

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

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

Monday, the 28th day of October 2024

I.A.No.4/2024
in
O.S.No.166/2023

1. Kuppan @ Munusamy
2. Madhammal
3. Krishnan ... Petitioners/defendants

/versus/

1. Muniammal
2. Mariyammal
3. Salammal ... Respondents/plaintiffs

This petition is coming on 23.10.2024 for final hearing before me in presence of Mr.K.Vadivel, Advocate for petitioners and Mr.S.Selvaraj, 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 7, Rule 11 and section 151 of CPC to reject the plaint.

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

The suit properties and other properties originally belonged to first defendant's mother Muthammal. During her life time she was enjoying the properties along with

her husband Perumal, first defendant and Venkattaraman, first defendant's brother. While so, the said Muthammal, first defendant and Venkattaraman executed a registered Sale deed in favour of then minors, third defendant and his brother Govindasamy by appointing their mother second defendant as guardian in respect of portion of suit properties of Muthammal which belonged to her way of patta and in respect of ancestral properties belonging to first defendant and Venkattaraman. The said Muthammal died on 9.12.2013. After her death, the said properties were succeeded by first defendant and his brother Govindaswamy. In the year 2014 Pongal festival, an oral partition was effected between Venkattaraman and first defendant in which the said Venkattaraman relinquished his share in suit properties and other properties in favour of his brother/first defendant and his family. The said Venkattaraman died in the year 2015, after his death the first defendant was in possession, enjoyment of the properties with his family. Govindan @ Govindasamy, son of defendants 1 and 2 died on 8.3.2010. On 27.2.2022, defendants 1 and 2 executed a sale deed in favour of third defendant in respect of suit properties and other properties. The third defendant is in possession, enjoyment of the properties. The plaintiffs were given necessary sridhana and money at the time of their marriage by first defendant, they are living with their husbands and they were never in joint possession, enjoyment of suit properties. The third defendant executed a Sale deed in favour of fourth defendant on 4.1.2023 for his family necessities and later he purchased the property from him. The plaintiffs upon instigation of unwanted

elements have filed this suit to grab the suit properties and to get illegal gains. This suit filed after 22 years of Sale deed dated 26.6.2003 is barred by limitation. The plaintiffs have not sought for declaration in respect of right over suit properties. Hence the suit is barred by section 34 of Specific Relief Act. The plaintiffs have the valued of the suit properties on higher side. There is no cause of action for this suit. Hence the suit is barred by section 58 of Limitation Act, section 34 of Specific Relief Act and section 16 of Hindu Succession Act. The suit is barred by law. Hence the suit is liable to be rejected.

3. The averments in the counter filed by first respondent and adopted by respondents 2 and 3 in brief is as follows:

All the allegations in the petition are not correct. The petitioners have not made out any case for rejecting the plaint. This suit is not barred by limitation or by section 34 of Specific Relief Act or by Hindu Succession Act. Only to defraud the plaintiffs, the defendants have created forged documents which will not bind the plaintiffs. As the defendants have no proper defense, after knowing that they have no chance to succeed, in order to drag on the proceedings this petition has been filed. Hence the petition has to be dismissed.

4. The point for consideration:

Whether the petition is liable to be allowed or not?

5. No oral or documentary evidence adduced on both side. Heard both side.

6. Point:

6.1) The petitioners allege that this suit filed for partition, for declaration of

Sale deed dated 26.6.2003 is barred by limitation, the respondents. plaintiffs have not sought for declaration of title, hence the suit is barred by section 34 of Specific Relief Act. The respondents/ plaintiffs have no right in respect of suit properties under section 16 of Hindu Succession Act. There is no cause of action for this suit. Hence the suit is liable to be rejected.

6.2) The respondents allege that the suit properties are the ancestral properties and the Sale deed dated 26.6.2003 has been executed without any rights. The petitioners/defendants have no exclusive right over the suit properties, plaintiffs are entitled to partition. All the allegations in the petition are the defenses of the defendants which cannot be decided now and only at the time of the trial and the petition is liable to be dismissed.

6.3) This is a suit for partition, for declaration of Sale deeds dated 26.6.2003, 27.7.2022 and 4.1.2023 as null and void. The case is in the stage of trial and proof affidavit of PW.1 was filed. At this stage the petitioners/defendants have filed this petition.

6.4) The respondents and third petitioner are the daughters and son of first and second petitioners. The petitioners allege that the suit properties are not ancestral properties. Per contra, the respondents allege that the suit properties are ancestral properties. This court is of view based upon the averments of both the parties, it cannot be decided whether the suit properties are separate properties of Muthammal or ancestral properties. Only during the trial, where the parties will adduce evidence

the nature of the suit properties can be decided.

6.5) As far as the contention of the petitioners that the relief claimed by the respondents in respect of Sale deed dated 26.6.2003 is barred by limitation Act is concerned, it is the case of the petitioners they were not aware of the documents, they came to know about recently alone. Hence whether plaintiffs have knowledge about this documents earlier is a debatable issue which cannot be decided on the basis of averments in the petition and counter and require elaborate trial.

6.6) The contention of the petitioners that the right of the respondents has been extinguished in respect of the suit properties, hence the suit is barred by section 34 of Specific Relief Act cannot be decided at this initial stage and require evidence.

6.7) The fact that the properties are separate properties of Muthammal or ancestral properties can be decided only after full fledged trial. Hence at this stage whether the suit is barred by section 16 of Hindu Succession Act cannot be decided.

6.8) It is well established law that the Court does not to have to see whether the claim made by the plaintiff is likely to succeed but it has merely to satisfy itself that the allegations made in the plaint, if accepted as true, would entitle the plaintiff to the relief he claims. In ascertaining whether the plaint shows a cause of action, the court does not enter upon a trial of the issues affecting the merits of the claim made by the plaintiff. The Court should not and cannot take into consideration the defenses which the defendant may raise upon the merits; nor is the court competent to make an elaborate inquiry into doubtful or complicated questions of law or fact for rejection of

the plaint.

6.9) There are triable issues involved in this case. Rejection of plaint takes away the very basis of the suit rendering as if there was no suit at all or that no suit was instituted. Order of dismissal of suit while recognizing the existence of a suit indicates its termination. Consequently on the grounds as raised by the petitioners/defendants, the plaint cannot be rejected in the present facts and circumstances. The respondents/plaintiffs have to be given so opportunity to prove the case and suit cannot be rejected at this stage. Hence point for consideration is answered against petitioners.

In the result, the petition is dismissed. Both the parties are directed to bear their own costs.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 28th day of October 2024.

Additional District Judge,
Dharmapuri.

Petitioners Side Evidence, Exhibits: Nil

Respondents Side Evidence, Exhibits: Nil

Additional District Judge,
Dharmapuri.

Fair Order

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O.S.No.166/2023

Dated:28.10.2024.