

IN THE COURT OF THE SUBORDINATE JUDGE, OMALUR  
SALEM DISTRICT

Present: Thiru Gnana Balakrishnan, B.Sc., B.L.,  
Subordinate Judge, Omalur

Friday, the 12<sup>th</sup> day of August 2022  
I.A.No. 2/2022 in O.S.No.48/2019

D. Deepak

.. Petitioner/6th Defendant

//Vs//

1. Sumathi
2. Kumaravel
3. Muthammal
4. Venkatachalam
5. Chinnapaiyan
6. Sidhammal
7. Arul Balaji

.. Respondents/Plaintiff &  
Defendants 1 to 5 & 7

This petition coming on before me for final hearing on 27.07.2022 in the presence of Advocate Thiru.R.Senthilkumar for petitioner and Thiru.B. Sivaram & Thiru A. Kailassanathan advocates for 1<sup>st</sup> respondent, other respondent not filed counter and upon perusing the records and arguments of both sides and having stood over for consideration, this court delivered the following:

**O R D E R**

This petition has been filed Under Order 7 Rule 11 of CPC to reject the plaint in OS 48/2019.

2. **The brief averments of the Petition is as follows:**

The 1<sup>st</sup> respondent as plaintiff filed the above suit in OS No.48/2019 for partition of the suit property, to declare that the decree in OS No.48/2018 on the file of the Subordinate Court at Mettur as null and void, to declare that the

sale deed bearing registration No.2687/2009 in favour of the 4<sup>th</sup> respondent/3<sup>rd</sup> defendant as null and void and for the consequential relief of permanent injunction restraining the 4<sup>th</sup> respondent/3<sup>rd</sup> defendant from alienating or encumbering the suit property, to declare that the registered sale deed bearing registration No.8009/2019 dated 16.10.2019 in his favour and in favour of the 7<sup>th</sup> respondent/7<sup>th</sup> defendant as null and void and for the consequential relief of permanent injunction restraining the petitioner and 7<sup>th</sup> respondent/7<sup>th</sup> defendant from alienating or encumbering the suit property and for permanent injunction restraining the respondents 4 to 6 defendants 3 to 5 from preventing or causing inconvenience to her in the 1/4 share, well right in the suit property etc. relief. The above suit has been filed on the most vexatious grounds and the same has to be axed at the initial stage. The suit is liable to be rejected the threshold. The allegations set out in the plaint averments are all false, frivolous, meritless, incongruous, extravagant and all together baseless.

The above suit is not an ancestral property of the respondents 1 to 3 herein as alleged. It is not the joint family property of the respondents 1 to 3 as alleged. In fact, the suit property and the property contiguous to it were purchased by one Mrs.Kandhaimmal by means of a registered sale deed bearing document No.94/1963 dated 24.01.1963. It was her self-acquired property and she enjoyed the same as its absolute owner thereof till her last breath. She died intestate leaving behind her, her sons Kandhasamy, Kumaravel, Palanivel and Perumal to succeed her estate/the suit property herein. Later, the said Perumal died intestate leaving behind him his wife Thaiyammal and son Pachiappan to succeed his undivided 1/4 share in the suit property. The sons of Kandhaimmal namely Kandhasamy, Kumaravel, Palanivel along with their deceased brother's wife and son/Thaiyammal and Pachiappan entered into a registered partition deed bearing document No.1777/1988 dated 17.08.1988 on the file of the Sub-Registrar,

Omalur. The suit property herein was fell to the shares of Kumaravel/2nd respondent/1st defendant. The partition was affected as per the operation of Section 15 of the Hindu Succession Act 1956 as amended. Therefore, the suit property is neither ancestral property nor joint family property of the 1<sup>st</sup> respondent/Plaintiff as alleged. Even otherwise, no female heir can be a member of coparcenary. Therefore, the plaintiff under law has no cause of action to institute the above the suit. The plaint did not contain cause of action to institute the above suit and in fact the plaintiff has no cause of action to file above suit against the defendants. Therefore, the above suit is liable to be rejected for the non-disclosure of cause of action.

