

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI

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

Friday, this the 26th day of April 2024

I.A.No.2/2023
in
O.S.No.200/2022

Devanderan ... Petitioner/3rd defendant

/ versus /

1.Gowrammal
2. Radha ... Respondents/plaintiffs

This petition is coming up before me on 18.4.2024 for hearing in presence of Thiru.R.Arul Ganesh, Advocate for petitioner and Thiru.P.V.Ravi, Advocate for respondents and and upon hearing both side arguments and on perusal of entire case records and having stood over for consideration till this day, this court delivered the following;

ORDER

This petition has been filed under order 7, Rule 11(a)(b)(c) and 151 of CPC to reject the plaint.

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

The respondents/plaintiffs have filed this suit alleging that their father Kaveri executed partition deed along with defendants 1 and 2 on 18.10.2010 and also executed

Sale deed dated 18.10.2010 in favour of petitioner/3rd defendant and plaintiff has filed suit for partition and for declaration of document dated 18.10.2010 as null and void. The respondents/plaintiffs herein already filed O.S.118/17 against their father Kaveri and defendants 1 to 3 in this suit and said suit was dismissed after full contest on 13.7.2018. A.S.11/19 preferred by the respondents/plaintiffs against the judgment and decree passed in O.S.118/17 was also dismissed on merits. The respondents/plaintiffs have filed this suit based upon the same relief and this suit is barred by res judicata. The respondents have not filed second appeal in A.S.11/19, they have given wrongly the name of the father of petitioner and have also not mentioned about the earlier suit or the appeal, not mentioned the sale deed executed in the name of petitioner and not sought for cancellation of Partition deed dated 18.10.2010. The plaintiffs and defendants 1 and 2 have joined together and filed this suit and defendants 1 and 2 remained exparte in this suit. The respondents have filed the suit with false allegations. There is no cause of action for this suit and the plaint is liable to be rejected.

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

The plaintiffs have filed this suit for cancellation of Sale deed dated 18.10.2010 executed by their father and brothers in favour of third defendant nominally for the loan and seeking partition. The plaintiffs are entitled to suit property which is ancestral property. The Sale deed dated 18.10.2010 executed without partitioning the property is not a valid one and plaintiffs are entitled to suit property. The plaintiffs filed O.S.118/17

on the file of Sub Court, Palacode for partition and for cancellation of partition deed. As plaintiffs were unaware about document in the name of third defendant, they have not sought the relief in respect of sale deed in the suit. There is no connection between O.S.118/17 and this suit and the judgment and decree in O.S.118/17 will not operate as res judicata. This petition has been filed only to drag on the proceedings without 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. On the petitioner side Ex.P1 to Ex.P24 were marked. On the respondents side Ex.R1 was marked.

6. **Point:**

a) According to petitioner/3rd defendant, plaintiffs have already filed O.S.118/17 on the file of Sub Court, Palacode for relief of partition in respect of suit property and said suit has been dismissed on merits and the judgment of the trial court was also confirmed by this court in A.S.11/19. The plaintiffs have not sought for cancellation of Partition deed and not sought for partition in respect of properties mentioned in partition deed. So there is no cause of action for this suit and this suit is barred by res judicata and liable to be dismissed.

b) The respondents/plaintiffs resisted the suit by contending that this suit is not barred by res judicata and there is cause of action for this suit and petition is liable to

be dismissed.

c) This is a suit for partition filed by respondents/plaintiffs against their brothers, first and second defendants and against third defendant alleging that he has purchased joint family properties and sale deed has been executed only for loan purpose and same is not a valid one.

d) The petitioner in order to substantiate his case relied upon Ex.P1-Certified copy of Plaint in O.S.36/15 on the file of Sub Court, Dharmapuri. Ex.P2 is Certified copy of Written statement of petitioner in this case in O.S.36/15. Ex.P3 is Certified copy of Partition deed dated 18.10.2010. Ex.P4 is Certified copy of Settlement deed dated 18.10.2010. Ex.P5 is Certified copy of Chief affidavit and cross examination of PW.1 Mrs.Gowrammal in O.S.118/17. Ex.P6 is Certified copy of Chief affidavit and cross examination of PW.2 Mr.Murugan in O.S.118/17. Ex.P7 is Certified copy of Evidence of DW.1 and cross examination in O.S.118/17. Ex.P8 is Certified copy of Chief affidavit and cross examination of DW.2 Mr.Kanniappan. Ex.P9 is Certified copy of decree in O.S.118/17. Ex.P10 is Certified copy of Sale deed dated 18.10.2010 in the name of petitioner in respect of suit property. Ex.P11 is Certified copy of Partition deed dated 18.10.2010. Ex.P12 is Certified copy of Sale deed dated 29.9.2014 in the name of second defendant. Ex.P13 is Certified copy of Cancellation of Sale agreement dated 5.9.2014. Ex.P14 is Certified copy of Sale deed dated 5.9.2014. Ex.P15 is Patta No.124 standing in the name of Kaveri and petitioner. Ex.P16 is Certified copy of Memorandum

