

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: Tmt. M.Alima, B.A., L.L.M.,

I Additional District Munsif, Nagercoil.

Wednesday, on the 14th day of August, 2024.

I.A. No. 8 of 2022 in O.S. No. 30 of 2022

1. Mrs.R.Kandhimathi

2. Mr.M.Arumugham

3. Mrs.Karpakam

4. Mrs.A.Meena Lakshmi

5. Mr.B.Ganesh

...Petitioners/Defendants

-vs-

G.Swaminathan

... Respondent/Plaintiff

This petition came before this court on 13.08.2024 for a final hearing in the presence of Mr.M.S.Moorthy, learned counsel for the 1 to 5 Petitioners/ 1 to 5 defendants, and Mr.N.Nallasivan Pillai, learned counsel for the respondent/plaintiff, and petitioner side enquiry heard, respondent was not present for enquiry hence, the respondent side enquiry closed on 13.08.2024 and perusing of the case records. Having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioners had filed the above petition under Order VII Rule 11 read with Section 151 of the CPC, seeking to pass an order to reject the plaint as barred by law and thus render justice.

1) Gist of Averments in the Petitioners/Defendants' Petition :

The petitioners/defendants had stated that the respondent/plaintiff filed a suit for specific performance of contract, permanent injunction and declaration against the defendants. The property schedule in the plaint is undivided 3 shares and measuring $\frac{3}{4}$ cents 30.36 sq.metre out of $1\frac{1}{4}$ cents. The suit filed by the plaintiff is frivolous and vexatious one and the plaintiff has no cause of action to file this suit. The suit is nothing but abuse the process of the court and the plaintiff approached the court in a fraudulent manner without clean hands. The suit is barred by law and liable to be rejected. The suit is barred by law and liable to be rejected. The definite case of the plaintiff and the averments in the plaint is that the plaint schedule property and more area admeasuring $1\frac{1}{4}$ cents belongs to one Meenakshi Sundaram Pillai father of the defendants 1 to 3 also the vendors of the plaintiff. The said Meenakshi Sundaram Pillai died intestate leaving behind the defendants 1 to 3 and vendors of the plaintiff. As such the above 5 legal heirs inherited the property and the plaintiff purchased $\frac{2}{5}$ share out of 5 shares from his vendors Chitra and Hariharan and entered into the oral agreement on 29.11.2019 for the $\frac{3}{5}$ shares from the defendants 1 to 3. Further alleged that the defendants 1 to 3 agreed to sell their $\frac{3}{5}$ share to the plaintiff and they negotiated the agreement for sale through the 1st defendant husband Ramalingam, on 29.11.2010 at the tune of Rs.21,000/- and the 1st defendant husband received Rs.10000/- as advance on the same day. The plaintiff approach them to execute the sale deed by accepting the balance sale consideration of Rs.11,000/- but they failed to execute the sale deed for the past 12 years and instead of that they sold their $\frac{3}{5}$ share

to the 4th defendant. The plaintiff sent the notice to the defendants and filed this suit. Further the plaintiff alleged that he is in possession of the plaint schedule property for past 15 years and seeking relief of not to disturb his peaceful possession and enjoyment of plaint schedule property. All the allegations stated in the plaint are denied by them and there was no oral or written agreement with them and not received any amount. Possession was not handed over to the plaintiff at any point of time. The plaintiff seeking relief of Specific performance of contract on the basis of oral agreement on 29.11.2010 and also seeking declaration that sale deed No. 237/2022 dated 24.01.2022 respect of the plaint schedule property as null and void and not binding the plaintiff. The plaint is liable to be rejected on the pleadings of the plaint and also list of documents submitted by the plaintiff for the following reason.