Further, the respondents 2 and 3/defendants 1 and 2 entered into a registered sale agreement bearing document No.6874/2007 dated 22.10.2007 with the 4<sup>th</sup> respondent/3defendant in respect of the suit property. The 3<sup>rd</sup> respondent/2nd defendant has no right in respect of the suit property but she has been joined in the said sale agreement for binding adjudication. Though there is a clause in the said sale agreement that at the time of sale the 1<sup>st</sup> respondent/plaintiff has to sign along with the respondents 2 and 3/defendants 1 and 2 does not confer any right on the 1<sup>st</sup> respondent/plaintiff to claim partition of the suit property. The 2<sup>nd</sup> respondent/1st defendant has acquired title to the suit property as legal heir of deceased Kandhaimmal as such after partition the suit property was the absolute and exclusive property of 2<sup>nd</sup> respondent/1st defendant.

The suit in OS.No.48/2008 on the file of the Subordinate Court, Mettur against respondents 2 and3/ defendants 1 and 2 for specific performance of the registered sale agreement No.6874/2007 dated 22.10.2007.The said suit was decreed on 14.08.2008. As against the said decree, the respondents 2 and 3/defendants 1 and 2 have not filed any first appeal and as such the said decree

has become final, conclusive and binding on the respondents 1 to 3 herein. The 4<sup>th</sup> respondent/3rd defendant levied the decree dated 14.08.2008 in OS No.48/2008 in execution in R.E.P. No.60/2008 in O.S.No.48/2008 on the file of Subordinate Court, Mettur and consequently obtained a registered sale deed bearing document No.2687/2009 dated 23.04.2009 executed by the Hon'ble Subordinate Judge, Mettur. Thereafter, the 4<sup>th</sup> respondent/3rd defendant filed an application in R.E.A. No. 18/2012 in R.E.P. No.60/2008 in OS No.48/2008 for delivery possession of the suit property and accordingly he has taken delivery of the suit property as per the delivery athaashi dated 28.12.2012. Thus , the 4<sup>th</sup> respondent/ 3rd defendant has become a absolute and exclusive owner of the suit property.

The 1<sup>st</sup> respondent/plaintiff instituted a suit OS No.22/2008 against the respondents 2 to 4/defendants 1 to 3 for partition of the suit property before the Hon'ble District Munsif Court, Omalur the suit in O.S.222/2008 on the file of the District Munsif Court, Omalur and it was also dismissed on 02.02.2015. The 1<sup>st</sup> respondent/Plaintiff has not taken any steps to restore the suit in OS No.222/2008. Therefore, the aforesaid decree bind the 1<sup>st</sup> respondent/plaintiff and she cannot be allowed to re-agitate the subject matter again and again and cannot try to unsettle the subject matter which was already settled. The 4<sup>th</sup> respondent/3rd defendant executed a registered sale deed bearing document No.8009/2019 dated 16.10.2019 jointly in his favour and in favour of 7<sup>th</sup> respondent/7th defendant for a valid sale consideration. The suit in OS 48/2019 was dismissed for default on 14.08.2019, but the sale deed No.8009/2016 was executed on 16.10.2019. The suit N.48/2019 was restored only on 23.04.2020. Therefore, the registered sale deed bearing document No.8009/2019 dated 16.10.2019 is not affected by doctrine of lis pendence as alleged.

The 7<sup>th</sup> respondent/7th defendant has executed a registered sale deed bearing document No.8091/2020 dated 29.08.2020 in his favour in respect of his undivided half share in his favour and hence, the petitioner became the absolute and exclusive owner of the suit property. None else. The name of the 4<sup>th</sup> respondent/3rd defendant has already been mutated in the revenue records and he has been issued patta. The relief of declaration to declare the decree as null and void dated 14.08.2008 in OS 48/2008 on the file of Subordinate Court, Mettur cannot be granted as barred by limitation. The relief is in substance to set aside the decree dated 14.08.2008 in OS 48/2008 on the file of Subordinate Court, Mettur. Therefore, the same has to be filed within a period of three years from the date of the said decree. Therefore, the 1<sup>st</sup> respondent/plaintiff is barred by limitation.

