

IN THE COURT OF THE DISTRICT MUNSIF AT AMBATTUR.

PRESENT: TMT. FANNY RAJAN, B.A., B.L.(Hons.),
DISTRICT MUNSIF, AMBATTUR.

Thursday, 02nd day of January 2025.

INTERLOCUTORY APPLICATION NO.5 OF 2023

IN

ORIGINAL SUIT NO.33 OF 2023

CNR.No.TNTR22 – 000019 - 2023

1. Mrs.V.Neelavathi
2. Mr.V.Venkatesalu

.....Petitioners/Defendants

Versus

R.Govindarajulu

.....Respondent/Plaintiff

This petition having come on 03.12.2024 before me for final hearing in the presence of M/s.R.Viveka Vanan, N.S.Revathi and R.Malathi, learned counsels for the Petitioners/Defendants and M/s.M.Jagatheesh, S.Durgadevi and K.S.Nithyapriya, learned counsels for the Respondent/Plaintiff, upon hearing the arguments made by the learned counsel for the petitioner and the respondent and on perusal of the records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This application is filed under Order 7 Rule 11(a) and (d) of CPC to reject the above suit with compensatory cost and thus render justice.

CONCISE STATEMENT OF THE PETITION FILED BY THE PETITIONER:

2. The Petitioner has averred that the respondent is no way connected to suit property and has created a cause of action. He has denied the averments in the suit. The respondent plaintiff had sent notice to the wrong address with malafide intention and hence the suit is not maintainable. The respondent had filed I.A No.1/2023, I.A. No.2/2023 urgent petitions, I.A. No.3/2023 leave the suit IA.No.4/2023 seeking for injunction.

3. The residential house at Plot no.93 is heavily damaged and in a dilapidated condition. Hence, a temporary hut has been put up and the house hold articles were stored. She had partially shifted to Door no.24, 1st floor V.O.C street, Korattur, Chennai - 600 080. The respondent is well aware of the correct address and serve to correct address abuse the process of law.

4. The respondent is her younger brother who is jointly residing with her younger sister Mrs.Menaka at Door no.27/11, 39th street, Venkatraman Nagar, Korattur, Thiruvallur District and filed this suit and sought for interim injunction, suppressing the real facts and failed to serve notice though she is residing very close to the suit property. Further, the mandatory provisions under Order 39 Rule 1- 3(A) had not been duly complied with on 30.01.2023, 02.03.2023, 03.07.2023 and 30.08.2023. The respondent had filed the present suit false by alleging that they tried to evict the respondent from the suit property through police officers of Korattur Police Station.

5. The suit is filed seeking to permanent injunction not to evict as per due process of law. The notice in IA no.1/23 was wrongly sent to No.56, Maruthi flats,

Venkatraman Nagar, Korattur, Chennai – 80. On 03.07.2023, a private notice was sent by the respondent counsel without due permission of the court. For this, reply notice dated 17.07.2023 was issued, also certified copies were obtained through copy application dated 14.07.2023. On perusal, it was noticed that there is no amended plaint copy with the correct address of the petitioner. The respondent adopted illegal methods and played fraud.

6. The suit property was obtained by their father late. Mr.K.V.Raghavan from the Slum Clearance Board in March 1996 through allotment of lease cum sale. After no objection certificate was issued, he constructed the house and paid the installment amounts. Plot No.82 at Door no.27/11, 39th street, Venkatraman nagar, Korattur, Chennai - 600 080 was handed over by their father to the elder sister M/s.Menaka and since she is in possession along with the petitioner. She is the absolute owner of the suit property having received the same through registered Will dated 23.06.2011 and since in physical possession.

7. The respondent was residing next to her in Plot no.92 and used to fight with her under the influence of alcohol for which complaint dated 30.11.2022 was lodged and later closed as action dropped. Suppressing the same, the instant suit has been filed making false allegations against the police to create a cause of action. The respondent is no way connected to the suit property and he owns a multi storey building at Plot no.121C, Kambar street, Kumaran Nagar, Padi, Chennai – 600 050. The respondent had fabricated document with an intention to grab the property.

