

In the Court of Additional District Munsif, Lalgudi

PRESENT: Selvi.M. Abinaya, B.A.,B.L.,
Additional District Munsif,
Lalgudi.

Tuesday the 29th day of October 2024.

E.A.No.36/2005 in E.P.No.84/2004 in O.S.No.866/1999

Fabiyola Ganam

....Claim Petitioner

/Vs/

1. Pitchai Muthu (Died)*

....Respondent/Plaintiff

2. Michael

....Respondent/Defendant

3. Therasa Mary *(Died)

*4. Arul Dass

*5. Carol Patric Raj

(Amended as per order in E.A.No.14/2017 dated 06.10.2017)

(Amended as per order in E.A.No.1/2022 dated 16.09.2022)

....Respondents/Plaintiffs

This petition filed by the petitioners against the respondents coming on 26.09.2024 this day before me for final hearing in the presence of Thiru. V.Ramanujam Advocate for the petitioner and of Thiru.K.Jayaraman Advocate for the 4, 5th respondents and 2nd Respondent called absent set exparte and 1, 3rd respondents died and being stood over till this day for consideration, today this court delivered the following...

ORDER

1. This petition is filed Under Order 21 Rule 97 and Section 151 of C.P.C., to allow the objections and dismiss the execution petition as not maintainable as against the claim petitioner with costs.

2. THE GIST OF THE AFFIDAVIT FILED BY THE 3rd PARTY/CLAIM PETITIONER IS AS FOLLOWS:

(i) The claim petitioner is the absolute owner of only 0.06 cents out of the suit property which is a vacant site used for the purpose of Haystacks, fire woods, tying cattle and putting wastages and bamboos. The suit property is surrounded by fence with iron barbecue. The suit property was purchased by the claim petitioner's father Savarimuthu in the year 1989. The claim petitioner's father was in possession and enjoyment and his name was entered in the Patta pass book. After the death of the claim petitioner's father, his wife Alangara Mary was in possession and enjoyment of the suit property. The suit property is derived to the claim petitioner by a settlement deed executed and registered in Mannachanallur Registrar office by her mother Alangar Mary on 12.06.2002 being out of love and affection with the claim petitioner. From the date of settlement deed onwards, the claim petitioner is in possession and enjoyment of the suit property by using the same as stated above. But the name in the patta is still in claim petitioner's father name i.e., Savarimuthu.

(ii) The respondents is having house site on the south of the claim petitioner's suit property. The respondents have approached the claim petitioner for purchase of the same in favor of them from the claim petitioner repeatedly. But the claim petitioner refused to sell the same to anybody else because she has no other site to build a separate house for her and also used as Kalam, haystacks, etc., The respondents are tying their cattles on the border stone of the claim petitioner and also they are trying to build a wall to cover the entire area of the claim petitioner's site.

There the claim petitioner questioned the same immediately. The respondents were using parliamentary words and threatening the claim petitioner with the help of Hooligans. The same has been resisted by the claim petitioner with the help of her relations.

(iii) But day in and day out, the respondents are threatening the claim petitioner with the help of gundass and hooligans. Under these circumstances, the 1st respondent Pitchaimuthu filed a false suit before the Hon'ble sub court, Tiruchirappalli along with his younger paternal uncle's grandson. The suit number is 866/1999. In this plaint, he stated that from their ancestors property, the 1st respondent claiming $\frac{3}{4}$ of the share and leaving $\frac{1}{4}$ of the share of the 2nd respondent. This is accepted by the 2nd respondent. This is explicitly proved that by seeing the plaint and written statement of the 2nd respondent's power agent. With the respondents Pitchaimuthu and Michael concealed the facts of the claim petitioner's possession and enjoyment of the suit property before the Hon'ble Sub Court, Tiruchirappalli. Not even including the claim petitioner as defendant in the suit. The respondents have given false information to the court to get a false and fraudulent decree and judgment. The further based on the decree and judgment the 1st respondent has filed E.P before this Hon'ble Court. The E.P number is 84/2004, so the claim petitioner prays that this Hon'ble court may be pleased not to pass any order for eviction. The respondents are not eligible and have no right to claim the claim petitioner's property.

(iv) During pendency of the claim application, the 1st respondent died on

29.11.2015 leaving behind his Wife Theresa Mary, Sons Arul Dass and Carol Patrick Raj as his legal heirs. They are proper and necessary parties in the proceedings. By order dated 15.02.2017 in E.A.No.7/2016, the 3 to 5 respondents have been ordered to be impleaded as the respondents/LRs of plaintiff in the claim application. Consequent to that the claim application has been suitably amended as per order in E.A.No.14/2017 dated 06.10.2017.