**3. The brevity of the counter filed by the Respondents are as follows:-**

The petition is false, Vexatious, frivolous and not sustainable in law and on equity. The 1<sup>st</sup> respondent does not admit any of the allegations made in the affidavit except those that are specifically admitted herein and put the petitioner to strict proof of the same as per law. It is true that the 1<sup>st</sup> respondent filed the above suit OS 48/2019 for the relief of partition, declaration and permanent injunction. It is absolutely false to allege that the suit property is not an ancestral property of the respondents 1 to 3 and it is not the joint family property of the respondents 1 to 3 as alleged and the suit property and the property contiguous to it were purchased by one Mrs.Kahdhaiammal by means of a registered sale deed bearing document No.94/1963 dated 24.01.1963 and it was her self-acquired property and she enjoyed the same as its absolute owner thereof till her last breath. In fact the said properties were purchased in the name of Kandayammal from out of the joint family funds and enjoyed as joint family properties. The said Kandayammal had no independent income to purchase the

said properties. The petitioner being a stranger and lispendence purchaser has no knowledge of the origin enjoyment of the suit properties and other properties in the family of respondents 1 and 2.

In fact the said Kandayammal got four sons and two daughters namely Perumayee and Sellammal as her legal heirs. It is true that legal heirs of one of her son namely Perumal along with other three sons had entered into a registered partition deed bearing document No.1777/1988 dated 17.08.1988 on the file of the Sub-Registrar, Omalur admitting accepting the said properties as their ancestral joint family properties excluding the said two daughters of Kandayammal. It is true that partition deed the suit property fell to the share of the 2<sup>nd</sup> respondent. As per Hindu law the purchaser of property is not the criteria, but the enjoyment of the property is important to decide the character of the property as joint family property. As such the purchase of property in the name of Kandayammal would not make it as her separate property since the same was enjoyed as joint family property and its income put in joint family hotch pot.

It is absolutely false to allege that the partition was affected as per the operation of Section 15 of the Hindu Succession Act 1956 as amended. the suit property is neither ancestral property nor joint family property of the 1<sup>st</sup> respondent/Plaintiff as alleged and no female heir can be a member of coparcenary and therefore, the plaintiff under law has no cause of action to institute the above the suit and the plaint did not contain cause of action to institute the above suit and in fact the plaintiff has no cause of action to file above suit against the defendants and therefore, the above suit is liable to be rejected for thenon-disclosure of cause of action. It is absolutely false to allege that the respondents 2 and 3 entered into a sale agreement on 22.10.2007 in document No.6874/2007 with the 4<sup>th</sup> respondent in respect of the suit property and the 3<sup>rd</sup>

respondent has no right in respect of the suit property but she has been joined in the said sale agreement for binding adjudication. As per law the 2<sup>nd</sup> respondent has no absolute right or locus stndi to enter into such a sale agreement in favour of 4<sup>th</sup> respondent must be a sham and nominal, collusive document and void in law. The 1<sup>st</sup> respondent had no notice or knowledge of the said sale agreement between the respondents 2 to 4. The same will not bind this respondent or her lawful half share in the suit proeprty in any event. In fact such an evasive denial of the petitioner is barred by the principle of estoppel.

It is true that the 1<sup>st</sup> respondent filed a suit for partition against the respondents 2 to 4 in OS No.222/2008 before the District Munsif Court, Omalur and the same was dismissed for default on 02.02.2015. In fact the said suit OS No.222/2008 was filed against the respondents 2 to 4 without notice and knowledge of the OS No.48/2008 filed by the 4<sup>th</sup> respondent. Subsequent to the notice and knowledge of the said exparte decree in OS No.48/2008 and sale deed in favour of 4<sup>th</sup> respondent. Subsequent to the notice and knowledge of the said exparte decree in OS No.48/2008 and sale deed in favour of 4<sup>th</sup> respondent the 1<sup>st</sup> respondent filed the comprehensive suit for declarations, partition and permanent injunction in OS 59/2013 on the getting the file of Subordinate Judge Court, Mettur on the basis of subsequent cause of actions. Since the said suit OS No.222/2008 on the file of Munsif Court, Mettur was dismissed for default, the said decree will not be futile to this comprehensive suit. Further the principle of estoppel will not apply to the case on hand as alleged by the petitioner.