of appeal in A.S.11/19 on the file of this court. Ex.P17 is Certified copy of Judgment in A.S.11/19 on the file of this court. Ex.P18 is Certified copy of Affidavit and petition filed under Order 41, Rule 27 in A.S.11/19. Ex.P19 is Encumbrance certificate. Ex.P20 is Certified copy of Sale deed dated 20.3.2020. Ex.P21 is Certified copy of Sale deed dated 1.7.2020. Ex.P22 is Certified copy of Sale deed dated 18.10.2010. Ex.P23 is Certified copy of Partition deed dated 18.10.2010 and Ex.P24 is Patta No.124.

e) The respondents in order to substantiate their case has marked Ex.R1- Certified copy of Decree in O.S.118/17.

f) The learned petitioner counsel contended that this suit is barred by res judicata as already O.S.118/17 filed by the plaintiffs for the relief of partition in respect of the suit property has been dismissed and the judgment of the trial court has been upheld in A.S.11/19.

g) The learned respondents counsel contended that the issue of res judicata cannot be decided in a petition for rejection of plaint and the same can be decided during trial. The learned respondents counsel relied upon the judgment of **Honourable Supreme Court in Keshav Sood Vs. Kirti Pradeep Sood and others**, wherein it has been held that issue of res judicata cannot be decided in Order 7, Rule 11 petition and the court can look into only in the averments made in the plaint and documents produced along with plaint and defense of defendant and document relied upon him cannot be looked into while deciding Order 7, Rule 11 application. Placing reliance upon the above

authority, this court is of view that contention of the petitioner counsel that this suit is barred by res judicata cannot be decided at this stage and the parties should be given an opportunity to prove the case in trial and the suit cannot be rejected straight away on the grounds of res judicata.

h) The contention of petitioner that plaintiffs have not sought for cancellation of Partition deed and not sought for partition in respect of properties mentioned in partition deed are defences of petitioner and same cannot be decided at this stage and can be determined only during trial.

i) It is well established law that the Court does not 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.

j) The issues in this matter has not yet been framed. 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. The 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 petitioner.

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 26th day of April 2024.

Additional District Judge,
Dharmapuri.

Petitioner side Evidence: Nil

Ex.P1	--	Certified copy of Plaint in O.S.36/15 on the file of Sub Court, Dharmapuri.
Ex.P2	--	Certified copy of Written statement of petitioner in this case in O.S.36/15.
Ex.P3	18.10.2010	Certified copy of Partition deed.
Ex.P4	18.10.2010	Certified copy of Settlement deed.
Ex.P5	--	Certified copy of Chief affidavit and cross examination of PW.1 Mrs.Gowrammal in O.S.118/17.
Ex.P6	--	Certified copy of Chief affidavit and cross examination of PW.2 Mr.Murugan in O.S.118/17.
Ex.P7	--	Certified copy of Evidence of DW.1 and cross examination in O.S.118/17.
Ex.P8	--	Certified copy of Chief affidavit and cross examination of DW.2 Mr.Kanniappan.
Ex.P9	--	Certified copy of decree in O.S.118/17.

Ex.P10	18.10.2010	Certified copy of Sale deed in the name of petitioner in respect of suit property.
Ex.P11	18.10.2010	Certified copy of Partition deed.
Ex.P12	29.9.2014	Certified copy of Sale deed in the name of second defendant.
Ex.P13	5.9.2014	Certified copy of Cancellation of Sale agreement.
Ex.P14	5.9.2014	Certified copy of Sale deed.
Ex.P15	--	Patta No.124 standing in the name of Kaveri and petitioner.
Ex.P16	--	Certified copy of Memorandum of appeal in A.S.11/19 on the file of this court.
Ex.P17	--	Certified copy of Judgment in A.S.11/19 on the file of this court.
Ex.P18	--	Certified copy of Affidavit and petition filed under Order 41, Rule 27 in A.S.11/19.
Ex.P19	--	Encumbrance certificate.
Ex.P20	20.3.2020	Certified copy of Sale deed.
Ex.P21	1.7.2020	Certified copy of Sale deed.
Ex.P22	18.10.2010	Certified copy of Sale deed.
Ex.P23	18.10.2010	Certified copy of Partition deed.
Ex.P24	--	Patta No.124.

Petitioner side Exhibits:

Respondents Side Evidence: Nil.

Ex.R1	--	Certified copy of Decree in O.S.118/17.
-------	----	---

Respondents Side Exhibits: Nil.

Additional District Judge,
Dharmapuri.

Fair Order

I.A.No.2/2023 in

O.S.No.200/2022

Dated:26.4.2024.

