

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, THIRUMANGALAM

Present: Thiru. C.Dineshkumar, M.A., B.L.,

Principal District Munsif, Thirumangalam

Friday 4th day of November 2022

I.A. No.130/2021

in

O.S. No.486/2013

Parameswari ... Petitioner/ 3rd Defendant

-Vs-

1. P.Kaliappan ... 1st Respondents /Plaintiff

2. The District Collector,
Madurai.

3. The Commissioner,
Thirumangalam.

... 2nd and 3rd Respondents /Defendants

This Petition coming on 21.09.2022 before me for final hearing in the presence of Counsel Thiru.N.Namasivayam, Advocate for the Petitioner/ 3rd Defendant and Thiru.S.Srinivasa Babu, Advocate for the 1st Respondent/Plaintiff and the 2nd and 3rd Respondents having remained exparte in the main suit itself and upon perusing the Petition, counter and the entire materials available on the records before this Court and having stood over for consideration till this day, this Court delivers the following

ORDER

This Petition has been filed under Order 7 Rule 11 and Section 151 of C.P.C. to reject the Plaint in O.S.No.486/2013.

THE POINT FOR DETERMINATION:

2) Whether this Petition has to be allowed or not?

3) The entire case records were perused carefully and both the sides were heard.

ARGUMENTS:

4) The learned counsel for the Petitioner argued that, the main issue in the present suit is regarding the common lane situated on the southern side of the property of the petitioner and previously a civil suit in O.S.No.131/2000 was filed by one Sethuraman @ Pandi against this Petitioner and the similar issue with respect to the common lane was raised and the same has been answered in favour of the petitioner and the extent of common pathway has been already decided as 7 feet and therefore, this suit is a second round of litigation and further, this petitioner had filed another suit in O.S.No.96/2002 against the Government official and the same has been decided in favour of the Petitioner and the Respondent/ Plaintiff is the neighbor to the parties of the previous suit and therefore, he is aware of the earlier proceeding and he has filed this suit by suppressing the above facts and prayed for allowing the application and to reject the plaint.

5) The learned counsel for the 1st Respondent argued that the suit is at the stage of cross examination of the DW1 and the 1st Respondent has filed an amendment petition with respect to the extent of the encroachment and the same is pending and after a period of 8 years from filing of the suit, this petition has been filed and the previous suits and the issues raised in the previous suits are not known to this 1st Respondent, as he is not a party to both the suits and therefore, it will not bind the 1st Respondent and prayed for dismissal.

6) On perusal of records, it could be seen that this case has been filed in the year 2013 and this application for rejecting the plaint has been filed in the year 2021 i.e., almost 8 years after the suit and the Plaintiff side evidence has been closed and this petitioner/ 3rd Defendant has already been examined in chief as DW1. But, the Petitioner side has not adduced any explanation for the delay in filing such application for rejecting the plaint.

7) Further perusal of records would show that the 1st Respondent / Plaintiff was not a party in the O.S.No.131/2000 and O.S.No.96/2002 and therefore, it cannot be expected that the 1st Respondent/ Plaintiff would have the knowledge about the discussion and decision of the Court in the previous suits.

8) Therefore, this court is of the opinion that the contention of the petitioner regarding the extent of the common lane can be considered and decided after completing the trial proceedings and the grounds stated by the petitioner does not come under the purview of Order 7 Rule 11 of the Code of Civil Procedure. Therefore, this Court is not inclined to reject the Plaint on the above said grounds at this stage.

As a result, this petition is dismissed. No cost.

Dictated by me to the Steno typist directly in the office computer and the same was corrected by me and pronounced in the open Court on this 4th day of November, 2022.

(Sd. C.Dineshkumar)

Principal District Munsif
Thirumangalam

I.A.No.130/2021
in
O.S.No.486/2013
Fair-Order
04.11.2022.