

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 16th day of April 2024

I.A.No.264/2018

in

O.S.No.120/2011

K.Nethaji

.....Petitioner/Plaintiff

-Vs -

1. Tamilnadu Mercantile Bank Limited,
Rep. by its General Manager.
2. The President, Redhills Vattara Nadar
Iikiya Sangam
3. M/s. Intrepress Pvt. Ltd., Chennai.
4. M/s. Hibiscus Enterprises Pvt. Ltd.

..... Respondents/Defendants

This petition came up for hearing on 16.04.2024, in the presence of Mr.E.Masilamani, learned counsel for the petitioner and Mr.P.V.Murlidhar, learned counsel for the 1st respondent, Mr.N.R.Rangarajan, learned counsel for the 2nd respondent, Mr.N.Baaskaran, learned counsel for the 4th respondent. The 3rd respondent was set exparte. Upon hearing the arguments of the counsels for petitioner and the respondents 1, 2 and 4, and on perusal of the material case records and having stood over for consideration before this court till this day, this court delivers the following

ORDER

This petition has been filed under Order VI Rule 17 of CPC to permit the petitioner/plaintiff to amend the plaint.

2. The averments set out in the affidavit filed by the petitioner are as follows:

2.1 The petitioner who is the plaintiff in the suit submits that he has filed the suit for a relief of permanent injunction as against the respondents/defendants. The petitioner

states that he has purchased two shares from the 2nd defendant and the 2nd defendant also allotted the shares in the name of the petitioner and also issued receipt for the purchase amount paid by the petitioner. As per the allotment the petitioner had received two shares bearing share Certificate No.30556 and No.26893. Subsequently the petitioner approached the 1st defendant bank for loan and had also obtained loan with the surety of the 2nd defendant by depositing the share certificate and subsequently the petitioner had cleared the entire loan due and the petitioner demanded to the 1st defendant for return of share certificates. In the meantime the 2nd defendant with a deceptive motive tried to sell the said share certificates to third parties, for which the petitioner has issued a legal notice to the 1st defendant dated 14.05.2011.

2.2. The petitioner further submits that without his consent and knowledge, the 2nd defendant in collusion with the 3rd defendant is trying to transfer the above said shares and hence this suit for permanent injunction was filed by the petitioner. Pending suit, the shares have been transferred to the 4th defendant and hence the 4th defendant was impleaded as proper and necessary party to this suit. The 4th defendant filed their written statement stating that there is no necessity to implead them as party to this suit, as he is a bonafide purchaser and that the petitioner has filed the suit for only Permanent Injunction and has not filed the suit for declaration. The petitioner further states that now it is just and necessary to amend the plaint to include the prayer for declaration to declare that the petitioner is the absolute owner of the said share certificates and that he is entitled to receive the share amounts as well as dividend amount for the above said shares. The petitioner further submits that as his previous counsel S.Manoharan died he was not able to amend the plaint previously. If the application is not allowed, The petitioner states that he will be put into irreparable loss, damage and hardship and if this application is allowed, no prejudice or hardship would be caused to the respondents. Hence this petition.

3. The averments of the counter filed by the 1st respondent are as follows:

3.1. The 1st respondent/1st defendant submits that this petition is filed after a lapse of 6 years from the date of filing of the written statement by the 4th defendant and hence is barred by limitation. The suit has been filed to restrain the 2nd and 3rd defendants from getting their shares transferred and no specific relief has been claimed against the 1st defendant. As per the bank's records the shares are still in the name of the petitioner/plaintiff and the transfer request made by the 2nd and 3rd defendants are rejected by the bank.

3.2. The 1st respondent further submits that the Tamilnadu Mercantile Bank Ltd., had never issued any notice or demand to anybody to purchase the shares of their Bank and also that they have never sanctioned loan to anybody on depositing of their shares. The 1st respondent Bank has only sent a letter dated 14.05.2011 to the plaintiff to the effect that the plaintiff should obtain a prohibitory order from the competent authority, if he had any objection for transfer of shares in question. The 1st respondent further submits that as on this date the 1st respondent has not effected any transfer of the shares under dispute and hence prays to dismiss this petition as there is no merits in the reasons put forth by the petitioner/plaintiff.