8. Their father has already executed settlement deed in favour of others which has

been divided along with the common passage and M/s.Menaka obtained Plot no.92. They have constructed multi-storey buildings and the respondent has let out at rent out. His father decided to settle out the property in her favour and her brothers are willing to sign consent affidavit. On 26.12.2010, subsequently the registered Will dated 23.06.2011 was registered and steps to probate the will has been filed in O.P no.224/2023 before the Hon'ble Principal District Judge, Thiruvallur.

9. A representation dated 23.01.2023 was issued seeking for the issuance of the sale deed. Writ Petition No.10067/2023 was filed for the execution of the sale deed and allowed on 31.03.2023. The enquiry conducted by the Tamil Nadu Urban Development Board is pending. Suppressing the above facts, the alleged attempt is made intentionally to create a new cause of action. The suit has to be rejected for the lack of cause of action, lack of document to prove cause of action, lack of amendment of plaint, denial of petitioner's right, the plaintiff is not connected with the suit property, he committed fraud and misrepresented in court, deliberately suppressed the Will. The suit is under valued and filed with the intention to grab the property, hence the suit is barred by law and limitation. Hence, the plaint has to be rejected.

CONCISE STATEMENT OF THE RESPONDENT AS PER THE COUNTER AFFIDAVIT:

10. The respondent has denied the allegations and stated that though the petition is filed under Order 7 Rule 11 in (a) and (b) unnecessary comments have been made against the court staff. The suit is filed for permanent injunction not to disturb or evict as per due process of law with the documents of possession and enjoyment.

Prior to filing of the suit, based on false complaint before the Korattur Police Station they forced him to vacate on the claim that the 2nd petitioner is the staff of the Hon'ble High Court. Hence the police threatened in an unlawful manner. Thus, there is a proper cause of action.

11. Both the petitioners are living in rental premises and through enquiry, he understood that she resided at No.56, Maruthi flats, Venkatraman Nagar, Korattur, Chennai – 80. The court notice was returned and the case was adjourned. After that, through relatives he became aware of the petitioners residence at No.24, V.O.C. Street, Korattur, Chennai – 80. Hence there is no bad intention to send summons to the wrong address. It is specifically denied that the plaintiff is residing at Plot no.93, Door no.27/11, 36 street, Venkatraman nagar, Korattur and partly shifted at no.24, V.O.C. Street, Korattur, Chennai – 80.

12. Many times police summoned him and threatened him hence the suit was filed. In the beginning he was under the impression that no.6, Barathi nagar, Venkatraman Nagar, Chennai -80 was her address. Thereafter enquiry, he became aware of the correct address. The petitioner failed to prove that the respondent is not residing in the suit property and she is residing therein. Without probating the will, she has filed the complaint before the Electricity Board to transfer the EB connection to her name, though the respondent is paying the electricity bills. The respondent is paying the bill and using the electricity. He is residing in the suit property and not with Ms.Menaka in No.92 as alleged.

13. After the filing of the suit, there is no disturbance from the petitioner. There is no malafide intention as alleged and the suit is not amended. It is admitted that in March 1996, the suit property was allotted as lease cum sale. However, it is specifically denied that the petitioner is the absolute owner of the suit property through the Will. The respondent is residing in the suit property and has family card, voter id, Aadhar card in the name.

14. The respondent is residing in the suit property and police forced him to vacate. Even the petitioner has admitted about it in the complaint before the Korattur police station. He specifically denied that he had several fabricated documents to grab the property. As he did not have sufficient source of income, his father and his legal heirs had no objection for him to enjoy the suit property. The rental income from the property as per Document No.2248 of 2007 is meagre and not sufficient to sustain his livelihood.

15. Their father died on 06.08.2011 intestate and only the respondent is in possession. After lapse of 10 years, letters of administration in O.P No.224/2023 has been filed showing a wrong address to the respondent. The details of the Will is suppressed by the petitioner's and denied prior to the alleged will when their father wanted to file a complaint against the petitioner he had advised against it. Hence, his father could not have executed the alleged will. If this petition is allowed, the respondent will be evicted with the help of police force. Hence, the petition has to be dismissed with cost.