(A) The plaintiff seeking relief relying on oral sale agreement dated 29.11.2010 which is not followed by any document and the same is barred by limitation which apparently proved by the plaintiff averments itself. (B) The plaintiff himself admitted that he purchased undivided 2/5 share and the 4th defendant purchased undivided 3/5 shares of Meenakshi Sundaram Property and measuring 1 ¼ cents. The remedy available for the plaintiff is to file a suit for partition and separate possession. Hence this suit is hit under Order 2 Rule 2 of CPC. (C) The plaintiff himself admitted that he purchased undivided 2/5 shares and also entered into an the oral agreement is in respect of 3/5 shares which was sold to the 4th defendant. But the entire 1.25 cents was not included in plaint but only ¾ cents as scheduled in the plaint. Hence without effecting partition and demarcation of boundaries by metes and bounds, the undivided

property cannot be split up and relief cannot be granted so on that score itself this suit is liable to be rejected. (D) The plaintiff has no cause of action to file this suit. The alleged cause of action stated by the plaintiff is illusory. (E) The alleged declaratory relief in respect of sale deed in favour of 4th defendant is valued at Rs.80,000/- but the C relief is not properly valued and no proper court fee is paid. Since the plaintiff is evaded to pay the court fee the suit is liable to be rejected. (F) The 3/5 share of the defendants 1 to 3 consists of land with building but the plaintiff cunningly omitted to including the house building in the plaint for getting unlawful gain. (G) The plaintiff seeking relief of Specific Performance of oral agreement Contract but at no point of time the possession over the 3/5 shares or the plaint schedule handed over to the plaintiff. The alleged fraudulent agreement was not followed by any possession. (H) The plaint averments itself reveals that the plaintiff purchased 2/5 shares and 4th defendant purchased 3/5 shares as such the plaintiff and 4th defendant are the co owners hence injunction cannot be granted against the co owner. (I) The suit is liable to be rejected in the initial stage itself for the above said reasons. It is a duty of the court to verify as to whether the suit has been filed within the time of limitation. (J) The suit is hit under Order 7 Rule 11 of CPC. (K) The suit has been filed beyond much period of limitation hence the suit liable to be rejected. (L) The plaintiff alleged that he entered into the oral agreement through the 1st defendant husband Ramalingam Pillai and paid advance to him but the said Ramalingam Pillai is not made as a party. Hence the suit is hit by non joinder of necessary and proper parties. (M) The suit as framed by the plaintiff, the alleged cause of action, relief sought for and court fee

paid by the under Order 11 Rule 1,2,3 & 4 of CPC also. (N)As per amendment Registration Act the agreement of sale shall be registered. Hence this oral agreement is hit by section 17 of Registration Act. In the above circumstances the petitioner prays that to pass an order to reject the plaint for the above said legal position; otherwise they will be put into irreparable loss and injury which cannot be compensated in any manner. Hence the petitioner prays that to allow this petition.

2) Gist of Averments in the Respondent/Plaintiff 's Counter :

The respondent had stated that all the averments made in the affidavit are deemed to be denied as false except those that which are specifically admitted hereunder. The petition is not maintainable in law and on facts. It lacks bonafide also. Para 1 of the affidavit is admitted by this respondent. Regarding the averment made in para 2 of the affidavit is concerned it is true that this respondent as plaintiff filed the suit for specific performance of contract directing the defendants that is petitioners 1 to 3 executed the sale deed in favour of this respondent after obtaining the balance sale consideration of Rs.11,000/- as per the oral sale agreement dated 29.11.2010 and also the last renewal of the oral sale agreement made on 29.10.2021 and also for permanent injunction restraining the defendants 1 to 5 that is petitioners 1 to 5 their hence men or agent not to alter or demolish or disturb the peaceful possession and enjoyment over the plaint schedule property, for declaration that the sale deed number 337 of 2022 of SRO Edalakudy dated 24.01.2022 executed by the defendants that is petitioners 1 to 3 in favour of the 4th defendant as null and void and also for cost. The averment made in para 3 of the affidavit is false and there by denied

