

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Presence: Thiru. R. Radhakrishnan, B.A., B.L.,
District Munsif, Sankari.

20th day of September, 2023, Wednesday

திருவள்ளூர்வராண்டு 2054, சோபகிருது வருடம், புரட்டாசி திங்கள் 03 ம் நாள் புதன்கிழமை

I.A.11/2022 in O.S.49/2009

C. Manivasakam ... Petitioner / Plaintiff

//Versus//

1. R. Balasubramaniam

2. A.A. Balu

3. G. Ganapathy

4. M. Chinnaraju

... Respondents/Defendants

This petition taken to file on 17.03.2022 and coming on this day 21.07.2023 for hearing before me in the presence of Thiru. N.S. Annadurai Advocate for Petitioner/Plaintiff; and of Thiru. V. Rajasekar Advocate for the Respondents 2 to 4 and R1 was exparte, and after perusing the Petition, Counter and on hearing both sides, this Court passed the following,

ORDER

The Petitioner/Plaintiff has filed this petition under Order 13, Rule 10 (2) and Rule 75 and Section 151 of Civil Rules of Practice to order to send for entire O.S.No.217/2008 original Records on the file of District Munsif Court, Sankari to this court in O.S.No.49/2009.

2) **The gists of the Petition:-**

The Petitioner has averred that, he is the plaintiff in the suit. The suit property and other property were originally belonged to the 1st respondent and one Sivaraman and they were in possession and enjoyment of the same. The 1st respondent and Sivaraman sold the suit property and other property to this petitioner under the registered sale deed dated 05.06.2008 for true and valid consideration and the petitioner was subsequently in possession and enjoyment

of the same. Then, the petitioner sold the suit property and other property to one Pachamuthu, under the registered sale deed dated 23.06.2009 for true and valid consideration and he was in possession and enjoyment of the same. The above said Pachamuthu has settled the suit property and other property in favour of his son Arulmurugan under the Registered Gift settlement dated 06.06.2011 and delivered the possession of the same. The patta, Chitta, Adangal and other revenue records of the suit property and other property stand in the name of the Arulmurugan. Now Arulmurugan is cultivating the seasonal crops and is regularly paying kist to the Government and he is absolute possession and enjoyment of the same. After selling the suit property to this petitioner, the petitioner's vendor, the 1st respondent along with the respondents 2 to 4 conspired and created a false sale agreement dated 11.03.2008 in favour of the respondents 2 to 4 in order to grab the suit property and the respondents 1 to 3 filed a suit in O.S.No.217/2008 before this court against the 1st respondent and they obtained decree collusively on 02.09.2008 for the relief of specific performance and registered the decree in Sub Register Office Mac Donald Chouldry. In fact that the 1st respondent sold the suit property to this petitioner on 05.06.2008 and admitting and submitting decree in O.S.No.217/2008 on 02.09.2008. It will alone go to show that the respondents 1 to 4 are playing fraud on court proceedings in submitting and getting Decree in O.S.No.217/2008 on 02.09.2008. The 1st respondent is not owner of the suit property and No saleable interest on 02.09.2008 and he is not entitled to admitting the suit claim. The alleged sale agreement is created by the respondents 2 to 4 with the help of 1st respondent. The 1st respondent withdrew the balance amount of Rs.40,000.00 from this court without executing the sale deed. No ordinary purulent man will allow to withdrawing the balance sale amount without executing sale deed in his favour. It will go to show that the respondents 1 to 4 all are conspired and created a false sale agreement, filed the suit in O.S.No.217/2008, and obtained a Decree in O.S.No.217/2008 on 02.09.2008. Hence, the said decree in O.S.No.217/2008 became void, in fructuous, barred unenforceable and not executable one and obtained by plaining fraud on court proceedings. The entire Orginal records in

O.S.No.217/2008 on the file of the District Munsif court, Sankari is necessary one. The entire suit records in O.S.No.217/2008 are material to this suit. In fact that the cheque petition was filed by the defendant's counsel in Docket sheet of plaintiff's counsel and affixed his address seal over on the address of the plaintiff's counsel's address. It will alone go show that the respondents No.1 to 4 playing fraud on court proceedings. Hence, entire O.S.No.217/2008 original records on the file of District Munsif Court, Sankari is necessary one for the purpose of the justice. The copy of the same will not serve the purpose. Therefore, prays for allowing the petition.

