

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI

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

Saturday, this the 6th day of December 2025

I.A.No.8/2025

in

O.S.No.140/2019

CNR.No.TNDP010010852019

Lakshmi.

..... Petitioner / defendant.

/versus/

Manimozhi.

..... Respondent/plaintiff.

This petition is coming on 26.11.2025 for final hearing before me in presence of Thiru.B.Girubananthan, Advocates for petitioner and Thiru.C.Murali, Advocate for respondent 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 petition has been filed under Order-7, Rule-11 and section 151 of CPC for rejection of plaint.

2.The averments in the petition in brief is as follows:

i) The plaintiff has filed this suit for declaration of title, to declare the preliminary decree and final decree passed in O.S.No.47/2008 on the file of Principal District Judge, Dharmapuri as null and void, for permanent injunction restraining the first defendant from alienating the suit properties, for permanent injunction restraining the first defendant from interfering with the peaceful possession of the plaintiff, for permanent injunction restraining the defendants 2 to 6 from disbursing the compensation amount to the first defendant. The plaintiff has filed

O.S.No.47/2008 on the file of Principal District Court, Dharmapuri in respect of this suit properties and other properties against her father Perumal, her step mother Suganthi, seventh defendant, her husband Ganapathy, Government of India National Highways and others seeking the relief of partition and not to disburse the compensation amount in respect of the properties acquired and not to create any alienation in respect of the suit properties. On 8.6.2009, preliminary decree was passed in that suit holding that the petitioner is entitled to 1/2 share in the suit properties and for permanent injunction as sought for. In spite of granting of permanent injunction in O.S.No.47/2008, very well knowing about the Judgment and decree passed in O.S.No.47/2008, the seventh defendant who is a party in O.S.No.47/2008 has sold undivided suit properties to Anbalagan and Pandurangan on 23.11.2009, after passing of the preliminary decree on 8.6.2009 in O.S.No.47/2008. Based upon the invalid Sale deed, the plaintiff who is daughter of seventh defendant in both suit has purchased suit properties on 7.12.2009 with out any consideration. The plaintiff has purchased the suit properties with the knowledge of Judgment and decree on O.S.No.47/2008. Hence the present suit is barred by resjudicata.

ii) The plaintiff has filed O.S.No.131/2008 against petitioner's father Perumal which was dismissed on 11.11.2014. The plaintiff has suppressed the above suit. The plaintiff has not impleaded the Government of Tamil Nadu. Hence this suit is barred by section 79 of CPC. The issues involved in O.S.No.47/2008 and this suit are one and the same.

iii) The plaintiff claim title to the suit properties from the seventh defendant who is already a party in O.S.No.47/2008. Hence the plaintiff has no right to seek declaration of title as the seventh defendant is already a party in O.S.No.47/2008. The plaintiff and her vendors have purchased properties after the passing of Judgment and decree in O.S.No.47/2008. Hence the plaint has to be rejected on the ground of Res judicata.

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

The respondent has filed memo to exonerate second to sixth defendants from this suit. The petitioner has filed O.S.No.47/2008 without impleading this plaintiff as a party, without sending notice, by cheating the Court and on the basis of forged documents have obtained Judgment and decree in O.S.No.47/2008. The said Judgment and decree is obtained by fraud and suppression of facts. The suit cannot be rejected on the grounds as alleged in the petition. The Judgment and decree in O.S.No.47/2008 will not in any way bind the plaintiff in this suit. Hence necessary issues have to be framed and trial has to be conducted in this suit. This petition has been filed without any merits and liable to be dismissed.

4. The point for consideration:

Whether the petition is to be allowed or not?

5. Heard both side. No oral evidence have been adduced on either side.

6. Point:

6.1) According to petitioner, she filed O.S.No.47/2008 on the file of Principal District Court, Dharmapuri, the said suit was decreed on 8.6.2009 in respect

of relief of partition, for permanent injunction restraining the defendants from creating any alienation over the suit properties and for other reliefs. After passing of Judgment and decree in the O.S.No.47/2008, the seventh defendant in this suit who is a party in O.S.No.47/2008, sold suit properties to plaintiff's vendors, plaintiff in this suit has purchased properties from persons who have no right to sell the properties, issues involved in this suit and O.S.No.47/2008 are one and same, hence this suit is barred by principles of res judicata. Hence the suit is liable to be rejected.

6.2) The respondent resisted the petition by contending that she is not at all a party to O.S.No.47/2008, the said Judgment and decree has been obtained by fraud and suppression of facts and hence liable to be set aside. The petitioner is not entitled to rejection of the plaint on the grounds as sought for. Hence petition is liable to be dismissed.