by this respondent. This respondent as plaintiff has filed the suit with due cause of action and merit only. Regarding the averment made in para 4 and 5 of the affidavit are not correct and there by denied by this respondent. This respondent has filed the suit as per the oral sale agreement made by Mr.Ramalingam Pillai for and on behalf of the defendants 1 and 2 and the husband of the 3rd defendant on 29.11.2010 with this respondent. The oral sale agreement was lastly renewed on 29.10.2021 and the last request made by this respondent with Ramalingam Pillai the husband of 1st defendant in this case as such the suit is maintainable and thereby there is no question of limitation. Further the 4th petitioner in this I.A.No.8/2022 as plaintiff had filed the suit as O.S.No.156/2022 against this respondent before this court for partition and also for injunction. That itself clearly and clinchingly shows that the 4th defendant in this case accepted the possession of entire 1 ¼ cents of land in Re.Sy.No.430/15 is with this respondent. So there is a mixed question of facts and law is involved in this suit. So the suit is rightly filed against the petitioners in this I.A. with due cause of action. Further after due perusal of the plaint averment only this court had numbered the suit. Regarding the averment made in para 6 and 7 of the affidavit are admitted by this respondent. Regarding the averment made in para 8 of the affidavit is concerned this respondent had purchased 2/5 share of land from the daughter Chitra and son Hariharan of late.Meenakshi Sundaram Pillai on 27.10.2010 vide document N.4408 of 2010 through SRO Edalakudy. Before that also immediately after the demise of late.Meenakshi Sundaram Pillai on 09.06.1995 the entire 1 ¼ cents of land in Re.Sy.No.430/15 of Eraviputhoor village is in possession and enjoyment of this

respondent. So after purchase of the undivided 2/5 shares from Chitra and Hariharan the rest of the legal heirs had expressed their willingness to execute the sale deed infavour of this respondent and thereby Ramalingam Pillai the husband of 1st petitioner made an oral sale agreement on 29.11.2010 for a total sale consideration of Rs.21,000/- and out of that Rs.10,000/- was received as advance money from the respondent on 29.11.2010 itself in front of Chithambaram son of Ganesan at the Milk Society Marungoor. The sale deed was not executed because of the mentally retard ness of the 3rd petitioner's husband by name Murugesan. So the earlier sale agreement was periodically renewed and finally it was renewed on 29.10.2021. The alleged sale deed executed by the petitioner's 1 to 3 in favour of the 4th petitioner is a void one. No demarcation or sub division was made by the defendants 1 to 3 before the execution of sale deed in favour of 4th defendant in this case. No complaint was filed by the petitioners 1 to 3 against this respondent that this respondent is in wrongful possession of 3/5 shares of their late father. Regarding the averment made in para 9 of the affidavit is concerned this respondent is in possession and enjoyment of 1 ¼ cents of land in Re.Sy.No.430/2015 on the basis of sale deed and also on the basis of oral sale agreement on 29.11.2010 and there by the suit was filed by this respondent for specific performance of contract, permanent injunction and also for declaration declaring the sale deed number 337 of 2022 of SRO Edalakudy as null and void. The averment made in paras 10 of the affidavit is false and there by denied by this respondent. Regarding the averment made in para 11 of the affidavit this respondent has filed the suit with due cause of action and the relief sought for in the suit is also

rightly claimed. With regard to the averments made by the petitioners in the affidavit as A to N are not correct and there by denied by this respondent. The averment are strictly to be proved by the petitioner. The oral sale agreement was made on 29.11.2010 and the same was periodically renewed and the same was lastly renewed on 29.10.2021 and the last request was made on 20.01.2022 and the date of refusal to execute the sale deed in favour of this respondent the suit was rightly filed by this respondent. The suit is not hit under order 2 rule 2 of cpc also. With regard to C and D are false and denied by this respondent. With regard to E this respondent is not party to the void sale deed. So proper court fee is paid by this respondent with regard to C relief in the main suit. With regard to F there is no building bearing door number 4 /28 in Re.Sy.No.430/15 of Eraviputhoor village. The petitioners are strictly to prove the existence of building in the plaint schedule property. With regard to G in the affidavit in para 11 long before the execution of sale deed in favour of this respondent with regard to 2/5 shares the entire 1 ¼ cents of land is in possession and enjoyment of this respondent and as such only the oral sale agreement was made on 29.11.2010 by Ramalingam Pillai for and on behalf of the petitioner 1 and 2 and the husband of 3rd petitioner. With regard to H, the 4th petitioner is not a co owner. She is the pendanti lite purchaser having fully aware of the fact of the sale agreement and also the possession and enjoyment of the property by this respondent., continuously from a long period. With regard to I to N are concerned this respondent stoutly denied the allegations. This respondent also taking steps to implead the Ramalingam Pillai, the husband of 1st petitioner in the suit. Court fee is properly paid and only after perusing