16. **POINT FOR CONSIDERATION:** Whether the petitioner is entitled for the relief of reject the plaint as prayed for?

Discussion and Findings:

17. This Court considered the oral submissions of the counsels for the Petitioner and respondent and perused the materials on record. No oral evidence has been let in by both parties. Whereas, the Petitioner had marked Ex.P1 to Ex.P9 on their side and the respondent marked Ex.R1 to Ex.R8 on his side.

18. It is well settled principle of law that for rejection of a plaint under Order VII Rule 11 CPC the court can look into only the plaint and plaint documents the merits of the pleadings and the averments in the written statement cannot be considered, no amount of evidence can be looked into at this stage and the plaint may be rejected only on satisfaction of anyone of the grounds mentioned in Order VII Rule 11 CPC. In consideration of these dictums, this court perused and dealt with the contentions.

19. Having in mind the above position of law regarding rejection of plaint, this court peruses the issue at hand. The main contention is that there is no cause of action and the petitioner herein is the absolute owner of the suit property and filed Ex.P1 to Ex.P9 regarding the same. Whiles, the respondent had marked Ex.R1 to R8 being the plaint documents.

20. This court has perused the Plaint particularly the relief, the cause of action and schedule of property, for the purpose of better understanding of the Plaintiff's

pleadings. The suit relief sought is for permanent injunction not to be evicted except as per due process of law. From a thorough reading of the Plaint and this petition, it clear that there is a question of cloud over title.

21. The Plaintiff has not sought to declare his title but based on his possession sought for permanent injunction. It is a well established principle of law that the possession of a party irrespective of whether lawful or unlawful cannot be disturbed except as per the due process of law. This court is of the considered view that this suit is only for permanent injunction and the main issue is whether the Plaintiff is in possession or not. From the petition affidavit it is clear that the Petitioners/defendants have claimed to be in possession, in contrast to the respondent/plaintiff's claim regarding possession.

22. Further, irrespective of the nature of possession, the entitlement of the relief is a matter of trial. The validity of the possession and who is in possession has to be determined after due perusal of Ex.P1 to Ex.P9 and Ex.R1 to Ex.R8 after an opportunity of trial has to be granted to both parties for examination in chief and cross. If this court comes to a premature conclusion regarding the possession, it would be prejudicial to the interest of the Plaintiff and defendant. Only after perusal of evidences and this court would be in a position to decide the merits and demerits of the contentions raised by the Petitioner regarding the possession of the suit property.

23. It is true that a dispute has been raised in respect of the title and right of the

Plaintiff in the suit property. Also the petitioner herein had claimed title through a Will and even as admitted by the Petitioner the probate proceedings is pending in OP No.224/2023. Hence, it is premature to decide the issue on cloud over title without letting in any evidence. It is pertinent to note that the cloud over title involves a comprehensive discussion by the court to decide whether the non seeking of relief of declaration of title had rendered the bare injunction suit not maintainable. It would be premature of decide on the maintainability of the suit without a relief for declaration without providing due opportunity to both parties to clearly establish the cloud over title. Without a trial, this court cannot decide on this issue as it involves mixed question of fact and law.

24. This court is of the considered view that to identify if the suit property is possession of the Plaintiff or not is a matter of evidence involving mixed question of fact and law. This court takes judicial note of the well settled principle of law that the merits and demerits of the pleadings and if the plaintiff is entitled to the relief as prayed for can be decided only subsequent to the trial, when the case of the plaintiff is proved through ocular and documentary evidence. The truth of the pleadings and the entitlement to the relief cannot be determined in this petition to reject the plaint.

25. It would be premature to conclude that the suit property is not in possession of the Plaintiff, there was no disturbance and dismiss the suit without providing an opportunity to put forth his case. Only on completion of trial this court would be in a position to decide whether the suit property is in possession of the Plaintiff or not and

whether the Plaintiff would be entitled to relief of permanent injunction as prayed for based on the evidences on record. This court finds that the issue at hand involves mixed question of law and fact. Hence, this contention is answered accordingly.

