- to the said Mrs.S.Yashodammal and again she paid Rs.4,000/- to her and four months later she paid Rs.3,500/-to her and all above the four sums of money paid by her from out of her own earned funds by selling fishes. She had executed a sale deed dated 27.02.1985 registered as doc.No.282/1985 thereby sold the said land to the 1st petitioner and the said land has been described as the plaint schedule [annexed as annexure-1]. At the time of purchase the first plaintiff was aged 14 years and the 2nd plaintiff was aged 11 years old.

2. The first plaintiff has studied up to IX standard and declared that he was not interested in going to school and tilted more on the other activities, friends etc. and the same was followed by the 2nd plaintiff. By the time they grew up to be teen agers and the petitioners had lost control over them, that the husband of the first petitioner had to give them additional pocket money simply to stop them from emotional threats all the time and to stop them from preventing our other children from doing even their home work. The husband of the first petitioner

spoke to them and convinced them to learn driving with a view to try for their employment with the Government owned Transport Corporations. The respondents learned driving but were not able to obtain commercial license for heavy motor vehicle. The first respondent was addicted to alcohol and took job as driver of private cars and was not willing to move any further. The remaining children studied up to their desired levels. The plaintiffs never contributed any monetary funds or moral support to the family at any point of time. They are still depending on the first petitioner who took possession of the schedule property by virtue of her fishing business of standing for about 40 years. The first petitioner developed the schedule property to this extent for which she borrowed amounts at instants through mortgage of the schedule property and released by step by step with gradual earnings.

3. The husband of the first petitioner felt partially responsible for the plaintiffs wayward behaviour as he had failed to discipline them at the right time. Taking advantage of the said soft corner, the plaintiffs began pestering her husband to hand over to them in cash all the provident fund and gratuity he had received at the time of his retirement. Knowing the nature of the plaintiffs he refused to do so. The husband of the 1st petitioner was already old and feeling sorry for his two sons directly purchased in their joint names a plot of land measuring 1234 sq. feet at plot No.7, Meenakshi Nagar, Velachery for a sum of Rs.86,300/- out

of his provident fund and gratuity amount by a sale deed dated 11.12.2000 registered doc.No.628/2001 to avoid future procedural formalities to transfer the purchased property to the names of the plaintiffs and further with a view that the self acquired property of the 1st petitioner will be given to the rest of the children. Subsequently hardly two years after the demise of her husband the plaintiffs had sold away the said property by two sale deeds dated 11.07.2005 registered as doc.No.4891/2005 and 4892/2005 through a power agent R.Gajalakshmi dated 28.04.2005. They have spent the sale consideration received from the said sale for their luxurious ways and after the said money is now exhausted they have set their eyes on her hard earned property. Due to the plaintiffs economic back drop and out of affection the first petitioner allowed the respondents and their respective wives and their children to reside in the separate portions of her property but they never took the responsibility and never cared of her ill health out of her old age. When 4th petitioner came for her delivery she convinced her to stay back with her and she too agreed and stayed back to take care of her and she had also requested her husband to come and live with her in the same portion and she is now taking good care of herself. The petitioners 2 to 4 are her daughters who take care and affection towards her and the 1st petitioner had settled the plaint schedule property in favour of the petitioners 2 to 4 through a settlement deed dated 12.08.2009 registered as doc.No.1681/2009 and they had every right to stay there and visit her.

4. The suit property was acquired out of the 1st petitioner's own savings and the recital of the title deeds clearly reflect the same. The document stated in the plaint do not further disclose their cause in any manner. The respondents cannot claim the concept of blending. Admittedly there was no ancestral property. The said settlement deed executed by the first petitioner was not challenged or disputed. Prima facie case is not made out. The suit has been instituted against the Hindu Succession Act seeking for partition for the self acquired property and it is a premature suit. The suit for declaration is not maintainable where certain provisions of a statute operate as a bar. The suit does not disclose cause of action and the suit is liable to be rejected.

5. The averments found in the counter affidavit filed by the 1st respondent on his behalf and on behalf of other respondents are as follows:-

The respondents have filed the suit for the relief of declaration that the suit property is the joint property of the plaintiffs and the defendants and for partition of the same into 7 shares and allot one share each to each plaintiff and for injunction. This petition has been filed by the defendants No.1 to 4 under Order VII Rule 11 (d) of CPC to reject the plaint. The provision of Order VII Rule 11 (d) of CPC clearly stipulate that the plaint can be rejected only based on the statement made in the plaint which should clearly shows that the suit is barred under any of the law of the land. The affidavit filed along with the petition nowhere claims or suggest that such a statement is available in the

plaint and as such the suit is not barred under any of the law of the land. On this simple ground itself the said application is liable to be rejected. The relief sought for does not falls under the provisions of Order VII Rule 11 (d) of CPC and is to be rejected. This petition is not maintainable both in law and on facts and relief sought for rejection of the plaint in the I.A. is not maintainable. The respondents deny all the allegations and averments made in the affidavit filed along with the petition. It is false to claim that the first petitioner was an earning member. The father of the plaintiffs and the defendants No.2 to 4 and the husband of the first defendant namely Ayyarappan came down to Chennai from Aruppukottai in the year 1959 and joined in the Education Department in the year 1965 as peon and the family was thoroughly depend on his income and the respondent's father contributing to the joint family. The first petitioner is only a house wife and the other contentions of contribution etc. are hereby thoroughly denied.

