

**In the Court of the II Additional District Munsif, Nagercoil**

**Present: Thiru.R.Sundara Kamesh Marthandan, M.L.,**  
II Additional District Munsif, Nagercoil.

**Thursday on this 11<sup>th</sup> day of January 2024**

I.A. No.4 of 2021

in

Original Suit No.32 of 2020

**CNR No.TNKK04-000063-2020**

C. Xavier Pushparaj

.. Petitioner/1<sup>st</sup> Defendant

-vs-

1. C. Yesudhasan

2. C. Yesu Maria Selvaraj

..Respondents/Plaintiff, 2<sup>nd</sup> Defendant

This Petition came up before this Court on 07.12.2023, in the presence of Thiru. T. R. Ezhamparithy Advocate for the Petitioner/1<sup>st</sup> Defendant and Thiru. R. Rathakrishnan Advocate for the 1<sup>st</sup> Respondent, 2<sup>nd</sup> Respondent died, upon hearing Petitioner and 1<sup>st</sup> Respondent side arguments and upon perusing the case records and having stood over for consideration till this day, this Court delivers the following:

**ORDER**

1. The Petitioner had filed the above Petition under Order VII Rule 11 CPC. seeking an Order to reject the Plaint.
2. The Petitioner/1<sup>st</sup> defendant in his affidavit filed in support of the above Petition had stated that the Plaintiff filed the above suit, by suppressing

the True facts and with false particulars, hence the Plaint is liable to be rejected, in the threshold. The Plaint schedule property was purchased by the defendants' mother Ayenasial, during the year 1920 and had been in her possession. The Sale Deed got lost. As such she could not pay kists or other taxes and could not Partition the same and give it to her children.

3. The defendants mother during April 1987 gave Rs.1,000/- (Rupees One thousand only) to the Plaintiff, to obtain certified copy. The Plaintiff had informed that the said sum of Rs.1000/- (Rupees One Thousand only) got by him, was expended for searching the document in Nagercoil. During the year 1920, Kanyakumari District was with Kerala State. The Plaintiff by stating that to trace out the document, he has to go to Poojapurai and that large amount is required and created trouble.

4. Hence on 20.05.1980, the Plaintiff's mother called her six children's including the 1<sup>st</sup> defendant and informed that the value of the Plaint schedule property is Rs.1,80,000/-(Rupees One Lakh Eighty Thousand only) and each child has to pay Rs.30,000/- (Rupees Thirty Thousand only) for taking the property. Hence the Petitioner/1<sup>st</sup> defendant paid Rs.30,000/- (Rupees Thirty Thousand Only) based on that Release Deed bearing Doc. No. 3501 of 2004, was executed in his favour. The Plaintiff and 2<sup>nd</sup> defendant after receiving money, stated that ill health and that will execute document later.

5. On 04.12.2004, when the 1<sup>st</sup> defendant attempted to construct compound wall around the Plaint schedule property Gunaseeli, Stella Mary,

Darwin Latha, Anthony Sujikumar have created false documents and lodged complaint at Asaripallam Police Station. When the Petitioner called upon the Plaintiff and 2<sup>nd</sup> defendant, they have stated that it is the Petitioner's property and that he himself has to take care of it. The Petitioner/1<sup>st</sup> defendant filed O.S. No. 692 of 2005, wherein the false documents were ordered to be cancelled. The Plaintiff and 2<sup>nd</sup> defendant have failed to join in the said suit. On 13.01.2006, the Petitioner/1<sup>st</sup> defendant applied for Patta. The Plaintiff/2<sup>nd</sup> defendant gave consent for obtaining Patta in the name of Petitioner/1<sup>st</sup> defendant. On 20.03.2006, Patta was issued in the name of the Petitioner.

6. Since 2004, the Plaint schedule property is in the Petitioner/1<sup>st</sup> defendant's possession. Since 2006 the Patta stands in the name of the Petitioner and he had been paying the Kist. The judgment passed in O.S.No. 692 of 2005 on the file of 1<sup>st</sup> Additional District Munsif, Nagercoil had been admitted by the Plaintiff and defendants. As such the Plaintiff could not file the above suit against the Petitioner/1<sup>st</sup> defendant. The Plaintiff had filed the above suit against the Petitioner/1<sup>st</sup> defendant falsely. Hence the same has to be rejected. Hence the above Petition.

