

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Tmt. V. Vannamalar, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.

Friday, the 26th day of July 2024.

IA No. 7 OF 2022
IN
O.S. NO.313 OF 2006

1. N.Shantha Kumari (Died)
2. P.V.L.Narayanan (Died)
3. S.Rajeswari
4. N.Sujatha

.....Petitioners/Plaintiffs

Versus

1. Radhakrishna Naidu
2. Rathinavalli (Died)
3. Ashok
4. Sathya Kumar
5. Premkumar
6. Suresh Babu
7. Malliga
8. Rajesh Babu

.....Respondents/Defendants

This petition came up before me on 23.07.2024 for final hearing in the presence of Mr.T.Susairaj, learned counsel for the petitioners/plaintiffs and Mr.G.Nanthagopal, learned counsel for the Respondents 1, 4 to 8 /defendants. The 3rd respondent has already been set exparte in suit and hence notice to him in this petition is dispensed with. Upon hearing the arguments made by the learned counsels for the petitioners and the respondents and on perusal of the material case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition has been filed under Order 7 Rule 11(b) of CPC to reject the counter claim filed by the respondents/defendants in the suit in OS.313 of 2006.

2. Brief averments of the affidavit filed by the petitioners are as follows:

2.1. The 4th petitioner submits this affidavit on her behalf and on behalf of the 3rd petitioner. The 4th petitioner submits that the respondents/defendants have made a counter claim in the suit seeking for the relief of declaration to declare the title of the defendants on the ground of adverse possession and for a consequential relief of injunction not to dispose the defendants from the suit properties in any manner.

2.2. The 4th petitioner further submits that the deceased 1st petitioner has purchased the suit property from her mother-in-law vide a registered sale deed dated 24.11.1979, registered as document No.2665/1979 with SRO, Ponneri. The 1st petitioner died and subsequently the 2nd petitioner also died and the 3rd petitioner and the 4th petitioner are the legal heirs of the deceased 1st and 2nd petitioners. As legal heirs, the 3rd and 4th petitioners are entitled to the suit property as absolute owners with exclusive title and lawful possession. The 1st and 2nd defendants in the suit have earlier agreed to purchase the suit property and thereafter the petitioners have refused to sell the property and arrangements for sale was dropped. Subsequently the defendants 1 and 2 conspiring and colluding together have created a sale deed in favour of the 3rd defendant with respect to the suit property. The defendants 1 and 2 had no right or interest over the suit property to convey the same to the 3rd defendant. The sale deed in favour of the 3rd defendant registered vide document No.6999/2006 at SRO, Ponneri is not a valid documents and not binding on the petitioners. Pending suit the 2nd defendant also died and his legal heirs were brought on record.

2.3. The 4th petitioner further states that the 1st defendant has filed a written statement stating that initially they were the lessees under the petitioners/plaintiffs and lease expired in the year 1992. Subsequently there was an agreement on 27.01.1993 and the plaintiffs have failed to execute the sale deed but the defendants continued to enjoy the suit property and they have perfected the title with respect to the suit property by way of adverse possession. The 4th petitioner further states that the above averments made by the defendants in the written statement are totally false. The 1st

petitioner's mother-in-law had filed a suit in OS.No.348 of 1993 but the same was dismissed for non prosecution.

2.4. The 4th petitioner denies the defendants' continuous, open and uninterrupted possession over the suit property and states that at no point of time the defendants have exercised any claim of right and interest and ownership over the suit property. The 4th petitioner further states that the defendants without any valid right, title and interest over the suit property are making a claim of title by adverse possession with respect to the said property.

2.5. The 4th petitioner further submits that the defendants have under valued the prayer of the counter claim and that it ought to have been valued under the section 25(b) of the amended provisions of the court fees Act. As per the amended court fees Act the defendants ought to have valued the counter claim prayer on the market value of the suit property. As per the guide line value for 1 acre in S.No.147/1 and 147/3 comes to a tune of Rs.2,68,00,000/- and the total measurement of the suit property is 3 acres 96 cents. Hence the total market value of the entire suit property amounts to Rs.10,61,28,000/- and half of the market value of it is Rs.5,30,64,000/-. The defendants ought to have valued the counter claim at Rs.5,30,64,000/- and court fee ought to have been paid to the tune of Rs.15,91,920/-. The 4th petitioner further states that if the court fee for the counter claim is valued properly, pecuniary jurisdiction to deal with such claim will be beyond this court's purview.

2.6. The 4th petitioner further submits that the respondents have intentionally undervalued the relief of counter claim without paying proper court fee and hence prays for dismissal of this petition under Order VII Rule 11(b) of CPC. Accordingly this petition to reject the counter claim has been filed.