the court fee the suit was numbered by the ministerial clerk. With regard to N the registration Act does not apply to the facts of this case because the oral sale agreement is in the year 2010. With regard to the other averments made in the affidavit are concerned the petition is not maintainable in law and on facts. It lacks bonafides. In order to harass, this respondent this highly mischievous petition was filed by the petitioner. Hence the respondent prays that to dismiss the petition.

3) The point for consideration is whether the above petition has to be allowed or not?

4) Point:

Heard and perused the suit records.

5) On perusal of records the respondent filed the above suit for the relief of specific performance of contract directing the defendant's 1 to 3 to execute the sale deed infavour of the plaintiff after obtaining the balance sale consideration of Rs.11,000/- as per the oral sale agreement dated 29.11.2010 and also find renewal of oral sale agreement made on 29.10.2022, for permanent injunction restraining the defendants 1 to 5 their hench men or agent not to alter or demolish or disturb the peaceful possession and enjoyment over the plaint schedule property, for declaration that the sale deed number 337/2022 of Edalakudy Sub-Registry dated 24.01.2022 executed by defendants 1 to 3 in favour of 4th defendant as null and void and not binds the plaintiff and also cost of the suit.

6) It is an admitted fact that, the plaint schedule property originally belonged to one Meenakshi Sundaram Pillai S/o Subbiah Pillai of Eraviputhoor, and he was in

possession and enjoyment of the plaint schedule property. The patta stand in his name. The said Meenakshi Sundaram Pillai and his wife Meenakshi died intestate, leaving behind their 3 sons, namely Hariharan, Arumugan and Murugesan, and 2 daughters, namely Chitra and Kandhimathi, as their legal heirs. On 27.10.2010, the plaintiff had purchased undivided 2/5th share over the plaint schedule from 2 of the legal heirs of deceased Meenakshi Sundaram Pillai, namely Chitra and Hariharan, by virtue of Registered Sale deed No.4408/2010 dated 27.10.2010. On 24.01.2022 4th Defendant had purchased rest of the undivided 3/5th share from the other 3 legal heirs namely Kandhimathi, Arumugam and Murugesan by virtue of the sale deed No. 337/2022 dated 24.01.2022 before the Edalaky Sub Registrar's Office.

7) The counsel for the petitioners argued that the plaintiff is seeking relief of specific performance of contract on the basis of oral agreement on 29.11.2010 and also seeking a declaration that sale deed No. 237/2022 dated 24.01.2022 respect of the plaint schedule property as null and void and not binding the plaintiff. The plaint is liable to be rejected on the pleadings of the plaint and also list of documents submitted by the plaintiff for the following reason. the suit is barred by limitation. The remedy available for the plaintiff is to file a suit for partition and separate possession. This suit is hit under Order 2 Rule 2 of CPC. Without effecting partition and demarcation of boundaries by metes and bounds, the undivided property cannot be split up and relief cannot be granted. The plaintiff has no cause of action to file this suit. The alleged cause of action stated by the plaintiff is illusory. The C relief is

not properly valued and no proper court fee is paid. The plaintiff cunningly omitted to including the house building in the plaint for getting unlawful gain. The plaintiff is in lawful possession over the plaint schedule property. The 4th defendant is a co owner hence injunction cannot be granted against the co owner. The suit is hit by non joinder of necessary and proper parties. i.e., 1st defendant's husband Ramalingam Pillai. Oral agreement dated 29.11.2010 is hit by section 17 of Registration Act. Hence, this petition is to be allowed.

