

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF
PADMANABHAPURAM.

Present: Thiru.A.Maruthupandi, B.Com., B.L.,
Additional District Munsif, (Full Additional Charge)

Monday, the 17th day of April 2023

I.A No.04 of 2023

in

O.S No.34 of 2016

1. Aji Kumar
2. Azhakesh Kumar
3. Jebin
4. Bibin
5. Vijaya Rani
6. Kala Rani
7. Sheeba Rani

.. Petitioners/Plaintiffs

/Vs. /

Palnesam

.. Respondent/Defendant

This petition is coming before me for final hearing in the presence of Mr.A.Salin, learned counsel for the petitioners/Plaintiffs and Mr.Rajasekar, learned counsel for the respondent/defendant. Upon hearing the counsel on both side and on perusal of the records stood over for consideration till this day, this court passed the following :-

ORDER

This petition is filed under VI Rule 17 and section 151 Civil Procedure Code to pass an order to amend the plaint.

2. THE AVERMENTS IN THE PETITION IN BRIEF :-

i) The suit is originally filed for injunction by the petitioners/plaintiffs over the plaint schedule property . The respondents/defendants have filed two fraudulent sale deeds. Both the sale deeds are fraudulently created and no title or possession passed as per these fraudulent documents. The petitioners/plaintiffs filed encumbrances certificates as document Nos.4 ,5 and 6 which clearly show that no documents have been created with regard to the suit property infavour of the respondent/defendant's father Selvanayagam as alleged. Presently the respondent/defendant's son had filed the Chief Affidavit along with those documents. As the respondent/defendant is disputing the title, put to the necessity of reopening the case to amend the suit to include the prayer for declaration of title. Under these circumstances it is absolutely necessary to amend the plaint to include the relief for declaration of title over the suit property. Hence, this petition.

3. THE AVERMENTS IN THE COUNTER FILED BY THE RESPONDENT/ DEFENDANT IN BRIEF :-

i) The deceased Rajayan Nadar got 23.750 cents as per sale deed No.1479/1967 dated 08.08.1967 to the extent of 23.750 cents. During his life time to executed a sale deed on 20.09.1982 infavour of one Mr.Selvanayagam as document No.1424/1982 to the extent of 5 cents out of 23.750 cents in Re.sy.No.466/3. On 24.06.1983 he executed a sale deed infavour of one suseela as per document

No.4075 /1983 to the extent of 2 cents in Re.sy.No.466/3. Wherein it is clearly state that "செல்வ நாயகத்திற்கு நான் முன் விலை கொடுத்த கண்டத்திற்கு தொட்டு வடக்கு பக்கம் கிழக்கு மேற்கு நீளத்தில் 2 சென்றிற்கு சரியிட்ட". The said Rajayan Nadar admitted the sale deed No.1424/1982. After that the said Suseela has executed a sale deed on 23.08.1983 infavour of the said Selvanayagam as per sale deed No.1094/1983 the extent of 2 cents. Even though the said selvanayagam purchase vide two sale deeds as per lies it is lying as on single plot to the extent of 7 cents with well defined boundary and boundary stones on all sides.

ii) On 14.12.2015 the legal heirs of deceased selvanayagam namely Paulnesam, Jayanthi, Vijayakumar, Baby, Anitha and Geetha Rani have jointly executed 4 release deed infavour of suresh as per document No.2314/2015 to the extent of 7 cents relearning there 6/7 cents. The said suresh is entitled 1/8 share. The present owner suresh got absolute right title and possession in continuation of Selvanayagam title. He is possession and enjoyment over 7 cents of propery as absolute owner. The respondent/defendant is aged and an old women at the age of 73 years. She is a heart patient. After getting his order the petitioners/plaintiffs restrained the respondent/defendant with the help of police not to enter the defendant property.

iii) The son of respondent/ defendant namely suresh got absolute right, title, possession over 7 cents of land. There are 20 small Tamarine tree and others trees are standing. The petitioners/plaintiffs not at all possession of this property. The respondent/defendant got no right over 7 cents of land since, they relinquished their right infavour of suresh. The respondent/defendant state that the written statement filed on 12.07.2016. The petitioner/plaintiff filed in I.A.No.203/2016 in this suit seeking ad-interim injunction and the said also party allowed excluding the property of 7 cents of land which belonged to Suresh. Wherein it clearly shows that " மேற்படி எதிர்மனுதாரர் தரப்பில் தாக்கல் செய்துள்ள ஆவணங்களை இந்நீதிமன்றம் ஆழ்ந்து பரிசீலனை செய்கையில் தாவா பட்டிகை சொத்தில் 23,750 சென்ட் சொத்தில் 7 சென்ட் சொத்தானது எதிர்மனுதாரரின் கணவருக்கு பாத்தியப்பட்டிருந்தது. அவர் இறந்ததற்கு பின்பு எதிர்மனுதாரர் மற்றும் அவரது குழந்தைகள் சேர்ந்து மற்றொரு மகன் சுரேஷ்க்கு எ.ம.சா.ஆ.4-இன் மூலம் விடுதலைப்பத்திரம் எழுதி கொடுக்கப்பட்டு அனுபவித்து வருவதை அறிய முடிகிறது".

iv) This respondent/defendant stated that as per the amended CPC no amendment can be entertained after commencement of trial. The trial also commenced and PW! adduced evidence also. The respondent/defendant stated that on the plaintiff side of

evidence over and evidence also closed. On the defendant side DW1 examined in chief and posted for cross examination of DW1. The petition is never preferred appeal adjust this order. Thus which shows that the petitioner/plaintiff have no objection of order in I.A.No.203/2016. Moreover, the petitioner/plaintiff filed in I.A.No.400/2018 to implead suresh as Addl. 2nd defendant the same also dismissed on 27.01.2021. Now, they filed present petition seeking a relief of declaration as against respondent/defendant namely paulnesam, she is not at all owner of the land. Hence, this petition is liable to be dismissed.

