

IN THE COURT OF THE DISTRICT MUNSIF, AVINASHI

PRESENT: SELVI. M. AFZAL FATHIMA,

B.COM., B.L(Hons), L.L.M.,

DISTRICT MUNSIF, AVINASHI

Thursday, the 31st day of March, 2022

I.A.No.609/2021

O.S.No.77/2011

1. Poovathal
2. Saraswathy
3. Mayangathal
4. Govindasamy
5. P.P.Santhi

..Petitioner/Defendant No. 6 to 10 & 12

..Vs..

Pechiammal

..Respondent/Plaintiff

This petition is coming on 18.03.2022 for final hearing before me in the presence of Thiru.M/s.Karthick & Associates, Mr.S.Karthick, B.A., B.L., Advocate for the Petitioners and Thiru.A.Arumugam, B.L., Advocate for the Respondent and this petition having stood over under this Court's consideration and upon perusing the records and after hearing the arguments, and this Court passed the following

ORDER

The petitioner has filed this petition under Section 151 of CPC.

2) The summary of the averments in the affidavit filed by the petitioner is as follows:

The petitioners submit that, they are the defendants 6 to 10 and 12 in the suit and the suit has been filed against them seeking for the relief of Partition. They submit that, the suit is currently awaiting the cross examination of Pw1. They submit that, in the current suit, the petitioners were not served Batta and the plaintiff to this suit have purposely not sent notice and due to the act of

the plaintiff, the suit was dismissed against the petitioners on 20.06.2016. The petitioners submit that, the Plaintiff/Respondent has already relinquished their share to these petitioners and submit that, the plaintiff has no right or interest over the suit property. They submit that, they did not receive any Court summon and any point of time and have suppressed several deeds and have purposefully not paid Batta with a malafide intention without giving a chance for them to file their written statement, documents and their denial. Thus they pray that, this petition may be allowed.

3) The summary of the averments in the Counter statement filed by the Respondent is as follows:-

In the counter, the respondents submit that, the petition is not maintainable. They submit that, the contentions of the petitioner that suit was dismissed against them on 20.06.2016 for not serving notice is denied. The suit for partition was filed during 2011 and the 2nd and 3rd defendants were served, the 6th defendant(1st petitioner) was served and was set exparte due to not appearance on 08.07.2011. They submit that, this petition has been filed by the petitioners with an intention drag on the proceedings of the suit at this current stage, as the suit is under going trial. They pray that this petition has to be dismissed as it is devoid of merits.

4) The petitioner and Respondent side, no oral evidence adduced and documentary evidence nil.

5) Both side arguments heard and records are carefully perused.

6) THE POINT FOR CONSIDERATION IN THIS PETITION IS THAT

WHETHER THIS PETITION IS DESERVES TO BE ALLOWED, OR NOT?

1. In the petition, the petitioners submit that, they have to be added as party in the suit as the plaintiffs in the suit, the respondent has not filed Batta and notice was not sent to them and the plaintiff purposefully did not serve notice and so the petitioners were dismissed from the suit. On perusal of the suit proceedings, it is found that, the 1st petitioner Poovathal was set exparte on 08.07.2011 as she did not appear before the Court on receipt of summons. The 4th petitioner Govindasamy who is the 9th defendant in this suit was also set exparte on the same date due to non appearance. These two petitioners have been properly served summons but they were not present on the date of hearing and so it was set exparte against them.

2. With regard to the 2nd petitioner and 3rd petitioner on 20.07.2016, the suit was dismissed against them as the plaintiff was called absent and for non payment of Batta to these defendants.

The 5th petitioner was proposed to the impleaded as party in I.A.1178/2018 and in that said petition, the petition was dismissed for default as “ *Batta for proposed party not paid*”.

3. So, it is found that, the petitioners 1 and 4 were served summons and they did not appear before the Court. The petitioners’ contention that all five of them were not served and the plaintiff did not serve notice purposefully is not completely true. Only the petitioners 2, 3 and 5 have not been served

notice and due to the default of payment of Batta, the suit was dismissed against them.

4. Finally it is held that, this petition is partly allowed in favour of the petitioners 2, 3 and 5 alone and they are permitted to contest the suit as defendants and prove their case. As, the defendants can not be held responsible for the non payment of Batta by the plaintiff and for the default of the plaintiff, the suit cannot be dismissed against them. Thus, the Court opines that, only the 2, 3 and 5 petitioners are permitted and the petition is allowed only in favour of these three petitioners. With regard to the 1 and 4 petitioners, they both have been served and they have been set exparte so their prayer to contest the suit and to set aside the exparte order passed against them cannot be done in this petition and the petition dismissed against 1st and 4th petitioners.

IN THE RESULT, petition is partly allowed in favour of 2, 3, and 5 petitioners and dismissed against 1st and 4th petitioners and no costs.

Dictated to the Steno-Typist and typed by her in Court Computer directly, corrected and pronounced by me in Open Court on the 31st day of March, 2022.

S/d-M.Afzal Fathima,
DISTRICT MUNSIF,
AVINASHI.

LIST OF EXHIBITS MARKED : NIL

LIST OF WITNESS EXAMINED : NIL

S/d-M.Afzal Fathima,
DISTRICT MUNSIF,
AVINASHI.