(v) As per order in E.A.No.1/2022 dated 16.09.2022, after the name of 3rd respondent added the word (died)**, her heirs already on record, the claimant objections will be applicable to 1st and 3rd respondent heirs.

3. THE GIST OF THE COUNTER FILED BY THE 1st RESPONDENT IS AS FOLLOWS: (4th and 5th respondents adopted the same)

(i) The above claim petition filed by the claim petitioner is not maintainable in law and on facts. The above claim petition is nothing but after thought with a view to prevent the decree holder from executing the decree obtained in the above suit. It is a settled principle of law that the executing court cannot go behind the decree. Preliminary decree was passed in the above suit for partition after contest as early as on 14.08.2000. After that I.A.No.108/2002 was filed for passing final decree in the above suit for partition and the learned advocate commissioner was appointed and inspected the suit property even on 20.04.2002 and the filed report with plan. The claim petitioner/3rd party was aware of all these things happened in the above suit. The petitioner/3rd party if really got any right in the property ought to have raised his

little finger even at that stage. But she kept mum after knowing that the final decree proceedings are goin on. After the inspection by the advocate commissioner, the 3rd party/claim petitioner has created the alleged settlement deed with an oblique motive to prevent the decree holder from getting the delivery of possession. As per the final decree passed in the above suit, neither Savarimuthu nor Alangarmary were in possession and enjoyment of the suit property. They had neither title nor possession. Under such circumstances, the petitioner/3rd party also has neither title nor possession.

(ii) Originally the suit property is the ancestral property of this respondent/plaintiff of which his grandfather got under oral partition between himself and other sharers. The sharers got property on the north of the suit property allotted to this respondent/plaintiff's grand father. The other sharers sold the property to 3rd party. This respondents grandfather was in possession and enjoyment of the suit property. He died leaving behind his wife Rathinam Ammal and four sons Pitchai, Arulappan, Micheal and Kulandhai who were minors and represented by their mother and guardian Rathinam Ammal. The minor attained majority and after that Rathinam Ammal died. Even during the life time of four brothers Pitchaimuthu and Kuzhandhai relinquished their share in favour of Arulappan, Pitchaimuthu and Kuzhandhai who died issuess. Arulappan died leaving behind this respondent being the only son to succeed. Micheal died leaving behind one Arokiyam being the only son who died leaving behind one Arokiyam being the only son who died leaving behind the defendant being the only son.

(iii) Under such circumstances the plaintiff is entitled to $\frac{3}{4}$ share and the defendant is entitled to $\frac{1}{4}$ th share. This respondent has been demanding partition for which the 2nd respondent evaded to partition the property. Under such circumstances the above suit was filed for partition and preliminary decree was passed and in pursuance of the same final decree was also passed and the said decree is sought to be executed. Under such circumstances, the petitioner/3rd party has no right whatsoever. The decree sought to be executed is after much contest. This respondent is entitled to execute the decree and the same cannot be prevented in any way. The claim petition filed by the claim petitioner is most frivolous and vexatious. The claim petitioner is not entitled to the relief prayed for.

4. THE GIST OF THE REPLY COUNTER FILED BY THE 3rd PARTY/CLAIM PETITIONER IS AS FOLLOWS:

(i) Firstly the petition mentioned property absolutely belonged to one Singarayar, S/o. Anthony Muthu. Subsequently, the father of the petitioner namely Savarimuthu orally purchased the same from Singarayar. During that time and before the petition mentioned properties and other properties were classified as Natham Puramboke. From the year 1984 to 1989, the Tamilnadu Government made survey and granted Natham patta to the occupier. At the time, the father of the petitioner/claimant namely Savarimuthu was in possession over the petition mentioned properties, hence the Government granted Natham Patta in favour of the Savarimuthu. In the year 1999 onwards Natham re survey held over the suit village,

at the time it was marked as Natham S.F.No.314/22H, the 1st respondent/plaintiff/decreed holder suppressed the entire above facts and conclusively obtained the decrees, from the Hon'ble Sub Court.

(ii) The 1st respondent/plaintiff counsel took personal interest in the trial side he wantonly nominated his junior counsel for the 2nd respondent/defendant. Hence, all of them purported alleged contest decrees from the trial side, under which they falsely filed this main E.P. The main aim of the 1st respondent/decreed holder is to encroach the petitioner's property under the help of collusive decree. In order to get collusive decree from the trial side, the 1st respondent has given wrong four boundaries in the plaint, if really the plaintiff is honest, he ought to have furnished new survey number in the trial side, without furnished the same he try to encroach petitioner/claimant property under the alleged decree. Never advocate commissioner inspect petition mentioned property at any point of time, particularly on 20.04.2002. If the advocate commissioner really inspected the suit property with the help of the surveyor, he will denote the new survey number in his plan. The petitioner only known the collusive partition suit after the arrival of Amin came to her property.