3) The gists of the Counter filed by the 2nd Respondent and adopted by the Respondents 3 and 4:-

(i) The Respondents have averred that, the petition filed the petitioner is false, frivolous, vexatious and not maintainable in law and on facts. Admittedly, the suit properties is originally belonged to 1st respondent, R. Balasubramanian and one Sivaraman. Arulmurugan never in possession of the suit properties at any time. The Revenue records are changed in the name of Arulmurugan illegally and without proper enquiry as per Revenue rules and regulations. The Revenue records are not valid in law and not binding on the respondents. The sale agreement dated 11.03.2008 is true, valid in law and binding on the petitioner also. Based on the sale agreement dated 11.03.2008 the respondents 2 to 4 filed a suit in O.S.No.217/2008 for specific performance against 1st respondent. The said suit was decreed on 02.09.2008. Subsequently execution petition filed in R.E.P.No.26/2012 for execution of sale deed through court and the same is pending. Now, the 1st respondent colluded with the petitioners in execution of sale deed dated 05.06.2008, to defraud the sale agreement dated 11.03.2008.

(ii) The 1st respondent is entitled to the balance amount of Rs.40,000/- and he withdraw the same from court. It cannot be sad that ordinary prudent man will not allow to withdraw the balance sale amount without

executing the sale deed. The decree passed in O.S.No.217/2008 is valid in law and binding on the petitioner. The petitioner has no right to question on the validity of decree passed in O.S.No.217/2008. It cannot be said that the decree passed in O.S.No.217/2008 is not executable. It is valid decree and execution petition is filed to execute the decree in R.E.P.No.26/2021 and the same is pending. The records in O.S.No.217/2008 on the file of this court can be obtained by the petitioner by applying Xerox certified copy of the same to prove any facts which he wish to prove. The docket sheet in the cheque petition filed by defendant counsel contained only his address and there is no question of playing fraud on court. There is no need in law to send for the entire records in O.S.No.217/2008 to this suit without obtaining proper Xerox certified copies and file the same in this case. The petitioner has filed this petition with view to protract the proceedings endlessly. There is no necessity to send for the records in O.S.No.217/2008 to this case. There is no merit in this petition. The petition is filed with a view to drag on the proceedings. Therefore, prays for dismissal of the petition.

4) Point for consideration:-

Whether the Petitioner is entitled to the relief as prayed for?

5) Both side heard. Records perused. The Petitioner/Plaintiff has filed this petition under Order XIII Rule 10 (2) and Rule 75 and Section 151 of Civil Rules of Practice to order to send for entire O.S.No.217/2008 original Records on the file of District Munsif Court, Sankari to this court in O.S.No.49/2009.

6) On the side of the petitioner it is averred and contented that, the petitioner is the plaintiff in the suit. The suit property and other property were originally belonged to the 1st respondent and one Sivaraman and they were in possession and enjoyment of the same. The 1st respondent and Sivaraman sold the suit property and other property to this petitioner under the registered sale deed dated 05.06.2008 for true and valid consideration and the petitioner was

subsequently in possession and enjoyment of the same. Then, the petitioner sold the suit property and other property to one Pachamuthu, under the registered sale deed dated 23.06.2009 for true and valid consideration and he was in possession and enjoyment of the same. The above said Pachamuthu has settled the suit property and other property in favour of his son Arulmurugan under the Registered Gift settlement dated 06.06.2011 and delivered the possession of the same. The patta, Chitta, Adangal and other revenue records of the suit property and other property stand in the name of the Arulmurugan. Now Arulmurugan is cultivating the seasonal crops and is regularly paying kist to the Government and he is absolute possession and enjoyment of the same. After selling the suit property to this petitioner, the petitioner's vendor, the 1st respondent along with the respondents 2 to 4 conspired and created a false sale agreement dated 11.03.2008 in favour of the respondents 2 to 4 in order to grab the suit property and the respondents 1 to 3 filed a suit in O.S.No.217/2008 before this court against the 1st respondent and they obtained decree collusively on 02.09.2008 for the relief of specific performance and registered the decree in Sub Register Office Mac Donald Chouldry. In fact that the 1st respondent sold the suit property to this petitioner on 05.06.2008 and admitting and submitting decree in O.S.No.217/2008 on 02.09.2008. It will alone go to show that the respondents 1 to 4 are playing fraud on court proceedings in submitting and getting Decree in O.S.No.217/2008 on 02.09.2008. The 1st respondent is not owner of the suit property and No saleable interest on 02.09.2008 and he is not entitled to admitting the suit claim. The alleged sale agreement is created by the respondents 2 to 4 with the help of 1st respondent. The 1st respondent withdrew the balance amount of Rs.40,000.00 from this court without executing the sale deed. No ordinary purulent man will allow to withdrawing the balance sale amount without executing sale deed in his favour. It will go to show that the respondents 1 to 4 all are conspired and created a false sale agreement, filed the suit in O.S.No.217/2008, and obtained a Decree in O.S.No.217/2008 on 02.09.2008. Hence, the said decree in O.S.No.217/2008 became void, in fructuous, barred unenforceable and not executable one and obtained by plaining fraud on court

