

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

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

Monday, this the 19th day of June 2023.

I.A.No.2/2023
in
O.S.No.198/2022
(CNR No.TNDP010014952022)

Jayalakshmi

...Petitioner/plaintiff

/versus/

1. Palaniammal
2. Kamatchi
3. P.Madhaiyan
4. P.Kumar

...Respondents/defendants

This petition is coming on 5.6.2023 for final hearing before me in the presence of Thiru.M.Ganesh Babu, Advocate the petitioner and Thiru.C.Gandhi, Advocate for the respondents and upon hearing the arguments of both side 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-39, Rule-1 and 2 of CPC to grant interim injunction till the disposal of the suit.

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

According to petitioner, the petitioner and respondents are children of late.Pachiappa chettiar and late.Kannammal. The father held house properties,

agricultural lands and commercial properties and the mother held 50 sovereigns of gold jewels. The father Pachiappa Chettiar acquired properties out of his self earnings as well as through family partition which took place between his brothers by way of Partition deed dated:15.2.1977. During the life time of the father, some of the joint family properties were partitioned in which the father and petitioner were allotted properties. Several properties were left out and subsequently the father also acquired few lands out of his self acquired funds. The father died intestate on 7.5.2019 and mother Kannammal also died intestate on 27.4.2021. The respondents 2 to 4 are residing in the house where father and mother last resided. The respondents have demolished the house without any prior intimation and planning to reconstruct without obtaining permission from the petitioner. The demolition of ancestral house without concurrence of petitioners created suspicion that the respondents are planning to take the entire house properties without giving any share to the petitioner. The petitioner is residing in Chennai. The third respondent married first respondent's daughter and fourth respondent got married second respondent's daughter. Hence the respondents have joined together. The petitioner is in joint possession of the suit properties. The respondents are enjoying the rent, income and revenue arising out of the property without giving any share to the petitioner after the death of father. In spite of legal notice dated:18.1.2022, the respondents did not come forward to partition the properties and issued reply notice dated:2.2.2022 containing false allegations. If the respondents are permitted to construct the new building the

petitioner's right over the property will be defeated. Hence the respondents should not be allowed to put up any constructions in the suit property.

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

i) At the time of the marriage of plaintiff in the year 1986, she was given 50 sovereigns of gold jewels and silver vessels etc. She was also given several lakhs of rupees for her family requirements and construction of her house in Villivakkam. The father sold a portion of the property which was allotted to his share in the partition deed, and had given each Rs.5 Lakhs to all his three daughters to provide them a sound financial assistance. They were looking after their parents and that is why at the instance of their father and as per the advice of their paternal uncle M.Latchuman chettiar a family oral partition and arrangement took place in the month of January 2019. In the above said oral partition and family arrangement M.Latchuman chettiar, K.Agilan, P.Govindan, plaintiff, this defendant and their two other sisters were also present and wherein defendants were allotted the properties of their father and other properties which were not mentioned in the partition deed.

ii) As per the family arrangement, this defendant and his brother alone are the absolute owner of the properties of their father and other properties which are not mentioned in the partition deed. Except this defendant none else have got any manner of right, title, interest or possession over the properties stated above and that is why plaintiff did not seek for any such partition soon after the death of their parents and also she never demanded for such partition either in person or through her paternal

uncle.

iii) The plaintiff after her marriage in the year 1987 is residing at her house in Chennai only. The plaintiff never visited the suit property as the co-sharer of the same. Hence the plaintiff is not entitled to seek any partition as she is ousted from the family. The suit is barred by limitation. The description of the suit property is very vague and hence same cannot be executable one. The value of the suit properties are also not correct. The court fees paid by the plaintiff is also not correct. 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 arguments.

6. Point:

a) According to petitioner, suit properties are joint family properties, and petition property is a house property where her parents lived, she is entitled to share in it, if the respondents are allowed to demolish it and make new construction, her rights will be affected, so respondents must be restrained by way of injunction from putting up any construction in schedule of property.

b) The respondent resisted the petition by contending that oral partition and family arrangement in January 2019, in which defendants were allotted properties of their father and other properties which were not mentioned in the partition deed, suit is barred by limitation and plaintiff is ousted from family.

c) This is a suit for partition . Admitted facts in this case are that the plaintiff, defendants 1 to 3 are children of Pachiappa Chettiar and Kannammal. The plaintiff alleges that the suit properties have not yet been partitioned and she is entitled to equal share in it. On the contrary, the defendants allege that partition has been already taken place and plaintiff is not entitled to any right in the suit properties.

d) This court is of view question whether partition has been already effected or not cannot be decided at this preliminary stage. The fact that the defendants are in possession and enjoyment of the suit properties are not denied by the plaintiff. It is the case of the plaintiff that if defendants are permitted to construct building in the suit property in the event of plaintiff succeeding in the suit and the construction if any made by the defendants will not only prejudice the claim of the plaintiff but it will also defeat the purpose of filing of this suit for partition.

e) This court is of view that the rights of the parties to partition cannot be determined at this stage. It is settled position of law in a suit for partition there cannot be any order of injunction against the co-sharer that too restraining him from developing suit property. However the defendants will not be entitled to equity in any manner in respect of constructions made by them in the event of plaintiff succeeding in this suit.

f) In view of foregoing deliberations, this court is of view that petitioner has not made out any case for granting of Injunction. Hence point for consideration is answered accordingly.

In the result, the petition is dismissed with observation that respondents shall not be entitled to equity in any manner in respect of constructions made by them in the event of petitioner/plaintiff succeeding in this suit . Both the parties are directed to bear their own cost.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 19th day of June 2023.

Additional Sessions Judge,
Dharmapuri.

Petitioners Side Evidence, Exhibits: Nil.

Respondents Side Evidence, Exhibits: Nil

Additional Sessions Judge,
Dharmapuri.

Fair Order

I.A.No.2/2023 in

O.S.No.198/2022

Dated:19.6.2023.