6. The contentions that the alleged payment of money made by the first petitioner for the sale consideration from her alleged self earned funds is denied. The first petitioner did not have any separate or self earned funds and the property under the sale deed dated 27.02.1985 was purchased only by the said Ayyarappan from and out of his earnings. It is false to state that this respondent has declared that he was not interested in studies and hence the first petitioner has not made this respondent to study beyond IX Std. It is also false to state

that this respondent has got interested in other activities and friends and the 2nd respondent has also followed by the footstep and left the school and studies. It is false to state that we were given additional pocket money as there was no such practice in the family to give pocket money to the children. It is false to state that this respondent was addicted to alcohol and did not move further in his life. The parents of the respondents including the first petitioner had not provided any means or assets for any betterment in their life and on the contrary the respondents started earning by their avocations and they contributed to the joint family stock and hence the contention that the respondents have not contributed monetarily or morally to the family is absolutely false. The contention that the first petitioner had a fishing business and was carrying on the same for 40 years is absolutely a fallacy without any substance. It is also false to state that she had developed the property through her earnings and she had spent for the marriage of the petitioners 2 to 4. The contention that the respondents have demanded the provident fund and gratuity etc.. from their father is denied and the purchase of the property in the year 2000 by the father in the name of the plaintiffs is also denied as false. The said property was never purchased by their father or the petitioners.

7. The first petitioner had no right to settle the joint family property in favour of the daughters. The other petitioners taking advantage of the old age of the first petitioner are trying to fish in the trouble water so as to enrich themselves.

It is false to state that the respondents have not contributed to the development of the property and they never shared for maintenance of the property and the marriage of the petitioners 2 to 4. The settlement made by the first petitioner is only out of pure dislike for the wives of the respondents and at the behest of the petitioners 2 to 4 and the contentions made in the petition that the plaint is devoid of merits can be decided by this Court only on the touch stone of the evidence and the plaint cannot be rejected merely on the statements of the petitioners in this petition. The contention of the non availability of prima facie case, threat of immediate injury and premature suit are all need to be decided only at the time of trial of the suit. This petition is not maintainable as the same has been filed only to drag the proceedings and to protract the same.

8. Point for consideration :

Whether this petition filed to reject the plaint is to be allowed or not, is the question to be decided in this petition?

9. No document was marked and no oral evidence was adduced by either side for this petition.

10. To the Point:-

This petition has been filed by the petitioners/defendants to reject the plaint under Order VII Rule 11 (d) of CPC on the ground that the suit claim is barred by limitation. The said provision reads as follows:

“Rejection of plaint- The plaint shall be rejected in the following cases:

(d) where the suit appears from the statement in the plaint to be barred by any law.”

The only claim or ground made by the petitioners to reject the plaint is that the suit claim is barred by statute. They have not specifically stated in the petition as to under which statute or which provisions of law the suit claim has been barred.

11. The learned counsel appearing for the respondents vehemently put forth his arguments that nowhere in this petition it has been stated by the petitioners as to under which statute or under which provisions of law the suit has been barred. It is the bounden duty of the petitioners to plead in their petition as to under which statute or law or the provisions of any of the Act the suit claim is barred, but to be frank, the petitioners have not made any specific plea in their petition as if the suit claim has been by any specific Act or statute or provisions of law.

12. The main suit has been filed by the plaintiffs to declare the suit property as the joint property of the petitioners and the respondents in which the plaintiffs are entitled to have 1/7th share each, consequentially to pass a preliminary decree and for permanent injunction. The relief of injunction is only a consequential relief and the main relief of declaration is the prime object of the plaintiffs. The plaintiffs have claimed that the suit property was purchased by

the father of the plaintiffs and the defendants No. 2 to 5 and the husband of the first defendant namely Ayyarappan in the name of the first defendant. Based on the said pleadings alone, the respondents have claimed prima facie case that the suit property is the joint family property and they are entitled to have shares and though the sale deed is stands in the name of the first defendant she has no independent income to purchase the same. The respondents had produced the parent sale deed with regard to the suit property which was executed by Pattammal and others in favour of one Yoshodhammal on 24.03.1975 and the sale deed stands in the name of the first defendant which was executed by the said Yoshodhammal on 27.02.1985.