3. Brief averments of the counter filed by the 6th respondent and adopted by the Respondents 1, 4, 5, 7 and 8 are as follows:

3.1. The 6th respondent submits that the suit property is the absolute property of the plaintiffs having purchased the same, by a sale deed dated 24.11.1979 and registered

as document No.2665/79 at SRO, Ponneri. From the date of purchase the plaintiffs had never been in possession and enjoyment of the said property and the same were under the possession and enjoyment of the said respondents who were cultivating the same and making improvements of the suit property. Thus the respondents have by prescription claim their title to the suit property by adverse enjoyment and possession. The petitioners have filed the suit suppressing the facts of the case. The real fact is that the vendor to the 1st petitioner / plaintiff is not her mother but the vendor is her mother-in-law. As admitted by the plaintiffs they have entered in to an agreement with the 2nd defendant for sale of the suit properties as early as in the year 1983. Even on the date of filing of the suit in OS.No.348 of 1993 on the file of this court only the 2nd defendant along with his family was in possession and enjoyment of the suit properties. The above suit was dismissed as not pressed. The above facts were concealed by the plaintiffs in their plaint.

3.2. The 6th respondent further submits that the 1st plaintiff filed the suit in the year 2006 and paid court fee under the old court fees Act. It is contended that the court fees on the counter claim shall be chargeable in the same manner as in the plaint and that without the plaint there cannot be a counter claim hence the court fee paid in IA.No.6 of 2022 based on the kist value is correct. The respondents 4 to 8 who are the Legal Representatives of the deceased 2nd respondent / defendant steps into the shoes of the deceased 2nd respondent / defendant in the above suit. Since the suit has been filed in the year 2006 the Court Fees Act which was applicable in the year 2006 is applicable for the counter claim filed by the legal heirs of the deceased respondent / defendant. Hence this petition is liable to be dismissed.

4. Neither the petitioners nor the respondents have placed any oral or documentary evidence before this court. Now, it is the paramount duty of the court to decide whether this petition is to be allowed or not.

5. Heard both sides arguments. Records Perused. Written arguments filed by the petitioners was perused.

6. On careful consideration of the above rival submissions, this court finds that the petitioners who are the plaintiffs in the suit have filed the suit in the year 2006 for a relief of declaration of title to the suit property along with other reliefs and valued the suit as per the kist value according to the then prevailing court fees under the Court Fees Act. In the year 2022, the respondents / defendants have filed their written statement with a counter claim seeking for the relief of declaration to declare the title of the defendants on the suit property on the ground of adverse possession and for a consequential relief of injunction not to disposses the defendants from the suit properties in any manner and valued the same on the kist value as per the court fees Act prevailing at the time of filing of the suit.

7. The petitioners have now filed this petition to reject the counter claim stating that the respondents / defendants have under valued the prayer of the counter claim and that it ought to have been valued under the section 25(b) of the amended court fees Act. The petitioners contend that as per the amended court fees Act, the defendants ought to have valued the counter claim prayer on the market value of the suit property and that as per the guideline value 1 acre in S.No.147/1 and 147/3 comes to Rs.2,68,00,000/- and as the total measurement of the suit property is 3 acres 96 cents, the total market value of the entire suit property comes to Rs.10,61,28,000/- and that half of the market value comes to Rs.5,30,64,000/-. Hence the petitioners contend that the respondents / defendants ought to have valued the counter claim for Rs.5,30,64,000/- and ought to have paid the court fee to the tune of Rs.15,91,920/-.

8. On the other hand, the respondents submit that the plaintiffs have filed the suit in the year 2006 and paid court fee under the old court fees Act and that the court fees on the counter claim shall be chargeable in the same manner as in the plaint. The respondents further contend that since without the plaint there cannot be a counter claim, the court fee paid in the counter claim based on the kist value as valued the plaint is correct. The respondents further states that since the suit has been filed in the year 2006 the Court Fees Act which was applicable in the year 2006 is applicable for the counter claim filed by the legal heirs of the deceased 2nd respondent / defendant.

9. On careful analysis, this court views that the suit has been filed in the year 2006 and valued based on kist at the then prevailing rate of Court Fees as per the Court Fees Act. When the Tamil Nadu Court Fees and Suits Valuation Act has been amended in the year 2017, valuation of the suit based on kist value for declaration of title to the suit property has been removed and as per the amended provisions of the Act the suit have to be valued based on the market value of the suit property. The counter claim has been filed only in the year 2022 for a declaration of respondents' title to the suit property. Hence, the counter claim has to be valued only under the provisions of the amended Court Fees Act, 2017. As the counter claim in the current suit has been valued based on kist is not correct. This Court concludes that the respondents have to value the counter claim as per the amended provisions of the Court Fees Act, 2017 on the market value of the suit property under section 25(b) of the TN CF & SV Act, 2017.

10. In the result, the respondents / defendants 4 to 8 are hereby directed under Order VII Rule 11(b) of CPC to value the suit for the relief prayed for in counter claim in IA No. 6 of 2022 under Section 25(b) of the TNCF & SV Amended Act, 2017 and to make payment of correct court fee on or before 19.08.2024. Call on 21.08.2024 for reporting compliance, failing which this petition stands allowed. No costs.

Dictated to the steno-typist, typed directly by her in the desktop, corrected and pronounced by me in the open Court on this the 26th day of July 2024.

**DISTRICT MUNSIF,
PONNERI.**

Both side witnesses and documents:- NIL

**DISTRICT MUNSIF,
PONNERI.**

Fair/ Draft Order
I.A.No.7/2022
O.S.No.313/2006
Date:26.07.2024
DMC,PNI.