

In the Court of Additional District Munsif, Lalgudi

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

Monday the 31th day of July 2023
I.A.No.5/2022 in O.S.No.248/2022

1. N.Revathi
2. P.Malathi

....Petitioners/Defendants

/Vs/

1. Jeeva
 2. Arun
 3. Minor. Jaysree
 4. Minor. Logitha
- Minors represented by
mother and guardian Jeeva

....Respondents/Plaintiffs

The petition filed by the petitioner against the respondents coming on 19.07.2023 this day before me for final hearing in the presence of Thiru. K.Sridhar Advocate for the Petitioners/Defendants and of Thiru.K.Vasanthan Advocate for the respondents/plaintiffs and having been stood over for consideration, till this day passes the following...

ORDER

1. This petition is filed Under Order 7 Rule 11 and Section 151 of C.P.C., to reject the plaint.

2. THE GIST OF THE AFFIDAVIT FILED BY THE PETITIONERS/DEFENDANTS IS AS FOLLOWS:

(i) The petitioners are the defendants in the original suit and the respondents/plaintiffs have filed this suit for permanent injunction restraining the petitioners/defendants from interfering with the respondent/plaintiff peaceful joint possession and enjoyment of the suit properties by putting up construction or otherwise. The respondents/plaintiffs admitted themselves as a Joint Property and

filed this vexatious suit. The respondents/plaintiffs in their plaint admitted in all the paragraphs petitioners/defendants are the Co-owners of the suit property. The respondents/plaintiffs admitted that the suit properties are not partitioned and the petitioners/defendants are Co-shares and Co-owners.

(ii) The petitioners stated that as a Co-owner and Co-sharer, the petitioners will be considered being in possession of every inch of land of the suit property. The respondents/plaintiffs as a Co-owner and Co-sharer are not entitled to permanent injunction restraining the petitioners/defendants as a Co-owner and Co-Sharer from exceeding their rights in the common property, absolutely and simply because the respondents/plaintiffs are also as Co-owner and Co-Sharer. The respondents/plaintiffs without permission of the petitioners/defendants as Co-owner and Co-Sharer attempted to do agricultural operation and created forged documents is against law. In this context the petitioners/defendants made a complaint before concerned Police Station on 07.07.2022 against respondents/plaintiffs. The C.S.R.No.is 589/2022 dated 07.07.2022 19.00 Hrs., Lalgudi Police Station, Trichy District. The petitioners stated that in order to avoid criminal proceedings such vexatious suit was filed by the respondents/defendants.

(iii) The cause of action arose on and from 14.07.2022 is false. On the same day enquiry was conducted before the Samayapuram Police Station. On 18.07.2022 the Inspector of Police Samayapuram forwarded the complaint to the Revenue Authorities for further action. All the Revenue records submitted by the respondents/plaintiffs revealed the suit properties belong to the petitioners/defendants as a Co-owner and Co-sharer. The cause of action of this suit is false and fraud. The petitioners stated that joint owner can't prevent another Co-owner from using portion of joint property by way of permanent injunction, held that once the suit property is not partitioned and the parties are Co-owner and Co-sharer. Each and every Co-owner and Co-sharer will be considered to be in possession of every inch of land. If and otherwise this petition is not allowed, the petitioner and other petitioners/defendants will be put to irreparable loss and hardship. Hence prays to allow this petition.

3. THE GIST OF THE COUNTER FILED BY THE RESPONDENTS IS AS FOLLOWS:

(i) All the allegations stated in the affidavit in support of the petition except those that are admitted herein are denied as false and incorrect and the petitioners are put to strict proof of the same. The suit is filed by the plaintiffs for the relief of permanent injunction restraining the defendants from in any way interfering with the plaintiffs joint possession and enjoyment of the suit property by putting up construction or otherwise. Joint possession is pleaded almost in all paragraphs in the plaint. Cause of action is also given. So one cannot disturb joint possession with the other that is the principle of which the suit is filed. In the affidavit filed in I.A.No.5/2022 the plaintiffs and the defendants are co-shares /co-owners in respect of the suit properties is admitted fact.

(ii) Under law of partition and co-ownership it is clearly stated that one co-owner may obtain order of interim injunction against another co-owner under certain circumstances. That one co-owner or co-sharer is not entitled to seek injunction against another co-owner is not a general rule or principle is prevalent and so the suit cannot be thrown out and the threshold. The suit has to be tried. Even if one co-owner is in possession and enjoyment of the land namely suit properties that this is got to be followed. There is treble issue to be tried. So the suit is to tried. The respondents/plaintiffs are entitled to the relief as prayed for in the suit. There is cause of action for the suit and the same is pleaded. The petitioners/defendants are not entitled to the relief as prayed for. Hence this petition may be dismissed with costs.

4. Point for consideration:

Whether the petition filed by the petitioners under Order 7 Rule 11 and Section 151 of CPC is to be allowed or not?

5. Discussion and Decision:

Heard both sides. The petitioners counsel stated that the respondents have filed

this suit for the relief of injunction and further the respondents in the plaint have admitted that the suit properties are not partitioned and these petitioners are co-owners in respect of the suit properties. The petitioners counsel contended that the joint owner cannot prevent another Co-owner from using portion of joint property by way of permanent injunction. Further the petitioners counsel stated that once the suit property is not partitioned and the parties are Co-owner and Co-sharer, each and every Co-owner and Co-sharer will be considered to be in possession of the property. The petitioners counsel stated that unless this petition is allowed, the petitioners will be put to irreparable loss and hardship and hence prays to allow this petition.

6. The respondents counsel raised objections to allow this petition, and stated that the averments stated in the petition are false and the petitioners are put to strict proof of the same. Further the respondents counsel contended that the plaint is disclosing a cause of action and only the non-disclosing of cause of action in plaint alone causes rejection of plaint. The respondents counsel stated that injunction cannot be granted against the co-owner or co-sharer is not a general rule and the plaint cannot be thrown at the threshold. Further the respondents counsel stated that there is issues to be tried in the suit and hence the plaint cannot be rejected. The respondents counsel stated that there is cause of action for the suit and an issue to be tried in the suit. Hence prays to dismiss the petition.

7. This court relies upon the decision of the Hon'ble Supreme court in **Gurudev Singh v. harvinder singh, 2022 LiveLaw(SC)963**. It was held that "Order VII Rule 11 – Rejection of Plaint – The case on behalf of the petitioner is that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a ground to reject the plaint at the threshold in exercise of powers under Order 7, Rule 11 CPC."

8. On considering the facts stated in the affidavit, petition, counter and on considering the submissions of both the counsels, this court finds that the petitioners

have not stated any valid grounds for the rejection of the plaint. The plaint cannot be rejected for the reason that no relief can be granted to the plaintiff. Further it is pertinent to note that the respondents/plaintiffs have filed the suit against the petitioners/defendants not to disturb their joint possession in respect of the suit properties. Furthermore in a petition to reject the plaint, the factors to be considered were only the plaint and the plaint documents. On perusal of the plaint and the plaint documents, this court finds that there is cause of action for the suit and there is no necessity to reject the plaint, and; hence this petition has to be dismissed.

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 31st day of July 2023.

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

Petitioners side witness and evidence - Nil

Respondents side witness and evidence – Nil

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