

IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
DHARMAPURI.

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Thursday, this the 7th day of December 2023.

I.A.No.2/2023
in
O.S.No.52/2022
(CNR No.TNDP010004782022)

Kunjappan

...Petitioner/plaintiff

/versus/

1. Kadhar Basha @ Kadhar Ali
2. Kathan Bi
3. Mashood Ahamad

...Respondents/defendants

This petition is coming on 2.12.2023 for final hearing before me in the presence of Thiru.M.Tamilarasan, Advocate for petitioner and Thiru.K.Kabilan, Advocate for respondents and upon hearing both side arguments and on perusal of the entire case records and having stood over till this day, this court pronounced the following:

ORDER

This is a petition filed under Order-6, Rule-17, 18 and section 151 of CPC to amend the plaint.

2. The case of the petitioner in brief is as follows:

According to petitioner, O.S.No.43/2014 filed by him for the relief of permanent injunction restraining defendants from evicting him except by due process of law has

been decreed on 11.3.2015. Before executing suit agreement, the first defendant's parents Mahaboob Basha and Madhaar Bi, 30 years ago, orally leased suit properties to plaintiff in the presence of villagers at yearly rent of Rs.5000/- and handed over the possession of the suit properties to plaintiff. The plaintiff was cultivating properties for 8 years after that the first defendant's father died and first defendant's mother also died on 9.7.2007. After death of parents, defendants interfered with plaintiff's possession and enjoyment of suit properties. Hence plaintiff filed O.S.No.43/2014 and same was decreed in his favour. As plaintiff was not in possession of certain important documents at the time of filing of the suit and he is in possession of the same presently, the plaint has to be amended with regard to certain important aspects. Hence the petition has to be allowed.

3. The averments in the counter in brief is as follows:

The respondents resisted the petition by contending that all the allegations in the petition are not correct. The suit properties were never given in lease of plaintiff. The plaintiff and first defendant were long time friends. The plaintiff approached the defendant stating that he is going to start retail petrol bunk business and assured that he would make the defendants as partners. The license for the petrol bunk would be taken in the name of plaintiff and the defendants have to execute agreement for permitting the plaintiff to start retail petrol bunk. He further represented that when the Government officials are visiting the suit properties in order to prove that he has right over it, he needs documents and obtained signatures of the defendants in blank twenty rupees stamp papers. After that the plaintiff did not start petrol bunk. When

the defendants insisted for handing over the blank stamp papers, he stated that he misplaced it and he would search and give it and he would get license. Hence the documents would be kept in his possession. He further stated that if the defendants are selling the properties he would purchase it. However the defendants denied the offer. Sale agreement was never entered between the plaintiff and defendants. Upon receiving the legal notice, when the defendants approached the plaintiff in person the plaintiff stated that he issued notice only for the reason that defendant should sell the properties only to him and assured that he would not take any further legal action. Hence the defendants did not give any reply. Taking advantage of the minority community of the defendant and as plaintiff has got political and men power defendants did not take any action. There are coconut trees in the suit properties and 30 fodder crops. As there are other properties belonging to plaintiff with well , defendants were purchasing water from the plaintiff's well and cultivating the crops. Only to grab the suit properties the plaintiff is preventing the defendants from entering into suit properties. Hence the petition has to be dismissed.

4. **The point for consideration:**

Whether the petition is liable to be allowed or not?

5. On the side of petitioner Ex.P1 to P5 were marked. No oral or documentary evidence adduced on respondent side. Heard both side arguments.

6. **Point:**

a) The plaintiff alleges that he has filed O.S.No.43/2014 for the relief of permanent injunction restraining the defendants from not to evict except due process

of law and said suit was decreed in his favour on 11.3.2015. The plaint has to be amended with regard to certain aspects as to oral lease executed by defendants parents and about O.S.No.43/2014, hence the plaint has to be amended.

b) The defendants resisted the petition by contending that they did not execute suit agreement at all and the plaintiff had obtained defendants signatures in blank stamp papers and to grab the suit properties has filed this suit.

c) The petitioner in order to establish his case marked Ex.P1- Certified copy of legal notice dated:3.12.2013 sent by plaintiff counsel to second defendant, Ex.P2- Certified Copy of Judgment and Decree in O.S.43/2014 dated:11.3.2015 on the file of District Munsif cum Judicial Magistrate, Pennagaram, Ex.P3- Memo dated:13.12.2013 calling upon plaintiff to appear on 18.12.13, Ex.P4- Certified Copy of acknowledgment card and Ex.P5-Certified Copy of petition in REP.5/2016.

d) This is a suit for specific performance and trial has not yet commenced in this suit. The plaintiff alleges that with regard to certain important aspects as to oral lease executed by defendants parents and about O.S.No.43/2014 has to be stated in the plaint. Hence the plaint has to be amended to include the above particulars. The respondents resisted the petition by contending that the properties were never orally leased to plaintiff and they never executed the suit agreement.

d) It is settled position of law that pre trial amendment should be allowed liberally. The proposed amendment will not in any way give advantage to plaintiff as plaintiff has to prove the same. The defendants will also have ample opportunity to

file additional written statement if necessary in support of their case. This court is of view in the interest of justice to provide petitioner an opportunity to prove the case the amendment sought for has to be allowed, however on cost as the petition has been filed when the case is posted in the list.

In the result, petition is allowed on payment of cost of Rs.2000/- to respondents. Cost to be paid on or before 13.12.2023, failing which petition stands dismissed. Call on 14.12.2023.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 7th day of November 2023.

Additional District Judge,
Dharmapuri.

Petitioners Side Evidence: Nil

Petitioner Side Exhibits:

Ex.P1	3.12.2013	Certified copy of legal notice sent by plaintiff counsel to second defendant.
Ex.P2	11.3.2015	Certified Copy of Judgment and Decree in O.S.43/2014 on the file of District Munsif cum Judicial Magistrate, Pennagaram.
Ex.P3	13.12.2013	Memo calling upon plaintiff to appear on 18.12.13.
Ex.P4	--	Certified Copy of acknowledgment card.
Ex.P5	--	Certified Copy of petition in REP 5/2016.

Respondents Side Evidence, Exhibits: Nil

Additional District Judge,
Dharmapuri.

Fair Order

I.A.No.2/2023 in

O.S.No.52/2022

Dated:7.12.2023.