4. POINTS FOR DETERMINATION :-

Whether the petitioners/plaintiffs are entitled to the relief as prayed for or not?

5. DISCUSSION AND ANALYSIS :-

Both side Heard. Records perused carefully.

i) The learned counsel for the petitioners/plaintiffs argued that the suit is filed for getting a decree of permanent injunction. The petitioners/plaintiffs filed encumbrance certificates are clearly shown that no documents have been registered with regard to suit schedule property. But, at the time of chief examination of respondent/defendant's son the respondent/defendant's side filed two fraudulent sale deed and thereby disputed the rights and title of petitioners/plaintiffs over the suit schedule property. So, now the petitioners/plaintiffs want to amend the prayer of

declaration declaring their right and title over the plaint schedule property. Hence, this petition is filed.

ii) The learned counsel for the respondent/defendant argued that this petition is filed after long period and if this petition is allowed the character of the suit as well as cause of action will be changed and introduced a new case and further argued and relied upon decision of Honourable Supreme court of India and Honourable High Court of madras held in (2007) 4 MLJ 378 (SC), 2015 (6) CTC 562, (2005) 4 M.L.J.269 and (2007)2 MLJ 46 and hence for the said reasons this petition is liable to be dismissed.

iii) On perusal of pleadings it is found that the original suit is filed for getting a decree of permanent injunction. The suit is posted for defendant's side evidence on 08.07.2022. The son of respondent/defendant namely one Suresh was examined as DW1 partly on 14.09.2022 and after that a petition was filed under order VIII Rule 3 of Civil Procedure code and taken on file in I.A. NO.2/2022 and the same was allowed on 27.09.2022. But, he has not been appearing from 14.11.2022 to 02.01.2023 and finally he was present on 04.01.2023 on that day a petition under order VI rule 17 of CPC filed by the petitioners/plaintiffs stating that the respondent/defendant filed two sale deed and disputed the rights and title of petitioners/plaintiffs over the suit schedule property. The petitioners/plaintiffs have

filed three encumbrance certificates which are not speaking that no documents registered with regard to suit schedule property. Hence, a petition is filed for seeking a relief of declaration declaring the rights and title of petitioners/plaintiffs over the suit schedule property. But, the respondent/defendant objected that the said amendment petition is filed after long time. When the respondent/defendant is disputed the rights and title of the petitioners/plaintiffs over the suit schedule property then the petitioners/plaintiffs shall file a petition to amend the relief. Because of, the amendment will help the court to dispose the case properly and effectively and without any contradictory question which will be arisen in future and if this petition is allowed no prejudice would be caused to the respondent/defendant and moreover to avoid multiplicity proceedings it is just and necessary to grant the relief as prayed by the petitioners/plaintiffs.

(2005) 4 M.L.J.269 :-

The Hon'ble High Court has observed that the power conferred under order VI Rule 17 of CPC can be exercised to avoid multiplicity proceedings and at the same time such power can not be indiscriminately exercised to extent the period of limitation. In this case, the DW1 has disputed the rights and title of petitioners/plaintiffs over the suit schedule pathway only after filing proof affidavit of DW1, so this petition has been filed to amend the relief of declarations declaring the rights and title of the petitioners/plaintiffs over the suit schedule property, so it is just

and necessary to pass an order infavour of them to avoid multiplicity proceedings. But, in this case no time extention is sought by the petitioners/plaintiffs to file an amendment petition, so this decision is not applicable to the present case in hand.

(2007) 2 M.L.J.46 :-

The Hon'ble High Court has observed that a petition under order VI Rule 17 of CPC filed after 15 years from the date of filing of suit, so the application hit by limitation. But, in this case this petition is filed within stipulated period, So this decision also not applicable to the present case in hand.

2015(6) CTC 562 :-

The Hon'ble Supreme Court has observed that to amend the pleadings as well as prayer to include the relief of declaration such amendment made after three years from date on which the defendant filed written statement relief barred by limitation. But, in this case this petition is filed to amend the relief of prayer not for pleadings and moreover it has been filed within stipulated period, hence this decision also not applicable to the present case in hand.

(2007) 4 MLJ 378 (SC) :-

The Hon'ble Supreme Court has observed that a suit for eviction is converted into title suit and a petition filed under order VI Rule 17 of CPC to amend the relief

after fifteen years without any explanation. So, the said petition is barred by limitation. But, in this case this petition has only been filed after chief examination of DW1 who was examined as DW1 on 14.09.2022 and moreover DW1 has disputed the rights and title of petitioners/plaintiffs over the suit schedule property, hence this petition is filed, so this decision is also not applicable to the present case in hand.

6. DECISION:

In the result, petition is allowed.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 17th day of April, 2023.

Additional District Munsif (FAC),
Padmanabhapuram.

ADMC, Padmanabhapuram.

I.A.No.4/2023 in O.S.No.34/2016

Draft/Fair Order:

Dt: 17.04.2023.