13. It is the case of the petitioners that the first petitioner is the title holder of the suit property and it is the self acquired property of her out of her hard earned money by doing fish selling business, that as the respondents are her own sons she permitted them to reside one portions of the suit property and hence it is their claim that the respondents are the permissive occupiers of the suit property permitted by the first petitioner. It is the further claim of the petitioners particularly the first petitioner that the respondents were minors at the time of purchase of the suit property by her.

14. It is the further case of the respondents/plaintiffs that the first defendant

herself has never treated the suit property as her absolute property as the said property was mortgaged by the plaintiffs and the defendants by joined together to execute the mortgage deeds dated 09.04.1997 and 09.05.2000 and without pursuing further studies the respondents were employed for the benefit of the family and income of the respondents and their father were put up for the development of the said property into a pucca building and all the parties to the suit were treated the suit property only as a joint family property. The claim of the respondents and the crux of the matter involved in the suit relates with mixed question of fact and law and the same has to be decided only at the time of trial and not before that.

15. Though the petitioners had filed this petition only under Order VII Rule 11 (d) of CPC it is their bounden duty to establish even a prime facie case as to under which provisions of law or under which statute the suit claim is barred. No specific pleading was made by the petitioners in their petition. The petitioners have stated in their petition as well as in their written statement as if the suit for declaratory relief is not maintainable where certain provisions of a statute operate as a bar. They have simply stated the said sentence alone in both their petition and the written statement, but under which statute the suit claim is barred has not been specifically stated by the petitioners.

16. It is the case of the respondents that during May 2013 the defendants 3 and 4 had started abusing the respondents and threatened them to vacate the suit property and then only doubting the attitude of the defendants they have made an enquiry in the office of the Sub Registrar, Mylapore and came to know that the first defendant had executed a settlement deed dated 12.08.2009 in favour of the petitioners No. 2 to 5. As such it is the definite stand taken by the respondents that they came to know about the execution of the settlement deed dated 12.08.2009 only during May 2013. The petitioners have not produced any authenticated documentary evidence to prove that at the point of time the respondents had the knowledge about the settlement deed dated 12.08.2009 prior to May 2013. This suit has been filed on 11.06.2013 for the first time before the Hon'ble High Court as per the seal affixed on the plaint.

17. As per the limitation Act the period for claiming declaratory relief with regard to a document is three years from the date of the execution of the document or three years from the date of knowledge of the said document as the case may be. The respondents had knowledge about the settlement deed dated 12.08.2009 only during May 2013 according to them and they have filed the suit in June 2013 itself. If the said date of knowledge of the respondents with regard to the execution of the settlement deed is taken into account it has to be treated as if the suit has been filed well within the period of limitation. If the petitioners have established during the course of trial that the respondents had

knowledge about the said settlement deed even three years prior to the alleged date of knowledge claimed by the respondents then the suit will be barred by limitation which requires evidence and for which the case has to be taken up for trial. The question of limitation itself is a mixed question of fact and law which requires evidence and it can be decided only during the course of trial. Merely based on the pleadings made by the respondents in their plaint and the averments found in the petition filed by the petitioners this Court cannot come to a conclusion that the suit claim is barred by any law or statute.

18. It is not the case of the petitioners that the suit is an abuse of process of Court and there is no cause of action for filing the suit. No such pleading was raised by the petitioners. The learned counsel appearing for the petitioners has submitted a case law in *N.V.Srinivasa Murthy and Others vs. Mariyamma (dead) by Proposed LRs and Others* decided on 11.07.2005 obtained from *Indian Kanoon*— <http://indiankanoon.org/doc/1261076/> in which our Hon'ble Supreme Court has held as follows:

"The trial court must remember that if on a meaningful no formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus

litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch.XI) and must be triggered against them."

Based on the pleadings made by the respondents/plaintiffs in their plaint it cannot be said that they have created the illusion of cause of action to apply the findings made in the above case law. When the petitioners have not made a pleading with regard to the cause of action in their petition and when this petition has not been filed under Order VII Rule 11 (a) of CPC also, merely relied upon the citation to reject the plaint based on the said findings is not sustainable in the eye of law. Considering the above stated circumstances and in the interest of justice, this Court finds that this petition is liable to be dismissed and the point has been decided accordingly.

19. In the result, this petition is dismissed. The parties are directed to bear their own cost.

This Order has been dictated by me to the steno typist, computerised by her directly, corrected and pronounced by me in the open Court this Wednesday, the 8th day of November 2023.

IV Additional Judge,
IV Additional City Civil Court, Chennai.

List of witnesses and exhibits on both sides:

Nil

IV Additional Judge,
IV Additional City Civil Court, Chennai.

IV Additional City Civil
Court, Chennai
Draft/Fair Order
in
I.A.No.2/2022,
in
in O.S.No.8379/2019
Date:08.11.2023.