

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, TIRUPPUR.

Present : Thiru.K.R.Kannan, B.A., B.L.,

Principal District Munsif, Tiruppur.

(J.O.CODE : TN01220)

Tuesday the 18th day of June 2024.

I.A.No.38/2024 in O.S.No.217/2020

Siva Kumar.

... Petitioner/1st Defendant

/Versus/

1. Suganthi.

2. Prem.

... Respondents/Plaintiffs

This Petition coming on 14.06.2024 for final hearing before me in the presence of Thiru.A.Chinnasamy B.A., B.L., Advocate for Petitioner/1st Defendant and the respondent failed to file counter. On perusal of available records, this court passed the following:

ORDER

This petitioner who is the 1st Defendant filed this petition Under Order VII Rule 11(a) and r/w 151 of C.P.C, and asked this court to reject the plaint as prayed for in the petition.

2. The averments stated in the affidavit are as follows :

i) The petitioner herein and the 1st defendant in the above suit. The petitioner submit that the respondents herein had filed the suit for bare injunction against the petitioner and others.

ii) The petitioner submit that the respondents herein had filed the suit for bare injunction falsely claiming that one Palanisamy, S/o.Koundappa Gounder had executed a power of attorney deed infavour of the respondents on 15.09.2020. The petitioner submit that the respondents had filed the above suit for bare injunction that

as per the alleged power of attorney deed, the respondents are in peaceful possession and enjoyment of the properties against the petitioner and two others without impleading their Principal as a party to the suit. The petitioner submit that the respondents as a power of attorney agent cannot file the suit representing their principal without impleading the principal as a party to the suit. The petitioner submit that mere power of attorney deed will not create any right title or interest over the properties mentioned in the power of attorney deed. The petitioner submit that based on the alleged power of attorney deed, the respondents cannot file this suit for bare injunction as that they are in peaceful possession and enjoyment of the suit properties. The petitioner submit that the suit as framed is not maintainable.

iii) The petitioner submit that the respondents/plaintiffs principal who is the real owner of the property is not a party to the suit. Without impleading the principal to the suit as a party, the power agent alone cannot maintain any suit on his own. The petitioner submit that the alleged power of attorney deed is only a creation agency whereby the grantor authorizes the grantee to do the acts specific therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him. The petitioner submit that the respondents/plaintiffs had no personal interest in the suit property. The petitioner submit that the power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantor to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him.

iv) The petitioner submit that the allegations made in the plaint and the documents mentioned in the plaint does not disclose any cause of action and it appears the allegations in the plaint and the document produced along with the plaint does not disclose any cause of action for the suit.

v) It is therefore to rejection of the plaint does not disclose any cause of action and asked this court to allow the petition as prayed for with cost.

2. Though this court has granted sufficient time to the Respondent/Plaintiff for filing the objections by way of counter, but the Respondent/Plaintiff failed to file counter. On, the side of the Petitioner/1st defendant no witness was examined and no documents were marked.

3. Now the Point for consideration is whether this petition has to be allowed or not?

4. Point for Consideration :-

i) The petitioner here in is the 1st defendant in the suit. The respondents are the plaintiffs in the suit. The parties are discussed in this order as pleaded in the plaint. The averments stated in the affidavit and the arguments submitted by the learned 1st defendant counsel were duly considered.

ii) The plaintiff filed the suit on 21.09.2020 for the relief of Permanent Injunction against the defendants 1 to 3 not to disturb the peaceful possession and enjoyment of the plaintiff in the suit property. In the suit till today summons to the defendants No.2 and 3 was not served. The 1st defendant appeared through counsel on 26.06.2023, after, gaining time for filing Written Statement till 07.06.2024, then the 1st Defendant filed this application to reject the plaint on the ground there is no cause of action for the suit.

iii) It is settled law as per Order VII Rule 11 (d), a plaint can be rejected on the plain reading of the plaint, if the plaint does not disclose any cause of action or the reliefs claimed in the plaint is barred by any law. On perusal, of the plaint the plaintiffs had pleaded as per the power of attorney document executed by one K.Palanisamy, when they tried to measure the suit property they were prevented by the defendants. As, per the pleadings in the plaint the 1st Defendant is residing near by the suit property. So, the plaintiffs filed the suit for the relief of Permanent Injunction and pleaded a detailed cause of action for the suit in para No.6 of the plaint.

iv) As, per the pleadings in para no.6 of the plaint, the plaintiff has pleaded as per the power of attorney document executed by one K.Palanisamy on 15.09.2020 and

on the date of threat made by the defendants on 09.09.2020 and the suit property is in possession of the K.Palanisamy as the cause of action for the suit. Whether, the said cause of action is a true one, whether the said K.Palanisamy is in possession over the suit property or the plaintiffs are in possession over the suit property as per the power of attorney deed executed by the said K.Palanisamy and whether the defendants had made an attempt to disturb the peaceful possession on 09.09.2020 is a true one or not can not be decided at this stage without perusing the documents and evidence. All the above facts can be decided only during the time of trial.

v) On perusal, of bare reading of the plaint this court find there is a cause of action for the suit and the relief claimed by the plaintiffs are not barred by any law. The reasons pleaded by the 1st Defendant in this petition to reject the plaint are all the defense to be raised by way of written statement in the suit. So, as per the discussions made above this court hereby comes to a conclusion there is a cause of action for the suit and the reliefs claimed in the plaint are not barred by any law. Since, there is no merits in this application and the same is here by dismissed without cost.

5. In the result, this petition is dismissed without cost.

Dictated to the Steno-Typist, directly and typed by her in court computer and corrected and pronounced by me in the open court, on this the 18th day of June 2024.

Principal District Munsif,
Tiruppur.

LIST OF WITNESSES & DOCUMENTS

On the side of Petitioner Witnesses & Documents : NIL

On the side of Respondents Witnesses & Documents : NIL

Principal District Munsif,
Tiruppur.