It is utter false to allege that since the sale deed dated 16.10.2019 is not affected by doctrine of lispendence as alleged and there is no legal impediment to purchase the property during the pendency of litigation filed to affect the property since the sale is always subject to the result of the suit and the 7<sup>th</sup> respondent has

executed a sale deed on 29.08.2020 in doc.No.809/2020 in favour of the petitioner in respect of his univided half share and the petitioner became absolute owner of the suit property and none else him has got any title, interest, claim possession and rights of whatsoever in respect of the suit property and the 4<sup>th</sup> respondent name was already mutated in revenue records and he has been issued patta.

In law as soon as the suit is restored to file the alleged sale deed in favour of the petitioner and 7<sup>th</sup> respondent will become lispendence document and the same is subject to the result of the suit. The petitioner being a lispendence purchaser has no right or locus standi to rely on his lispendence sale deeds and file and maintain the petition to reject the plaint as a matter of right. The mutation of revenue records in favour of 4<sup>th</sup> respondent in a fraudulent manner during the pendency of the suit OS No.59/2013 will not have any credibility before court of law. The said revenue documents are fraudulent, illegal and not bind the 1<sup>st</sup> respondent in any event.

As the suit being treated and enjoyed by the respondents 1 and 2 as joint family property and the 1<sup>st</sup> respondent being coparcener is entitled to file and maintain the suit for partition. In such a cast the 1<sup>st</sup> respondent is entitled to file and maintain the suit to declare the said collusive decree obtained in OS 48/2008 on the file of Subordinate Court, Mettur within three years from the date of knowledge of the said decree under section 58 of Limitation Act. Since the 1<sup>st</sup> respondent is not a party to the said suit the same will neither bind the 1<sup>st</sup> respondent nor the 1<sup>st</sup> respondent is bound to file the suit within three years from the date of decree. As such the suit in OS 59/2013 is not barred by limitation. The petitioner being lispendence purchaser without establishing the bonafide,

prudence and validity of his sale deed before this Court has no right or locus standi to file and maintain the petition to reject the plaint.

4. No oral and documentary evidences were placed on the side of petitioner. On the side of Respondents Ex.R1 to R3 were marked.

5. Whether this petition is liable to be allowed or not?

6. Heard both sides. Records perused. The learned petitioner counsel argued that the plaint in OS 48/2019 is manifestly vexatious and meritless. The 4<sup>th</sup> respondent/3<sup>rd</sup> defendant had executed a registered sale deed bearing doc. No.8009/2019 dated 16.10.2019 jointly in favour of the petitioner and 7<sup>th</sup> respondent/7<sup>th</sup> defendant for a valid consideration. The suit in OS No.48/2019 is dismissed for default on 14.08.2019 but the sale deed bearing doc. No. 8009/2019 was executed on 16.10.2019, the suit in OS.48/2019 was restored only on 23.04.2020. Therefore, the registered sale deed bearing doc. No.8009/2019 dated 16.10.2019 is not affected by doctrine of lispendens as alleged. Further the learned petitioner's counsel argued that the respondents 2 and 3/ defendants 1 and 2 are entered into a sale agreement doc. No.6874/2007 dated 22.10.2007 with the 4<sup>th</sup> respondent/3<sup>rd</sup> defendant in respect of the suit property. The name of the 4<sup>th</sup> respondent/3<sup>rd</sup> defendant name already mutated in the revenue records and issued patta . Further the 7<sup>th</sup> respondent /7<sup>th</sup> defendant also executed a registered sale deed doc. No.8091/2020 dated 29.08.2020 in respect of his undivided half share in favour of the petitioner. The petitioner is absolute and exclusive owner of the suit property. The 1<sup>st</sup> respondent/plaintiff is not entitled to get any share of the suit property. Therefore the suit is not maintainable and may be rejected.

