

In the Court of the II Additional District Munsif, Nagercoil

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

Monday, on this the 5th day of August 2024.

I.A. No.3 of 2023

in

Original Suit No.241 of 2019

Visvanath Vishal

.. Petitioner/Plaintiff

-VS-

Abubucker

.. Respondent/Defendant

This Petition came up before this Court on 12.07.2024. Thiru.M. Padmasanan Advocate for the Petitioner and Thiru.R. Appavurathinam Advocate for the Respondent 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 VI Rule 17 and Section 151 CPC seeking an order to amend the Plaint, with the proposed amendment.

2. The Petitioner had stated that he had filed the above suit to declare the Lease Deed dated 12.07.2019 bearing Doc. No.2302 as null and void. The Petitioner had claimed that the Petitioner's paternal grandfather Sivakiri had established Sree Annapoorna Panthava Asramam, during the year 2001 at Siluvai Nagar, Kanyakumari in the property measuring ten cents, comprised in Re- Survey No. 532/2A,

Kanyakumari Village, purchased by him, under Sale Deed bearing Doc. No. 819 of 2001. The said Sivakiri had established the idol of Lord Siva and conducted poojas and celebrated the Dhasara festival days, in a great manner and also gave Annathanam to the devotees, not less than One Thousand people. He had also gave meals, to the persons, visiting the Asaramam.

3. The said Sivagiri lived in a building. He stored plates, glasses, copper cooking vessels, Kuttuvam, by performing poojas. There was a cap with diamond stone, copper vessels were also available. There was a washing machine and he had a Avenger bike (2016-model) worth Rs. 1,20,000/- (Rupees One lakh Twenty Thousand only). He has also helped Poor students, by giving books and dresses. He was doing other social activities. The Patta and Building Tax are in his name. The Petitioner and his mother and relatives would often come from Hyderabad and stay in the Asramam. The Petitioner's grandfather died on 01.03.2017. Seven months before the death of the Petitioner's grandfather, the Defendant came to the Asramam, as devotee of Sivakiri and helped Sivagiri. to perform poojas and to give Annathanam. During the absence of Plaintiff, the defendant was engaged, to perform poojas in the Asramam, such a key of the Asramam was given to the defendant.

4. The Settlement Deed dated 11.07.2019, bearing Doc. No. 2286 of 2019, Kottaram Sub Registrar's Office was executed by the Petitioner's mother, in favour of the Petitioner. Since the Petitioner and his family members do not know Tamil, the defendant helped them to Register the Settlement Deed. However he had fraudulently, registered a Lease Deed on 12.07.2019, by representing that it is for

change of Patta, for the Plaintiff. Since the Petitioner do not know Tamil, he signed the document believing his words.

5. The Petitioner, his mother and family members are residing in the Asramam. Subsequently, the Petitioner learned that the respondent had obtained Lease Deed for 28 years, when it was shown in the Police Station. The Petitioner has no knowledge about the Lease Deed dated 12.07.2019, bearing Doc. No. 2302 of 2019, Kottaram, Sub Registrar's Office. The Respondent had misrepresented and fraudulently obtained the said Lease Deed. For such lease, there was no consideration, as stated in the Lease Deed. No advance amount was received. In that property, there is an upstairs building. The mentioning of Rs. 5000/- (Rupees Five Thousand only) as annual rent, for the period of 28 years, will prove that, such Deed is a fraudulent one.

6. The building is situated in Kanyakumari Township Tourist Area. As per the Lease Deed, no possession had followed. The Petitioner and his mother are residing in the Plaint Schedule property and performing poojas to the idols, established by the Petitioner's Grandfather, in the building. Only to usurp the property, the Respondent had obtained the alleged Lease Deed. The Lease Deed is void and not effected. The respondent along with one Muruganantham, had fraudulently obtained Power Deed on 11.07.2019, at Kottaram Sub Registrar's Office, with the reference to a property at Thenkasi. Upon coming to know about the same, the Petitioner and his mother questioned the same and they cancelled it, on 17.07.2019.

7. During the 1st week of November, after conducting Dhasara festival, in the Plaint Schedule property, the Petitioner went to Hyderabad and returned to the Plaint

property Asramam on 18.11.2019. When the Petitioner and his mother opened the Asramam, the respondent was not there. The respondent had stolen Cash Rs. 2,00,000/- (Rupees Two Lakhs only), kept in the Bureau, the bike bearing Registration No. TN.74. AK-8283 and other valuable things worth Rs. 10,00,000/- (Rupees Ten lakhs only) and absconded. The Petitioner took steps to return the things. However the respondent threatened the Petitioner, that if any complaint, is given to the Police, he will finish the Petitioner's life.

8. On 22.11.2019, the Petitioner gave complaint to the Sub Inspector, Kanyakumari. For which, the Police had neither gave receipt nor registered FIR. On 22.11.2019, the Petitioner gave complaint to the Superintendent of Police and the same is now pending before the District Crime Branch, Nagercoil for enquiry. In the enquiry at the Police Station, held on 13.12.2019, the Respondent showed the Lease Deed, disputing the theft. The respondent claimed that the movables of the Asramam, the bike bearing Registration No.TN.74- AK-8283, the idol's diamond cap, copper vessels, plates, glasses etc. is with him and that he will return the same after the expiry of Lease Deed. Hence the Petitioner had filed the above suit seeking to declare the said Lease Deed as null and void. The Respondent is liable to return those things to the Plaintiff. Hence the prayer for Mandatory Injunction is necessary. Therefore, the Petitioner had filed the above Petition.

