

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: **Thiru. R.Sundara Kamesh Marthandan, M.L.,**
Principal District Munsif, (FAC) Nagercoil.

Friday, on this the 1st day of December 2023

I.A. No. 1 of 2023
in
O.S. No. 195 of 2022

1. Raja Thangam
2. Raja Chinnam

... Petitioners/Defendants 1 and 2

-vs-

Raja Singh

...Respondent/Plaintiff

This Petition came up before this Court for hearing on 03.11.2023 in the presence of Thiru. S.A.Kanagasabapathi, Advocate for the Petitioners/Defendants 1 & 2 and Thiru. S.Athilingam, Advocate for the Respondent/Plaintiff and upon hearing the Petitioners' and Respondent's counsel and upon perusing the case records and having stood over till date for Consideration, this Court delivers the following:

ORDER

1. The Petitioners have filed the above petition under Order VII Rule 11 and Section 151 CPC seeking an order to reject the plaint.

2. The Petitioner has stated that the Respondent/Plaintiff had filed the above suit seeking partition and separate possession of ½ share over the plaint schedule property. The Defendants 3 to 6 are the legal heirs of late Smt.Rajaselvi, the Petitioners' sister. The Petitioners and Raja Selvi are the

direct legal heirs of Smt. Raja Lekshmi Ammal wife of late Shanmugam Nadar. After the demise of Raja Lekshmi Ammal the Petitioner's father late Shanmugam Nadar married Smt. Kanaga Leela as second wife and they were blessed with two sons namely the Plaintiff and 7th Defendant and two daughters namely Rajageetha and Raja Lekshmi.

3. Further on 29.11.1960 the plaint schedule property was purchased by Smt. Raja Lekshmi Ammal from Smt. Chinnammal Nadachi vide Document No. 3747/1960 Agasteeswaram Sub Registrar Office. Since the date of Sale, the Petitioner's mother was in possession and enjoyment over the schedule property. Now after the demise of the Petitioner's mother on 02.01.1982, the Petitioner's sister Smt. Rajaselvi had executed a Release Deed in favour of her two brothers vide Document No. 616/1982 Edalakudi Sub Registrar Office.

4. Further on 18.05.2022, the legal heirs of late Smt. Rajalekshmi Ammal had divided the schedule property into two portions. The Petitioners have executed Release Deeds bearing Document Nos. 2232/2022 and 2233/2022 reciprocally and relinquished their respective rights over each other. As such the Petitioners are in possession and enjoyment of 8.25 cents each and effected mutation and obtained Patta in the name of two Petitioners. The Petitioners have demolished the old dilapidated buildings for the construction of modern shopping complex.

5. Further the Plaintiff has filed the above suit claiming that he is also one of the legal heirs of Shanmugam Nadar and that he is entitled to half share

out of the 1/3 share of Shanmugam Nadar, is frivolous allegation, without any legs. In fact the Plaintiff and Defendant 7 to 9 are step children of late Smt. Rajalekshmi Ammal. They can claim right against Shanmugam Nadar's self earned properties. In the case on hand, the schedule property absolutely belongs to Smt. Rajalekshmi Ammal, the mother of Petitioners. After her demise, her three children are the direct legal heirs. The Plaintiff being her step children cannot claim property right under the cloud of Shanmugam Nadar. The right devolved upon the three children and in view of 1982 Release Deeds, the Petitioners became absolute owners.

6. The Plaintiff's claim is that after demise of Shanmugam Nadar, his share further devolved upon his legal heirs is illegal and non-est in law. As per Section 15 of Hindu Succession Act the self acquired property of a Hindu woman shall go to her children, as legal heirs and only in the absence of children, others will have any right to over it. The legalheirship certificate produced by the Plaintiff is not valid. The legalheirship certificate of Smt. Rajalekshmi Ammal alone is relevant to the properties owned by her. No cause of action had arisen on 18.05.2022. When there is no cause of action arisen on facts, the suit is infrutuous and causing hardship to the Petitioners.