7. The learned 1<sup>st</sup> respondent counsel argued that the 1<sup>st</sup> respondent being an unmarried daughter is a coparcener of joint family and also entitled to lawful equal moiety 1/2 shares in the suit property. The respondents 2 and 3 entered into a sale agreement on 22.10.2007 doc No. 6874/2008 with the 4<sup>th</sup> respondent in respect of the suit property. The 3<sup>rd</sup> respondent has no right in respect of the suit property. The suit property being treated and enjoyed by the 1<sup>st</sup> and 2<sup>nd</sup> respondent as joint family property and the 1<sup>st</sup> respondent is being coparcener is entitled to file the suit for partition. The 2<sup>nd</sup> respondent has no absolute right or *locus standi* to enter into sale agreement in respect of the suit property with the 4<sup>th</sup> respondent. The 4<sup>th</sup> respondent executed a sale deed in favour of the petitioner and 7<sup>th</sup> respondent on 16.10.2019 in doc No.8009/2019. The petitioner being *lis pendence* purchaser and he has no right or *locus standi* to file this petition. Therefore, this petition is no merit and may be dismissed.

8. Considering the facts of the petition stated that the suit property originally belongs to one Kandayammal by means of registered sale deed doc. No.94/1963 dated 24.01.1963, it was her self acquired property and she enjoyed absolute owner, thereafter she died intestate leaving behind her legal heirs Kandasamy, Kumaravel, Palanivel, Perumal to succeed her estate. The registered partition took place in the family of the 2<sup>nd</sup> respondent and his brothers are 17.08.1998 under the doc No.1777/1998 of SRO Omalur. The suit property is neither ancestral property nor joint family property of the 1<sup>st</sup> respondent/plaintiff as alleged. Even otherwise no female heir can be a member of coparcener. Therefore, the plaint under no cause of action to institute the above suit. Therefore, the above suit is liable to be rejected for the non disclosure of cause of action.

9. This court perused the plaint averments that the suit properties are the undivided ancestral properties of the plaintiff and the defendants 1 and 2 and there was a registered partition deed doc No.1777/1998 dated 17.08.1998 between the 1<sup>st</sup> defendant and his brothers. In the family partition B schedule property mentioned in the partition deed was allotted to 2<sup>nd</sup> respondent /1st defendant. The plaintiff is in joint possession and enjoyment in the suit properties along with the defendants 1 and 2 . The plaintiff is having half share in the suit properties and also suit filed for 2 equal shares in the suit properties and in that one share allotted to the plaintiff considering all the rights.

10. From the petition, the petitioner stating that suit property belongs to one Kandaymmal she was purchased in the year of 1963. After the death of the said Kandayammal, that the legal heirs of the Kandayammal have been partitioned in the suit property in the year of 1998 in which the B schedule property allotted to the 1<sup>st</sup> defendant / 2<sup>nd</sup> respondent herein, after that the 2<sup>nd</sup> respondent/1st defendant has executed a sale deed in favour of the other respondents. Now, the petitioner was purchased the suit property and the petitioner stated that he is a absolute owner of the suit property. The 1<sup>st</sup> respondent has no right in the suit property because of the suit property belongs to 2<sup>nd</sup> respondent / 1<sup>st</sup> defendant. The 1<sup>st</sup> respondent is not a coparcener in the suit property and also she is not entitled the equal share in the suit property.

11. The 1<sup>st</sup> respondent has taken the plea in this petition the suit property absolutely belonged to the joint family property. The 2<sup>nd</sup> respondent/ 1st defendant also admitted in the earlier sale agreement dated 22.10.2007. மேற்படி கிரய காலத்தின் போது நம்பில் 1, 2 லக்கமிட்டவர்களின் குமார்த்தி சுமதியை கிரய காலத்தின் போது சம்மந்தப்பட்ட கிரய அலுவலகத்திற்கு அழைத்து வந்து