9. The respondent had filed counter, wherein the respondent had stated that the Petitioner's claim that he left for Hyderabad, during the first week of November, after conducting the Dhasara Festival, in the Petition Schedule Property and returned to the

Petition Schedule property Asramam on 18.11.2019, as utter falsehood and called upon the Petitioner to prove the same, with documentary evidence. The Petitioner's claim that the respondent had stolen Rs.2,00,000/- (Rupees Two Lakhs only) Cash and bike bearing Registration No. TN 74 AK 8283 and the things worth Rs. 10,00,000/-(Rupees Ten Lakhs only) as False. Such averments are made in order to cause damage to the Respondent's Reputation. The Petitioner's claim that the respondent threatened the Petitioner when he asked for return of those articles, is also false.

10. The Petitioner's claim that he gave complaint on 22.11.2019, with the Sub Inspector of Police is also false. There is no proof for the Petitioner, to show that he kept Rs.2,00,000/- (Rupees Two Lakhs only) cash, bike bearing Registration No. TN 74 AK 8283 and valuable articles worth more than Rs.10,00,000/- (Rupees Ten Lakhs only) in the Asramam. The Petitioner's claim that the Petitioner's grandfather Sivagiri stored plates, wood glasses, copper cooking vessels are all false. There is no such things in the said house. There is no idols cap with diamond stones. Those allegations are fabricated by the Petitioner.

11. The respondent found that the Petitioner claims title over the Petition Schedule property, by fabricating documents. In the suit, the Petitioner had only challenged the documents dated 12.07.2019 bearing Doc. No.2302, Kottaram Sub Registrar Office and sought for any Mandatory Injunction, directing the respondent to return the alleged stolen articles. The suit was filed on 19.12.2019, after lapse of five years, the Petitioner had come forward with the above false allegation, in the

above Petition. The Petition has been filed only in order to drag on the proceedings and to misguide this Court. The above petition has been filed to conceal the Petitioner's nefarious act of illegal possession. Earlier the Petitioner filed I.A. No.2 of 2022 to sent for certain documents, from District Superintendent of Police, District Crime Branch, Nagercoil, regarding the alleged theft said to have been committed. The said application was dismissed. The respondent craved leave to treat the written statement filed in the above suit, as part and parcel of the above Petition and prayed for dismissal of the above Petition.

12. The point for consideration is whether the above Petition has to be allowed or not?

13. As stated by the Petitioner and admitted by the respondent, the above suit has been filed seeking to challenge the Lease Deed 12.07.2019, bearing Doc. No. 2302, Kottaram Sub Registrar's Office as null and void. The Petitioner had claimed that the Petitioner and his mother and family members are residing in the Petition Schedule property and that during the first week of November 2018, they left for Hyderabad and returned on 18.11.2019, they found that cash Rs. 2,00,000/- (Rupees Two Lakhs only), bike bearing Registration No. TN 74. AK.8283 and valuables worth Rs.10,00,000/- (Rupees Ten Lakhs only) were stolen from the Petition schedule property, by the respondent.

14. The Petitioner having stated so, had filed the above suit, before this Court on 19.12.2019. As such, as on the date of presentation of the above Plaint, the cause of action for the alleged recovery was very much available for the Petitioner.

However, as contended by the respondent, the Petitioner had not opted to seek such prayer, even at that time, when the above suit was filed. The Petitioner had also not stated as to the reason for including the proposed amendment prayer, even during the filing of the Suit. At this juncture, it could be seen that Trial has not commenced in the suit. With regard to the proposed amendment alleging theft by the Respondent/Defendant and the denial by the Respondent/Defendant to the Petitioner/Plaintiff's allegations, the said disputed fact, need not be adjudicated, while deciding the above Interlocutory Application.

15. It would be suffice to see whether the proposed amendment will change the nature of the suit. As discussed above, the suit challenges the documents said to have been executed by the Petitioner in favour of the Respondent in respect of the Plaint Schedule Property. Now by way of amending the Plaint, the Petitioner seeks to recover the movable properties, which are said to be available in the Plaint Schedule Property. The original prayer is for declaration and the proposed prayer is for Mandatory Injunction. Even then the proposed amendment, will not amount to introduction of a new case.

16. Furthermore, if the Petitioner is not allowed to ask for the proposed amendment prayer namely Mandatory Injunction. In case, if he succeeds in his prayer for declaration, then he will be barred under Order II Rule 2 Code of Civil Procedure, to ask for recovery of possession, at later point of time. Considering the same, this Court is of the considered view, that the Petitioner is entitled for the Petition relief. However in view of the delay in taking out this application i.e. filing of the above

application after five years from the date of filing of the suit, there is reason to believe that the above application has been filed, with intent to prolong the suit. As such, the inconvenience and hardship to which the Respondent, will be put to, should be compensated. Hence this Court is of the considered view, that the above Petition could be allowed on terms.

In the result, I.A. No. 3 of 2023 is allowed on condition, the Petitioner pays a sum of Rs.1000/- (Rupees One Thousand only) to the Respondent on or before 15.08.2024, Call on 16.08.2024.

Dictated to the Steno-Typist, transcribed and typed by her in computer and corrected and pronounced by me in Open Court, this the 5th day of August 2024.

sd/-

II Additional District Munsif,
Nagercoil.

Petitioner side witness and document :- Nil.

Respondent side witness and document :- Nil.

sd/-

II Additional District Munsif,
Nagercoil.

I.A. No.3 of 2023
in

O.S. No.241 of 2019
Fair Order

Date : 05.08.2024

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in

O.S. No.241 of 2019
Date : 05.08.2024

Order pronounced in Open Court

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II ADM