8) The counsel for the respondent argued that the oral sale agreement was made on 29.11.2010 and the same was periodically renewed, and the same was lastly renewed on 29.10.2021 and the last request was made on 20.01.2022 and the date of refusal to execute the sale deed in favour of this respondent the suit was rightly filed by this respondent. The suit is not hit under order 2 rule 2 of cpc also. With regard to C and D are false and denied by this respondent. With regard to E this respondent is not party to the void sale deed. So proper court fee is paid by this respondent with regard to C relief in the main suit. With regard to F there is no building bearing door number 4 /28 in Re.Sy.No.430/15 of Eraviputhoor village. Long before the execution of sale deed in favour of this respondent with regard to 2/5 shares the entire 1 ¼ cents of land is in possession and enjoyment of this respondent and as such only the oral sale agreement was made on 29.11.2010 by Ramalingam Pillai for and on behalf of the petitioner 1 and 2 and the husband of 3rd petitioner. The 4th petitioner is not a co owner. She is the pendanti lite purchaser having fully aware of the fact of the sale agreement and also the possession and enjoyment of the property by this respondent.,

continuously from a long period. This respondent also taking steps to implead the Ramalingam Pillai, the husband of 1st petitioner in the suit. Court fee is properly paid. The registration Act does not apply to the facts of this case because the oral sale agreement is in the year 2010. Hence, the petition is to be dismissed.

9) The trial in the case has not been initiated. It is only after trial that this court can decide the following issues:

- A. Whether the suit is barred by limitation?
- B. Whether the remedy available for the plaintiff is to file a suit for partition and separate possession. This suit is hit under Order 2 Rule 2 of CPC?
- C. Whether, without effecting partition and demarcation of boundaries by metes and bounds, the undivided property cannot be split up and relief cannot be granted?
- D. Whether the plaintiff has no cause of action to file this suit. The alleged cause of action stated by the plaintiff is illusory?
- E. Whether the C relief is not properly valued and no proper court fee is paid?
- F. Whether the plaintiff cunningly omitted to including the house building in the plaint for getting unlawful gain?
- G. Whether the plaintiff is in lawful possession over the plaint schedule property?
- H. Whether the 4th defendant is a co owner hence an injunction cannot be granted against the co owner?
- L. Whether the suit is hit by non joinder of necessary and proper parties. i.e., 1st defendant husband, Ramalingam Pillai?

N. Whether oral agreement dated 29.11.2010 is hit by Section 17 of the Registration Act?

10) Hence in this situation this court of opinion that after full trial only the entire truth of the case come out by way of adducing oral and documentary evidence.

11) Moreover, the limitation is a mixed question of law and facts. The limitation aspect should be considered on the pleadings of the plaintiff, not on the subsequent events or affidavit of the petitioner.

12) Further, when the plaintiff denies the sale deed number. 337/2022 of Edalakudy Sub-Registry dated 24.01.2022 executed by defendants 1 to 3 in favour of 4th defendant, the plaintiff was not a party to the alleged sale deed, and so his valuation of suit under Section 25(d) and payment of court fee thereon are valid. On perusal of records, the court fee paid by the plaintiff is correct as per the valuation of the suit property in the suit. The petitioners did not file any document or evidence to prove that the market value mentioned in the above case is undervalued.

13) Moreover, It is well settled law that the rejection of plaint could be decided only on the averments made in plaint and not going through the other documents, written statement, etc. Hence the plaint cannot be rejected primarily without deciding the issues involved in the suit after an elaborate trial. The petition is devoid of merits and premature one.

14) The aforesaid discussion clearly shows that the contention of petitioners does not come under the grounds of Order VII Rule 11 CPC. Hence, this court is of

considered view that the petition seeking rejection of the plaint deserves to be dismissed.

15) As a result, this petition is dismissed without cost.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 14th day of August, 2024.

I Additional District Munsif,
Nagercoil.

Petitioners side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

I ADM Court, Nagercoil.
Draft/Fair Order in
I.A.No. 8/2022 in
O.S.No.30/2022
Date: 14.08.2024