

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE, VELLORE DISTRICT.

PRESENT: Tmt.P.Revathy, M.A.,M.L.,
Additional District Judge(FTC),Vellore.

Dated this the 02nd day of March 2024, Saturday.

I.A.NO.4/2023 in
O.S.NO.5/2022

- - - - -

S.Karunakaran

.. Petitioner/29th defendant

//Vs//

M.Thiyagarajan

..Respondent/Plaintiff

This petition is coming before me on 27.02.2024 for final hearing in the presence of Thiru.M.R.Ramanan & Associates, counsel for the petitioner and of Thiru.C.Saranraj and Thiru.T.Sathyanarayanan, Counsels for the respondent and upon hearing the arguments of both sides and upon perusing the written arguments filed by the petitioner and upon perusing the entire case records and having stood over for consideration, till this date this court delivered the following:-

ORDER

Petition filed by the petitioner under Or.7, Rule 11 and Sec.151 of CPC, prays to reject the Plaint with cost.

2.The averments of the affidavit is as follows:-

The petitioner herein is the 29th defendant in the suit. The respondent

herein filed the suit for partition and separate possession and for declaration of various sale deeds as null and void and for preventive injunction not to transfer the suit properties. The petitioner advised that the suit is in clear abuse of process of law as none of the reliefs sought for by the Plaintiff is capable of being granted for the following reasons.

(1) Regarding relief for partition and separate possession, on the plea that Plaintiff and defendants 1 to 10 are members of Hindu Joint family, claim the properties to be joint family properties, claim shares in the suit properties. Some of the properties covered by plaint documents 2 to 10 are stated to be (a) ancestral nucleus having been purchased by ancestor late Sri.Mahadeva Chattier (b) properties covered by plaint documents 11 to 14 were purchased in the name of 1st defendant (c) properties covered by plaint documents 15 to 22 purchased in the name of 2nd defendant.

Suit for partition of these properties was already filed in O.S.No.347/1992 as mentioned in para 7 of this plaint and the same was dismissed and copy for the same has been filed as plaint documents No.55 and 56, relating to Additional Sub Court, Vellore. Hence the present plaint filed again for partition of the same properties 12 years after filing of earlier suit is barred by limitation and not maintainable in law and is liable to be rejected.

As per plaint, the sharers-defendants 1,2,4,5,6,8,9 and 10 executed different registered sale deeds on different dates, all more than 12 years ago in favour of various other defendants who are third parties, individually, separately,

claiming as if the respective individual properties as their own. There are also derivative deeds of 2nd sales made by the purchasers from these defendants. The Plaintiff is thus inconsistent and besides, as there is no joint possession.

Suit for declaration can be filed only within 3 years but all the impugned documents are very much beyond the period of 3 years and therefore the suit for declaration is barred by law of limitation.

One of such document is the registered sale deed No.2469/1998 dated 13.05.1998 executed in favour of his late father V.Selvaraj. The petitioner's father died intestate on 04.07.2014 and therefore his mother Smt.Malliga, sister Kavitha, brothers Gopinath, Jeeva being legal heirs of his father have been impleaded in the plaint as defendants 26 to 30. This sale deed dated 13.05.1998 shown as document No.39 cannot be declared to be null and void now after 25 years from 13.05.1998.

The ancestor Sri.Mahadeva Chettiar died intestate on 16.01.1979 as mentioned in para 5 of the plaint. Thus succession opened on 17.01.1979 and right to seek for partition and separate possession more than 40 years after the succession opened, got extinguished as per Sec.27 of the Limitation Act. There is no cause of action of this suit now. Defendants 41 to 44 are public officers. No pre suit notice has been issued or filed as mandated by Sec.80 of CPC.

There is not even pleading in the plaint that there was joint possession and enjoyment. Therefore, court fees paid u/s.37(2) of CF Act is false and not proper and is liable to be rejected. Hence the petitioner filed this petition.