கிரயத்தை பூர்த்தி செய்து கொடுக்க வேண்டியது என ஆவணம் வாசகம் கண்டுள்ளது. Thereafter, the 4<sup>th</sup> respondent/3<sup>rd</sup> defendant had filed in a suit in OS 48/2008 before the Subordinate Judge, Mettur against the Respondents 2 and 3/Defendants 1 and 2. Based on the above said sale agreement dated 22.10.2007 and obtained a ex parte decree on 14.08.2008. Further, the 3<sup>rd</sup> defendant was executed a registered sale deed bearing Doc No. 8009/2019 dated 16.10.2019 jointly to the petitioner and in favour of the 7<sup>th</sup> respondent / 7<sup>th</sup> defendant for a valid consideration. Furthermore, the 7<sup>th</sup> respondent / 7<sup>th</sup> defendant has executed a registered sale deed bearing Doc No. 8091/2020 dated 29.08.2020 in favour of the petitioner. The petitioner also stating that he is absolute and exclusive owner of the suit property and also mutated the revenue records.

12. The learned 1<sup>st</sup> respondent counsel argued that the suit property belongs to joint family properties of the 1<sup>st</sup> respondent/plaintiff and her parents of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The sale agreement dated 22.10.2007 it shows that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have clearly admitted. The recitals mentioned in the deed as follows: "மேற்படி கிரய காலத்தின் போது நம்மில் 1, 2 லக்கமிட்டவர்களின் குமாரத்தி சுமதியை கிரய காலத்தின் போது சம்மந்தப்பட்ட கிரய அலுவலகத்திற்கு அழைத்து வந்து கிரயத்தை பூர்த்தி செய்து கொடுக்க வேண்டியது." Therefore, only question has to be decided that the suit property belongs to separate property or joint family property. The plaint averments entirely that the suit property as a joint family property and the 1<sup>st</sup> respondent/ plaintiff is entitled half share in the suit schedule property. But, the petitioner/7<sup>th</sup> defendant who was a subsequent purchaser of the suit property and he is stating that the suit property is not a joint family property only belonged to the 1<sup>st</sup> and 2<sup>nd</sup> defendant. The petitioner was purchased the suit property pending in the above suit.

13. In the circumstance, the 2<sup>nd</sup> and 3<sup>rd</sup> respondent/D1 , D2 are not filed any counter in this petition. The petitioner is a subsequent purchaser and he only stated that the suit property is not a joint family property. The petition and counter reveals that the 1<sup>st</sup> and 2<sup>nd</sup> defendants and 4<sup>th</sup> respondent/3<sup>rd</sup> defendant have entered in a sale agreement dated 22.10.2007. In based on the above sale agreement dated 22.10.2007 that the 4<sup>th</sup> respondent/3<sup>rd</sup> defendant has filed the suit against the 1<sup>st</sup> and 2<sup>nd</sup> defendant in OS 48/2008 before the subordinate Court at Mettur. After that the 4<sup>th</sup> respondent has obtained the decree and executed the sale deed in favour of the petitioner and 7<sup>th</sup> respondent. Subsequently the petitioner was purchased the suit property from the 7<sup>th</sup> respondent. The 1<sup>st</sup> respondent stated that she is not party in the suit proceedings in OS.No.48/2008 and the decree was passed in that suit will not bind her. This court considered that the respondents were executed the above sale deeds all pending in the above suit in OS 59/2013 on the file of Subordinate Court, Mettur. Thereafter the above suit was transferred to this Court and renumbered as OS.No. 48/2019.

14. In the circumstance, considering the facts of the petition, the suit property is a joint family property or separate property of the 2<sup>nd</sup> respondent/1<sup>st</sup> defendant which can be decided only after the trial. Hence, this petition is there is no merit and deserves to be dismissed.

In the result the petition is dismissed. No costs.

Order dictated to the Steno-typist, typed by her directly, corrected and pronounced by me in the Open Court, this the 12<sup>th</sup> day of August 2022.

Sd./- Gnana Balakrishnan  
Subordinate Judge,  
Omalur.

Petitioner side witnesses and exhibits: Nil

Respondents side witnesses : Nil

Respondents side Exhibits:

- Ex.R1 - 13.09.2001 - Sale deed in favor of Rajendran – certified copy  
Ex.R2 - 08.02.1999 - Partition deed – certified copy  
Ex.R3 - 12.07.2002 - Sale deed in favor of Rajendran – certified copy

Sd./- Gnana Balakrishnan  
Subordinate Judge,  
Omalur.