6.3) Admittedly the petitioner has filed O.S.No.47/2008 on the file of Principal District Court, Dharmapuri for the relief of partition, for permanent injunction restraining the defendants from creating any alienation over the suit properties, for permanent injunction restraining the defendants from disbursing the compensation. The said suit has been decreed on 8.6.2009 holding that the plaintiff is entitled to partition and permanent injunctions as sought for. The second defendant in O.S.No.47/2008 has sold the suit properties as power agent of first defendant to third defendant in O.S.No.47/2008 by way of Sale deed dated:14.7.2008. The third defendant in O.S.No.47/2008 is seventh defendant in this suit has sold suit properties to Anbalagan and Pandurangan by way of Sale deed dated:23.11.2009. The plaintiff

in this suit has purchased suit properties from Anbalagan and Pandurangan by way of Sale deed dated:7.12.2009. Indisputably plaintiff is a pendente lite purchaser. The plaintiff has not been made party in final decree proceedings. This court has to now decide whether suit can be rejected on ground that in spite of permanent injunction restraining defendants in OS.No.47/2008 from making any alienation, suit properties have been sold and as plaintiff is a pendente lite purchaser.

6.4) Admittedly plaintiff has purchased suit properties after passing of preliminary decree. Hence there is no question of impleading her in O.S.No.47/2008. Therefore the plaintiff is not entitled to challenge preliminary decree. The plaintiff's predecessor in title namely seventh defendant has purchased suit properties from power agent of petitioner's father Perumal, who has been allotted ½ share in suit properties in OS.No.47/2008. The plaintiff although a pendente lite purchaser is entitled to share of Perumal in suit properties. This court relies upon following authorities:

1) The judgment of Hon'ble apex court in T.G.Ashok Kumar vs Govindammal & Anr on 8 December, 2010 (2011 AIR SCW 551).

12. We are therefore of the view that the suit ought not to have been dismissed in entirety even if the sale by the second respondent in favour of appellant on 11.4.1990 was hit by the doctrine of lis pendens. The second respondent cannot avoid the sale made by her on the ground that she was held to be not the exclusive owner, in the pending partition suit. Therefore the courts below ought to have decreed the appellant's suit in part, in regard to the portion of the suit property that fell to the share of second respondent instead of dismissing the suit.

2) The judgment of Hon'ble Madras High court in Rajendran vs Mohanambal

dated 9 November, 2018, wherein it has been held as follows:

26. The helplessness to which fraud drives a pendente lite transferee without an effective remedy can be best illustrated with an example from common experience. One situation is that, during the pendency of a suit for partition between siblings, one of the parties will sell a specific property without the pendente lite purchaser ever knowing about the suit. The seller will now, not only not participate in the suit to defend the title of his purchaser, but will participate in the final decree proceedings, watch the property he sold allotted to another party, and he himself will walk with yet another property towards his share. It is a naked fraud that a pendente lite seller is unmindful of practising. Now, in an Execution proceeding for delivery property, a pendente lite purchaser cannot obstruct under Rule 102, and hence he may have to file a separate suit as his case does not qualify for a decision under Rule 101 on the point of title (as the same has already been decided in the suit). And if a suit were to be filed by the purchaser, it is unlikely he would secure the property he purchased as lis pendens in the former suit might stare on him. In the end result, fraud, which the Courts generally frown upon, now gets a shelter within law. And, the prevailing understanding of law on lis pendens vis a vis the right of hearing of a pendente lite alienee, will now find it difficult to avoid a criticism that it prefers protecting the consequences of this fraud to saving the victims of fraud. Is this what the law intends to achieve? (See in the context Annammal Vs Chellakutti [76 (1963) LW 215], where the First Bench of this Court has kept the termination of suit without a bonafide contest and its abandonment by the plaintiff outside the purview of lis pendens, but it requires judicial intervention in each particular case of similar variety, and does not provide a procedural safety to a pendente lite alienee)

Placing reliance upon above authorities, this court is of view that there cannot be a partial rejection of plaint, as plaintiff is entitled to Perumal's share. Hence this suit cannot be rejected on the grounds as alleged by petitioner.

6.5)The petitioner counsel relied on the authorities :

1).R.Vasu and eight others (vs) Munna @ Selva Kumar of Hon'ble High Court of Madras dated 16.3.2022 - 2022(6) CTC 248.

2) Har Narayan Tewari (D) through L.Rs (vs) Cantonment Board, Ramgarh

Cantonment and others of Hon'ble Supreme Court of India dated 8.7.2024 - 2024(4) CTC 748,

wherein it has dealt with resjudicata are not applicable to facts of case .

3) i) K.R.Andu Gowder, ii) Seenilakshmi, iii) Drowpathi (vs) Saroja and thirteen others of Hon'ble High Court of Madras dated 20.10.2023 - 2023(6) CTC 19, wherein it has dealt with plaint can be rejected on the ground of relitigation and abuse of process of court is not applicable to facts of case.

6.6) In view of foregoing deliberations, this court is of view that all contentions raised by petitioner is not sufficient to reject this suit and these defences can be considered only at the time of trial.

6.7) It is well established law that 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.

6.8) 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 petitioner/defendant, the plaint cannot be rejected in the present facts and circumstances. Hence point for consideration is answered against petitioner.

In the result, the petition is dismissed. Considering the facts and circumstances of the case, no cost is awarded.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 6th day of December 2025.

Additional District Judge,
Dharmapuri.

Petitioner Side witness, Exhibits: Nil
Respondent Side witness, Exhibits: Nil

Additional District Judge,
Dharmapuri.

Fair Order
I.A.No.8/2025 in
O.S.No.140/2019
Dated:6.12.2025.