3. Brief averments of the counter filed by the respondent is as follows:-

The petition is not maintainable either in law or on facts. All the affidavit averments are denied except those that are admitted by the respondent herein. This respondent had filed the suit for partition with separate possession and the suit properties are all the joint family properties which were purchased in the name of the family members for the welfare of the family. The previous suit in O.S.No.347/1992 was filed by one Mr.Palani who has been arrayed as the 2nd defendant and this respondent arrayed as 3rd defendant in the above suit. It is not necessary to file one another suit for partition where already a suit for partition had been pending before any court of law. As the previous suit had been gone against the interest of the plaintiff therein, he had left the previous suit for default and till now he had not taken any steps to restore it, the reason being that he himself had alienated several family properties illegally during the lis-pendens and this respondent had taken necessary steps to implead all the illegal purchasers in the previous suit in I.A.No.307/1998, I.A.No.43/2007, I.A.No.400/2008 and I.A.No.453/2014 and in several other petitions. Hence the cause of action for the present suit arose only on 27.04.2018 and the present suit was filed by this respondent to safe guard his rights and title over the properties and it is well within the prescribed period and not barred by law of limitation .

The previous suit had been dismissed for default on 27.04.2018 and all the sale deeds had been created only during the pendency of the previous proceeding, where the time of the proceedings has to be excluded from the day a

former civil proceedings was instituted and the day on which it ends. In this circumstances the present suit has filed within a period of 3 years. In a suit for partition there arises no time limitation and as it is a comprehensive suit where the share's of the other defendants who had illegally alienated the family properties shall compensate this respondent with the remaining share's available to them in the suit properties. On this ground when there is no final order on merit, this present suit for partition is definitely maintainable. The petitioner's father had purchased a portion in item No.2 of the C schedule property during the pendency of the proceeding and soon after this respondent had filed a implead petition, the father of this petitioner herein O.S.No.347/1992, later he filed I.A.No.306/1998 in O.S.No.347/1992 for grant of temporary injunction not to put up any construction in the petition mentioned property which was later allowed and made absolute till the disposal of the suit on 10.09.1998. The petitioner's father had purchased the joint family property from this respondent's father, who does not have a semblance of right, title and interest over the family property, whereby he had relinquished his right, title and interest over the property of the family by way of a registered release deed dt.09.09.1982.

It is trite law that the court fee must be decided based on the plaint and cannot be decided based on the objections raised by the other side. It is clearly mentioned by this respondent in his plaint that he had valued the suit u/s.37(2) and had expressly stated that he is deemed to be in joint and consecutive possession of the properties of the family and before considering this there

should be a clear and specific averments in the plaint that the plaintiff had been excluded from the joint possession to which they are entitled to in law, but at this instance no such kind of pleading is there and all these are a mixture of substantial question of law and facts can be decided only at the time of trial.

This respondent had filed a petition u/s.80(2) of CPC and this court was pleased to allow the said petition and take on file the present suit. As such the petitioner himself has not approached the court with clean hands. And the respondent has filed all the title deeds pertaining to the suit properties set out in the Plaint. Further the respondent pleads for partition through the title deeds filed by him and not by way of Patta at any point of time to any extent.

This petition is not maintainable and infructuous the reason being, he has pleaded in his affidavit that as if he is the joint title holder along with the defendants 26 - 28 and 30, where as early as on 30.10.2017, the petitioner along with the defendants 27 and 28 have relinquished their right to the defendants 26 and 30 pertaining to one of the schedule properties claimed by him. As such as from 30.10.2017, the petitioner not being a title holder cannot maintain this petition, when he is not the title holder to a property relinquished by him. The petitioner has filed this petition with an intention to harass this respondent and to just drag this respondent to his whims and fancies with setting out incorrect and untrue facts to this court. Hence the respondent prays to dismiss the petition.

4. The point for consideration in this petition is;

Whether the petition is to be allowed or not?

5. Point:

On the side of the petitioner, no oral evidence was adduced and no document was marked. On the side of the respondent no oral evidence was adduced and Ex.R.1 to Ex.R.8 were marked.

The petitioner stated that the respondent herein filed the suit for partition and separate possession and for declaration of various sale deeds as null and void and for preventive injunction not to transfer the suit properties. The suit is in clear abuse of process of law as none of the reliefs sought for by the Plaintiff is capable of being granted. With regard to relief for partition and separate possession, on the plea that Plaintiff and defendants 1 to 10 are members of Hindu Joint family, claim the properties to be joint family properties, claim shares in the suit properties. Some of the properties covered by plaint documents 2 to 10 are stated to be (a) ancestral nucleus having been purchased by ancestor late Sri.Mahadeva Chattier (b) properties covered by plaint documents 11 to 14 were purchased in the name of 1st defendant (c) properties covered by plaint documents 15 to 22 purchased in the name of 2nd defendant.