7. The 1<sup>st</sup> Respondent/Plaintiff had filed counter stating that the Petition is not maintainable in law and facts. The genuineness and reality of the Plaint averments can be established only in the trial. Plaint could not be rejected on the ground of unreality in the Plaint averments. The burden of proof is on the Petitioner/1<sup>st</sup> defendant to prove the Genuineness of the Plaint. The Plaint

schedule property was purchased by the father of Inasi, in Petitioner's mother Inasi's name. She has absolute right and title over the schedule property and she is in possession and enjoyment, over the Plaint schedule property.

8. The Petitioner's claim as to Sale Deed and relinquishment of right are concocted stories. The said Inasi made a family arrangement and allotted equal shares to all her six children. The Petitioner was allotted the first share from the road side. Three legal heirs of Inasi namely, J.M. Rosaly, C. Annammal and C. Yesu Paneer Selvam relinquished their right over their 3/6 share in favour of the Petitioner/1<sup>st</sup> defendant, out of love and affection, without receiving any consideration. They have relinquished their right over 3/6 share on the Petitioner as because he has not studied much and he was without any job.

9. The Petition lacks bonafides. No ground for rejection of Plaint is established in the affidavit filed in support of the above Petition. The suit has valid cause of action. The suit has been correctly valued. The suit is not barred by any Act. The above Petition is not maintainable. Hence the 1<sup>st</sup> Respondent/Plaintiff prayed for dismissal of the above Petition.

10. The point for consideration is whether the above Petition has to be allowed or not i.e. the suit has to be rejected?

11. The case of the Petitioner/1<sup>st</sup> defendant is that there was an earlier suit in O.S. No. 692 of 2005, filed by the Petitioner/1<sup>st</sup> defendant against Gunaseeli, Stella Mary, Darwin Latha, Anthony Sujikumar and that the false

documents created by them, were ordered to be cancelled, by the decree passed in the said suit and that the Plaintiff and 2<sup>nd</sup> defendant herein have not took part in the said suit proceedings and have not get themselves arrayed as party in that proceedings. As such by suppressing the said suit proceedings, the Plaintiff had filed the above suit. Hence the same is liable to be rejected.

12. The Petitioner/1<sup>st</sup> defendant himself had stated that the 1<sup>st</sup> Respondent/Plaintiff is not party to the said suit. In such circumstances, whether the Petitioner/1<sup>st</sup> defendant was aware of the said suit namely, O.S. No.692 of 2005 and whether the 1<sup>st</sup> respondent/Plaintiff was a necessary party to the said suit and whether the Petitioner/1<sup>st</sup> defendant had called upon the 1<sup>st</sup> Respondent/Petitioner to get himself impleaded in the said suit, could not be adjudicated in the above Interlocutory Application. A person, who is not a party in the earlier suit, cannot be expected to plead with regard to that suit, in this suit.

13. If at all, a person interested or has right in a property, had not participated in a proceedings to safeguard the property, the same by itself, be a ground for rejecting the present suit. In the present suit, the Plaintiff had sought for Permanent Injunction, against the Petitioner/1<sup>st</sup> defendant from disturbing the Plaintiff's possession and enjoyment and from alienating the 1<sup>st</sup> Respondent/Plaintiff's share in the Plaintiff schedule property. As such whether the 1<sup>st</sup> Respondent/Plaintiff is entitled for the suit relief or not could be adjudicated only at the time of trial.

14. The Petitioner/1<sup>st</sup> defendant's contention as to suppression of facts, regarding the earlier suit between the Petitioner/1<sup>st</sup> defendant and 3<sup>rd</sup> parties is not a ground for rejecting the Plaint. Since the 1<sup>st</sup> Respondent/Plaintiff could not be found fault, as to alleged suppression of facts, regarding the said suit, this Court is of the considered view, that the Petitioner/1<sup>st</sup> Defendant is not entitled for the Petition relief.

In the result, the above Petition is dismissed. No cost.

This Order is dictated to the steno-typist and typed by her directly in Computer, Corrected and Pronounced by me in Open Court on this 11<sup>th</sup> day of January 2024.

II Additional District Munsif  
Nagercoil.

Petitioners side witness & Documents : Nil

Respondents side witness & Documents : Nil

II Additional District Munsif  
Nagercoil.

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O.S.No.32 of 2020  
Fair Order  
Date : 11.01.2024