proceedings. The entire Original records in O.S.No.217/2008 on the file of the District Munsif court, Sankari is necessary one. The entire suit records in O.S.No.217/2008 are material to this suit. In fact that the cheque petition was filed by the defendant's counsel in Docket sheet of plaintiff's counsel and affixed his address seal over on the address of the plaintiff's counsel's address. It will alone go show that the respondents No.1 to 4 playing fraud on court proceedings. Hence, entire O.S.No.217/2008 original records on the file of District Munsif Court, Sankari is necessary one for the purpose of the justice. The copy of the same will not serve the purpose. Therefore, prays for allowing the petition.

7) On the side of respondents it is averred and contended that, admittedly the suit properties is originally belonged to 1st respondent, R. Balasubramanian and one Sivaraman. Arulmurugan never in possession of the suit properties at any time. The Revenue records are changed in the name of Arulmurugan illegally and without proper enquiry as per Revenue rules and regulations. The Revenue records are not valid in law and not binding on the respondents. The sale agreement dated 11.03.2008 is true, valid in law and binding on the petitioner also. Based on the sale agreement dated 11.03.2008 the respondents 2 to 4 filed a suit in O.S.No.217/2008 for specific performance against 1st respondent. The said suit was decreed on 02.09.2008. Subsequently execution petition filed in R.E.P.No.26/2012 for execution of sale deed through court and the same is pending. Now, the 1st respondent colluded with the petitioners in execution of sale deed dated 05.06.2008, to defraud the sale agreement dated 11.03.2008. The 1st respondent is entitled to the balance amount of Rs.40,000/- and he withdraw the same from court. It cannot be sad that ordinary prudent man will not allow to withdraw the balance sale amount without executing the sale deed. The decree passed in O.S.No.217/2008 is valid in law and binding on the petitioner. The petitioner has no right to question on the validity of decree passed in O.S.No.217/2008. It cannot be said that the decree passed in O.S.No.217/2008 is not executable. It is valid decree and execution petition is filed to execute the decree in R.E.P.No.26/2021 and the same is

pending. The records in O.S.No.217/2008 on the file of this court can be obtained by the petitioner by applying Xerox certified copy of the same to prove any facts which he wish to prove. The docket sheet in the cheque petition filed by defendant counsel contained only his address and there is no question of playing fraud on court. There is no need in law to send for the entire records in O.S.No.217/2008 to this suit without obtaining proper Xerox certified copies and file the same in this case. The petitioner has filed this petition with view to protract the proceedings endlessly. There is no necessity to send for the records in O.S.No.217/2008 to this case. There is no merit in this petition. The petition is filed with a view to drag on the proceedings. Therefore, prays for dismissal of the petition.

8) On perusal of suit record, it could be seen that, the suit in O.S.No.49 of 2009 has been filed for the relief of Declaration and consequential injunction. The petitioner herein is the plaintiff and the respondents are the defendants in the suit. In the suit P.W.1. was examined on the side of plaintiff and it has been pending for further Pws. At this stage this petition has been filed. Order XIII Rule 10 Sub-Rule (1) of Civil Procedure code allows parties to a suit to apply for summoning, by a court, either from its own record or from any other court, the record any other suit or proceedings, and inspect the same. Sub-Rule (2) requires an applicant to file an affidavit explaining how the record, which is requisitioned, is material to the suit and also a declaration that the applicant could, without unreasonable delay or expense, obtain a duly authenticated copy of the record from the court from which the record is being sought to be requisitioned, or that the production of the original is necessary in the interest of justice. The petitioner has not stated how the record, which sought to be summoned is material to the suit and why he was not in a position to obtain a duly authenticated copy of the record without unreasonable delay. Further, it is from the petition averment, there is nothing to indicate that prior to moving the present petition, the petitioner made any endeavour to get authenticated copy of the records. Further, the petitioner has not identified with certainly, the

documents of which he wants lead evidence. Therefore, this court is of the view that, the petition is without merits and the same is liable to be dismissed.

9) In the result, this petition is Dismissed. No costs.

This order directly dictated to the Steno-typist, typed by him and corrected by me, and Pronounced in the Open Court in the 20th day of September 2023.

Sd/- R. Radhakrishnan,
District Munsif,
Sankari.

Encl.: NIL

Sd/- R. Radhakrishnan,
District Munsif,
Sankari.