(iii) The decree obtained by the plaintiff by way of fraudulent manner and the same is in executable under law. The respondents and their predecessor have no inch of right over the petition mentioned property. The respondents have much more property over the suit village, but they only filed alleged partition regarding the petitioner's property. The petition mentioned property market worth is very low, during the time of purchase of the petitioner father. Hence the same was purchased by

him orally. Subsequently, he was granted Natham Patta regarding the same. Without worked out efficiencies remedy by the respondents, both collusively obtained decree, under which the 1st respondent/plaintiff tried to capture the possession of the property from the petitioner/claimant.

5. **Point for consideration:** Whether the petition filed by the petitioner under Order 21 Rule 97 and Section 151 of C.P.C., is to be allowed or not?

6. **Determination and Decision:** Heard both sides. This petition has been filed by the petitioner/ 3rd party under Order 21 Rule 97(1) of CPC to allow the objections of the claim petitioner and dismiss the execution petition as not maintainable as against the claim petitioner.

7. This court perused the petition, affidavit of the petitioner/ 3rd party, counter statement of the 1st respondent/plaintiff adopted by the 4th and 5th respondent and the case records and the arguments put forth by the counsel for the petitioner and respondents side are considered.

8. The case of the petitioner is that the 1st respondent/plaintiff and the 2nd respondent / defendant has colluded and fraudulently obtained a collusive partition decree by including the property of the claim petitioner and has filed the Execution petition for delivery of possession of the 1st respondent's share. Per contra, the 2nd

respondent denied the allegations of the claim petitioner and contended that the claim petitioner has fraudulently executed a settlement deed after knowing about the partition decree and claiming untenable right by filing this petition only in order to delay the execution proceedings.

9. It is pertinent to state here that, as per the law, the person who desires any court to give order or judgment as to any right or liability dependent on the existence of facts, which he asserts, must prove those facts exists. Further, when a person is bound to prove the existence of any fact, it is said that the burden of prove is lies upon that person. As such, in the present case, the initial burden is upon the petitioner/ 3rd party to prove her case.

10. Whereas, in the present case, in order to prove the petitioner's case, the petitioner namely Fabiyola Ganam, has been examined as PW1 and exhibited nine documents as Ex.P1 to Ex.P9. The Ex.P1 is the survey sketch which shows the location of the petitioner's property. The Ex.P2 is the settlement deed dated 12.06.2002 in favor of the petitioner in Document No. 1243/2002 in respect of S.F.No. 314/22H measuring an extent of 0.06 cents. Ex P3 is the A register in respect of the S.F. No.314/22 before Natham subdivision in the joint names of Arulappan and 6 others i.e., Arulappan, Micheal, Kulandhai, Gnanaprakasam, Sandhiyagu, Savarimuthu and Anthony. The Ex.P4 is the Natham adangal in respect of S.F.No. 314/22H in favor of Savarimuthu who is the petitioner's father.

11. The legal notice dated 06.12.2010 sent to the 2nd respondent Micheal has been marked as Ex. P5. The Acknowledgment card for the receipt of the above said notice by the 2nd respondent Micheal has been marked as Ex. P6. Further the reply sent by the 2nd respondent Micheal through his advocate dated 14.12.2010 has been marked as Ex.P7. Ex. P8 is the caveat notice in caveat O.P.No.330/2010 filed by the 2nd respondent Micheal against the petitioner Fabiyola Ganam. Ex.P9 is the plaint in O.S.No. 383/2022 filed by the 2nd respondent Micheal against the petitioner Fabiyola Ganam.

12. Further the petitioner in order to prove her case has examined one individual witness namely Kuzhanthaitherasu as Pw2 and the Pw2 deposed in consonance with the case of petitioner. During the cross examination of Pw2, the Pw2 deposed that the respondents Pitchaimuthu and Micheal have property to the south of the suit property. Further the pw2 deposed that property of the petitioners and the respondents are different properties. The relevant portion of the evidence of pw2 is extracted hereunder:

"எதிர்மனுதாரர் பிச்சைமுத்து மற்றும் மைக்கேல் ஆகியோர்களுக்கு மனுச் சொத்திற்கு தென்புறத்தில் சொத்து உள்ளது. மனுதாரர் பபியோலாஞானம் சொத்து வேறு. அதுபோல் எதிர்மனுதாரர் சொத்து வேறு என்றால் சரிதான்."