26. Similarly, the issue regarding whether the plaintiff has approached this court with clean hands or not or whether there is a suppression of fact and abuse of law are matters involving mixed question of facts and law. It is true that the address in the suit plaint and the serviced summons is different, the private notice was issued without court order and there is no amendment to the correct address. However, the issue whether the address being wrongly mentioned is intentional malafide to mislead the Court or not is a matter of trial. Therefore, in this petition for rejection of Plaint, this court considers that the issues cannot be decided in the absence of material evidences. This court finds that the issues can be decided upon completion of trial in the main suit.

27. Apart from that the non compliance of Order 39 Rule 3A does not even arise in this case, as there is no exparte ad interim injunction granted before the service of notice to the petitioner herein. Hence, the said contention cannot be entertained.

28. Though the Petitioner had raised a contention regarding the wrong suit valuation, admittedly the suit is only for permanent injunction. Therefore, no irregularity noted in valuation under Section 27(c) of the Tamilnadu Court Fee and Suit Valuation Act. Hence, the said contention cannot be entertained.

29. In light of the said discussion and findings and after considering the pleadings

in the plaint and the plaint documents, this court opines that the plaintiff has established a prima facie cause of action and there is no specific bar under law against the Plaintiff to seek the remedy sought for in respect of the suit property against the defendant private party. This court also takes judicial note of the well settled principle of law that the merits and demerits of the pleadings and if the plaintiff is entitled to the relief as prayed for can be decided only subsequent to the trial in this Suit for permanent injunction, when the case of the plaintiff is proved through ocular and documentary evidence. The truth of the pleadings and the entitlement to the relief cannot be determined in this petition to reject the plaint. Hence, this court is of the considered view that the Plaint cannot be rejected under the ground of lack of cause of action or barred by law under Order VII Rule 11(a) and (d).

30. In light of the aforesaid discussions and findings, this Court concludes that there are no merits in this Petition to reject the Plaint under Order VII Rule 11(a) and (b) of CPC. Hence, this Petition shall be dismissed.

31. Considering the nature of relationship between the parties and the relief sought for, this court is of the considered view that the parties shall bear their own costs.

RESULT :-

32. In the result, this Petition is dismissed. 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 02nd day of January 2025.

Sd/-FANNY RAJAN
DISTRICT MUNSIF,
AMBATTUR.

PETITIONER SIDE WITNESSES : NIL

PETITIONERS SIDE EXHIBITS:

Exhibit P1	26.12.2010	Copy of the undertaking affidavit - Original
Exhibit P2	23.06.2011	Registered Will – Photo Copy
Exhibit P3	31.03.2023	High Court Order in W.P No.100067/2023 filed by the 1 st Defendant – True Copy
Exhibit P4	17.05.2023	Electricity Consumption Statement – Online Copy
Exhibit P5	03.06.2023	Water Tax and Charges Receipt – Online Copy
Exhibit P6	19.06.2023	EB Receipt – Online Copy
Exhibit P7(Series)	--	Gas Bills(10 Nos) - Original
Exhibit P8	13.09.2023	Notice sent to 1 st Defendant for enquiry by the Tamil Nadu Urban Habitat Development Board - Original
Exhibit P9	19.09.2023, 30.11.2022	RTI Reply - Original CSR – Photo Copy

RESPONDENTS SIDE WITNESSES:NIL

RESPONDENTS SIDE EXHIBITS:

Exhibit R1	--	EB White Card - Original
Exhibit R2	17.02.2020	EB Receipt - Original
Exhibit R3	19.12.2022	EB Receipt - Original
Exhibit R4	2005 - 2009	Family Card - Original
Exhibit R5	--	Aadhar Card – Photo Copy
Exhibit R6	--	Aadhar Card – Photo Copy
Exhibit R7	--	Aadhar Card – Photo Copy

Exhibit R8

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Gas Card – Photo Copy

Sd/-FANNY RAJAN
DISTRICT MUNSIF,
AMBATTUR.