4. The averments of the counter filed by the 2nd respondent are as follows:

The 2nd respondent submits that since the present amendment seeking for the relief of declaration is based on the objection made in the written statement, it ought to have been filed within 3 years of such filing of written statement. As such this application filed belatedly is barred by time. The market value of each share as on the date of suit and this petition was more than Rs.2 Lakhs and as such this suit should have been valued for the relief of declaration on the basis of market value of the two shares. There is no merit or bonafide in this application. This application is frivolous and has been filed only to protract the proceedings. Hence this petition is liable to be dismissed with costs.

5. The averments of the counter filed by the 4th respondent are as follows:

The 4th respondent submits that the petitioner after receiving the written statement of the 4th respondent in order to fill the lacuna have filed this petition and therefore the present petition is not maintainable in law. The proposed amendment will change the complete nature of the suit. The 4th respondent submits that they are the bonafide purchaser of the shares claimed under the suit. The 4th respondent submits that the suit dispute can be resolved or adjudicated between the petitioner and the 2nd respondent. No claim can be made against the 4th respondent. Therefore, the petition is liable to be dismissed with exemplary costs.

6. Even after service of notice, the 3rd respondent failed to appear before this court and hence was set exparte.

7. Neither the petitioner 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.

8. Heard the counsels for the petitioner and the respondents 1 and 2. Despite providing with opportunities the 4th respondent has failed to submit his arguments. Hence this court proceeded to dispose off this petition on merits based on the available case records. Records Perused.

9. On careful consideration of the material case records and arguments placed before this court, this court finds that the petitioner is the plaintiff in the suit and that he has filed the suit for a relief of permanent injunction as against the respondents/defendants. The petitioner contends that he has purchased two shares from the 2nd defendant bearing share Certificate No.30556 and No.26893. Subsequently the petitioner approached the 1st defendant bank for loan and had also obtained loan by depositing the said share certificates and subsequently had repaid the entire loan dues. The petitioner further contends that in the meantime the 2nd

defendant without his consent and knowledge and in collusion with the 3rd defendant is trying to transfer the above said shares and hence this suit for a relief of permanent injunction was filed by the petitioner. Pending suit, the shares have been transferred to the 4th defendant and hence the 4th defendant was impleaded as proper and necessary party to this suit. The 4th defendant filed their written statement stating that he is not a necessary party to the suit as the petitioner has filed the suit for only Permanent Injunction and has not filed the suit for declaration. Hence the petitioner has now filed this petition to amend the plaint to include the prayer for declaration to declare that the petitioner is the absolute owner of the said share certificates and that he is entitled to receive the share amounts as well as dividend amounts for the above said shares.

10. On the other hand, the 1st and the 2nd respondent contends that since this petition has been filed after a lapse of 6 years from the date of filing of the written statement by the 4th defendant, this petition is barred by limitation. The 4th respondent contends that the petitioner after receiving the written statement of the 4th respondent in order to fill the lacuna have filed this petition and therefore the present petition is not maintainable in law.

11. Considering the nature of amendment sought for, this court views that the proposed amendment will not alter the cause of action in any manner. Infact, the respondents would be afforded an opportunity to test the veracity of the evidences placed by the petitioner in support of his case, if the amendment is allowed in this case. Considering the nature of the suit, and the prayer that are sought to be included in the suit, this court is of the view that the said amendment sought for would only be helpful in proper and effective adjudication of the suit and the said amendment, if allowed, will not cause any prejudice to the respondents. Further the said amendment shall bring clarity and help in the adjudication and also will help in complete settlement of issues between parties and will also help in avoiding multiplicity of proceedings. In the circumstances this court is inclined to allow this petition.

12. In the result, this petition is allowed. No costs.

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 16th day of April 2024.

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF
PONNERI**

Both side witnesses and documents:- NIL

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF
PONNERI**

Fair/ Draft Order
I.A.No.264/2018
O.S.No.120/2011
Date: 16.04.2024
DMC,PNI