7. Further the previous history reveals that the Plaintiff had threatened, assaulted his own father Shanmugam Nadar and obtained many items of properties under registered documents. In one occasion Shanmugam Nadar lodged complaint with the District Collector against the Plaintiff for his

unlawful activities and violence, against him. Prior to filing of the suit the Plaintiff constantly contacted the 2nd Defendant and demanded lumpsum amount, by threat. On the refusal of the 2nd Defendant for payment of money, the aggrieved Plaintiff has instituted the above frivolous and vexatious suit before this Court. Hence the Petitioners/Defendants 1 and 2 have come by way of the above petition seeking an order to reject the plaint.

8. The Respondent/Plaintiff had filed counter stating that the above petition is not maintainable in law and on facts. It lacks bonafides, filed with intent to harass and drag on the proceedings. The Respondent/Plaintiff has every right to seek partition of his 1/7 share out of 1/3 share in the plaint schedule property. The Respondent/Plaintiff is a co-owner of the plaint schedule property. The same was inherited by the Respondent/Plaintiff's father Shanmugam Nadar, after the demise of his wife Mrs. Rajalekshmi Ammal. The Petitioners were not in exclusive possession and enjoyment of the property. The Respondent/Plaintiff was in joint possession and enjoyment along with his father.

9. It is false to claim that the Respondent has knowledge about the Relinquishment Deeds between the Petitioners. The Petitioners have no right to executed such void Relinquishment deeds, in respect of the Respondent/Plaintiff's share. The Plaint clearly and precisely discloses cause of action, that could be adjudicated after full fledged trial. The Respondent/Plaintiff had not suppressed any material facts. Without conducting

trial, the Petitioners have no right to seek an order rejecting the Plaint. The cause of action arose on 18.05.2022 and also on 10.06.2022. Hence the Respondent prayed for dismissal of the above Petition.

10. The Point for Consideration is whether the above petition has to be allowed or not?

11. The Petitioners/Defendants contention is that as the suit property originally owned by Rajalekshmi Ammal, the first wife of late Shanmugam Nadar and the Respondent/Plaintiff is the son of Kanaga Leela, the second wife of late Shanmugam Nadar, the Respondent/Plaintiff is not entitled for any share in the suit property. Even according to the Petitioners, Shanmugam Nadar had married Kanaga Leela after the demise of his first wife Rajalekshmi Ammal.

12. Further it is the case of the Plaintiff that Rajalekshmi Ammal had died intestate. The estate of Rajalekshmi Ammal were inherited by Shanmugam Nadar along with his children born through Rajalekshmi Ammal. Hence upon the demise of Shanmugam Nadar, his children born through both Rajalekshmi Ammal as well as Kanaga Leela have inherited the estate of Shanmugam Nadar. The objection raised by the Petitioners/Defendants 1 and 2 for the above partition suit, regarding the Plaintiff's claim of right over $1/7^{\text{th}}$ out of $1/3^{\text{rd}}$ share of Shanmugam Nadar, could be adjudicated only after trial only.

13. In so far as the above rejection application is concerned, it has to be seen whether there is cause of action pleaded or not in the plaint. The Respondent/Plaintiff had pleaded cause of action as denial of the Defendants to

partition the suit property. As such, it cannot be held that the Plaintiff do not disclose any cause of action. In view of the discussions made above this Court is of the considered view that the Petitioners/Defendants 1 and 2 have not made out a case for rejecting the plaint and that they are not entitled for the petition relief.

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

Dictated to the Steno Typist, and typed by her, corrected and pronounced by me, in open court this, the 1st day of December, 2023.

Principal District Munsif,(FAC)
Nagercoil.

Petitioners side witnesses and documents : Nil

Respondent side witnesses and documents: Nil

Principal District Munsif,(FAC)
Nagercoil.

PDM Court, Nagercoil.
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Draft/Fair Order
Date: 01.12.2023.