13. Furthermore, the petitioner summoned one individual witness namely Joseph who is also the attestor of the settlement deed Ex.P2 and examined him as Pw3 . The Pw3 deposed that the petition mentioned property was purchased by the petitioner's father from Singaram orally. Further the petitioner's mother inherited the petition mentioned property and settled the same in favor of the petitioners. Furthermore the Pw3 deposed the relating to the execution of the settlement deed. On perusal of the cross examination of Pw3, it is evident that the Pw3 deposed without knowing anything about the petition mentioned in the property.

14. During the pendency of the petition, the 1st respondent died and his legal heirs are impleaded as 3 to 5 respondents. Further during the pendency of the petition, the 3rd respondent died and the legal heirs of the 3rd defendants were already on record. Sufficient time was given to the 2nd respondent to file counter but the 2nd respondent failed to do so and hence the 2nd respondent was called absent and set exparte. The other respondents did not choose to let in any evidence in support of their case.

15. On conjoint very careful perusal of above said documents Ex.P1 to Ex.P9, the Ex.P3, the A register in the joint names and the natham adangal Ex.P4 in the name of the petitioner's father Savarimuthu shows that the S.F.No. 314/22 was subsequently subdivided under the natham survey and the petitioner' father name was mentioned in the S.F.No.314/22H. Further the S.F.No.314/22H was inherited by the

petitioner's mother and the same was settled in favor of the petitioner by her mother Alangaramary through settlement deed dated 12.06.2002 i.e., Ex.P2. Furthermore, the Ex.P1, FMB sketch establishes the location of the claim petition mentioned property.

16. The Ex.P1 to Ex.P9 neither establishes that the claim mentioned property is included in the property mentioning in the main Execution petition nor establishes the 1st respondent/ plaintiff colluded with 2nd respondent/defendant and taken steps to take delivery of possession of claim petition mentioned property. Further it is also pertinent to note that in the main Execution petition, the property in the name of the petitioner's predecessor in title who is none other than the petitioner's father has been mentioned as one of the four boundaries. Even though the petitioner mentioned that the four boundaries given by the 1st respondent/plaintiff is wrong, the plaintiff failed to prove the same.

17. Furthermore, in Ex.P9 which is the plaint in O.S.No.383/2022, the 2nd respondent has categorically admitted that the property in S.F.No.314/22H belongs to the petitioner Fabiyola Ganam. Even though the 2nd respondent admitted that the property in S.F.No.314/22H which is the claim petition mentioned property belongs to the petitioner, the duty is cast upon the petitioner to prove that the S.F.No.314/22H is comprised in the property in the main Execution petition. Further it is also pertinent to note that the petitioner side witness Pw2 in his evidence deposed that the property of the petitioner and respondents are different properties.

18. In these circumstances, on considering the above detailed discussion, this court finds that the petitioner has miserably failed to establish that the claim petition mentioned property is comprised in the property mentioned in the main Execution petition. Further as stated supra, the petitioner not established the fact, such as, the 1st respondent/ plaintiff colluded with 2nd respondent/ defendant and taken steps to take delivery of possession of the claim petition mentioned property.

19. On considering the above detailed discussion as well as facts and circumstances of the case, this court comes to the conclusion that there is no merit in the present petition and as such the petition is liable to be dismissed. Further, on considering the facts and circumstances of the case and nature of the petition, there is no order with respect to the costs.

In result, this petition is dismissed. No costs.

This order dictated by me to the steno typist transcript typed by her, corrected and pronounced by me in the open court this 29th day of October 2024.

Sd/-M.Abinaya,
Additional District Munsif,
Lalgudi.

Petitioner side witness :-

Pw.1 - M.Fabiyola Ganam – (Petitioner)

Pw.2 – Kuzhanthaitherasu - (3rd party)

Pw.3 – Joseph (3rd Party)

Petitioner side evidence :-

S.I.No.	Date	Particulars
Ex.P1	-	Survey sketch – Certified copy
Ex.P2	12.06.2002	Settlement deed – Certified copy
Ex.P3	-	A register in respect of the S.F.No.314/22 – True copy
Ex.P4	-	Natham Adangal in respect of S.F.No. 314/22H – True copy
Ex.P5	06.12.2010	Legal notice sent to the respondent Micheal – Office copy
Ex.P6	-	Acknowledgment card for the receipt - Original
Ex.P7	14.12.2010	Reply sent by the respondent Micheal through his advocate – Office copy
Ex.P8	-	Caveat notice in caveat O.P.No.330/2010 filed by the 2 nd respondent Micheal against the petitioner Fabiyola Ganam – Office copy
Ex.P9	-	Plaint in O.S.No. 383/2022 filed by the respondent Micheal against the petitioner Fabiyola Ganam – Office copy

Respondents side witness and evidence - Nil

Sd/-M.Abinaya,
Additional District Munsif,
Lalgudi.

/True copy/

Additional District Munsif,
Lalgudi.