

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

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

Tuesday, the 27th day of August 2024.

I.A. NO.1 OF 2020
in
O.S. NO.255 OF 2012

1. Saroja (died)
2. Sakunthala
3. Muthu
4. Mathiazhagan
5. Manjula
6. Kalaiyarasi
7. Kalpana
8. Maran (Amended as per order in IA.6/2023 dated 24.03.2023)

..... Petitioners/Plaintiffs

Versus

1. Killiammal
2. Soundararajan
3. Jagadeesan
4. Malathy
5. Arunkumar
6. K.Rajini
7. Mallika @ Ponnammal
8. Nageswari
9. Mohan Reddy
10. B.T. Enterprises Private Limited, Rep. by A.Bala

..... Respondents/Defendants

This petition having come on 02.08.2024 before me for final hearing in the presence of Mr.R.Sureshkumar, learned counsel for the petitioners/plaintiffs and Mr.R.Krishnaswamy, learned counsel for the 10th Respondent/10th Defendant. The respondents 1 to 9 were set exparte in the suit and hence notice to them is dispensed with in this petition. Upon hearing the arguments made by the learned counsels for

the petitioners and the 10th respondent and on perusal of the material case records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition has been filed under Order 13 Rule 10 Read with Section 151 of CPC and Rule 75 of CRP to send for the documents, which were marked as Exhibits in OS.No.173/2006 on the file of this court, to this case and to mark the same in this case and after marking of the same, the certified copies of the documents to be substituted to this case, and the original documents to be returned back to the said suit in OS.No.173/2006.

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

2.1. The petitioners submit that they have filed the above suit for partition of suit properties and for declaration and for permanent injunction as against the respondents/defendants. The petitioners submit that the respondents on the basis of the forged sale deeds and a release deed tried to alienate and encumber the suit properties in the second week of November, 2012 to third parties.

2.2. The petitioners submit that their co-parcener Elumalai had filed a suit for partition before this court as against the respondents/defendants in OS.No.173/2006 and subsequently the suit was withdrawn from this court as settled between the parties. The entire records relating to the suit properties were filed in the said suit and marked as Exhibits in the said suit in OS.No.173/2006 which was disposed off as withdrawn. Now it is just and necessary to mark the said documents in this suit and thus it is necessary to send for the said documents to this case for marking of the same and after marking the same, the certified copies of the same to be filed in this case and the originals to be returned back to the said suit in OS.No.173/2006.

2.3. The petitioners submit that the said documents marked in OS.No.173/2006 is necessary to be marked in this case. Hence this petition.

3. Brief averments of the counter filed by the 10th respondent are as follows:

The 10th respondent submits that the petitioners have not stated as to whether the documents marked as Exhibits in OS.No.173 of 2006 which is prayed to be sent for were filed by the plaintiffs in that suit or by the defendants in that suit. The 10th respondent deny that those documents are essential for the above suit. The 10th respondent submits that the above suit was filed in the year 2012. Almost 10 years have passed. It is after this suit was posted in the list for trial, initially the plaintiffs filed a proof affidavit of PW-1. Subsequently they filed a petition to eschew the earlier proof affidavit and prayed to file a fresh proof affidavit and that was allowed. Now, knowing that they have no case to stand, with a view to protract the proceedings of the above case the petitioners have chosen to file this application setting out false and frivolous allegations. If really the petitioners are genuine they ought to have filed for certified copies of all those exhibits marked in OS.No.173 of 2006 and could have filed the same. Hence, the present application is filed only with a view to harass the defendants and to cause unnecessary hardship and inconvenience to the defendants. Hence, this petition is liable to be dismissed with costs.

4. Respondents 1 to 9 were already set exparte in the suit and hence notice to them in this petition is dispensed with. 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.

6. Considered the rival submissions made. This petition has been filed to send for the documents, which were marked as Exhibits in OS.No.173/2006 on the file of this

court, to this case and to mark the same in this case. The petitioners though state that those documents are essential to their case, they have neither described the documents nor have stated as to under which series the said documents were marked in the said suit. The petitioners have also not specified in what way they are material to this case. As per Rule 10(2) of the Order XIII of CPC, every application under this rule shall be supported by submission of an affidavit with prayer thereof setting out the details of the document or documents sought for stating their relevancy to the case. In case where certified copies of the said documents would serve the purpose to the case, the petitioners must state the details of any effort taken by them for obtaining such certified copies and the result thereof in their affidavit. The present application of the petitioners is silent on that count. Thus the petitioners have failed to satisfy this court on the above aspect. When certified copies of the documents which were detailed in the petition can very well be obtained by the petitioners from the said earlier suit itself, this court views that the plea at present to send for records from the said suit becomes unnecessary. In such a scenario this court is not inclined to allow this petition.

7. In the result, this petition is dismissed. No costs.

Dictated to the steno-typist, directly typed by her in the desktop, corrected and pronounced by me in the open Court on this the 27th day of August 2024.

DISTRICT MUNSIF,
PONNERI.

Both side witnesses and documents:- NIL

DISTRICT MUNSIF,
PONNERI

Fair/ Draft Order
I.A.No.1/2020
O.S.No.255/2012
Date:27.08.2024
DMC,PNI.