Suit for partition of these properties was already filed in O.S.No.347/1992 as mentioned in para 7 of this plaint and the same was dismissed and copy for the same has been filed as plaint documents No.55 and 56, relating to Additional Sub Court, Vellore. Hence the present plaint filed again for partition of the same properties 12 years after filing of earlier suit is barred by limitation and not maintainable in law and is liable to be rejected.

As per plaint, the sharers-defendants 1,2,4,5,6,8,9 and 10 executed different registered sale deeds on different dates, all more than 12 years ago in favour of various other defendants who are third parties, individually, separately, claiming as if the respective individual properties as their own. There are also derivative deeds of 2nd sales made by the purchasers from these defendants. The Plaint is thus inconsistent and besides, as there is no joint possession.

Suit for declaration can be filed only within 3 years but all the impugned documents are very much beyond the period of 3 years and therefore the suit for declaration is barred by law of limitation.

The ancestor Sri.Mahadeva Chettiar died intestate on 16.01.1979 as mentioned in para 5 of the plaint. Thus succession opened on 17.01.1979 and right to seek for partition and separate possession more than 40 years after the succession opened, got extinguished as per Sec.27 of the Limitation Act. There is no cause of action of this suit now. Defendants 41 to 44 are public officers. No pre suit notice has been issued or filed as mandated by Sec.80 of CPC.

There is not even pleading in the plaint that there was joint possession and enjoyment. Therefore, court fees paid u/s.37(2) of CF Act is false and not proper and is liable to be rejected.

But the respondent denied the allegations and stated that the respondent had filed the suit for partition with separate possession and the suit properties are all the joint family properties which were purchased in the name of the family members for the welfare of the family and the previous suit in O.S.No.347/1992

was filed by one Mr.Palani who has been arrayed as the 2nd defendant and this respondent arrayed as 3rd defendant in the above suit. It is not necessary to file one another suit for partition where already a suit for partition had been pending before any court of law. As the previous suit had been gone against the interest of the plaintiff therein, he had left the previous suit for default and till now he had not taken any steps to restore it, the reason being that he himself had alienated several family properties illegally during the lis-pendens and this respondent had taken necessary steps to implead all the illegal purchasers in the previous suit in I.A.No.307/1998, I.A.No.43/2007, I.A.No.400/2008 and I.A.No.453/2014 and in several other petitions. Hence the cause of action for the present suit arose only on 27.04.2018 and the present suit was filed by this respondent to safe guard his rights and title over the properties and it is well within the prescribed period and not barred by law of limitation .

The previous suit had been dismissed for default on 27.04.2018 and all the sale deeds had been created only during the pendency of the previous proceeding, where the time of the proceedings has to be excluded from the day a former civil proceedings was instituted and the day on which it ends. In this circumstances the present suit has filed within a period of 3 years. In a suit for partition there arises no time limitation and as it is a comprehensive suit where the share's of the other defendants who had illegally alienated the family properties shall compensate this respondent with the remaining share's available to them in the suit properties. On this ground when there is no final order on

merit, this present suit for partition is definitely maintainable. The petitioner's father had purchased a portion in item No.2 of the C schedule property during the pendency of the proceeding and soon after this respondent had filed a implead petition, the father of this petitioner herein O.S.No.347/1992, later he filed I.A.No.306/1998 in O.S.No.347/1992 for grant of temporary injunction not to put up any construction in the petition mentioned property which was later allowed and made absolute till the disposal of the suit on 10.09.1998. The petitioner's father had purchased the joint family property from this respondent's father, who does not have a semblance of right, title and interest over the family property, whereby he had relinquished his right, title and interest over the property of the family by way of a registered release deed dt.09.09.1982.

It is clearly mentioned by this respondent in his plaint that he had valued the suit u/s.37(2) and had expressly stated that he is deemed to be in joint and consecutive possession of the properties of the family and before considering this there should be a clear and specific averments in the plaint that the plaintiff had been excluded from the joint possession to which they are entitled to in law, but at this instance no such kind of pleading is there and all these are a mixture of substantial question of law and facts can be decided only at the time of trial.

This respondent had filed a petition u/s.80(2) of CPC and this court was pleased to allow the said petition and take on file the present suit. As such the petitioner himself has not approached the court with clean hands. And the respondent has filed all the title deeds pertaining to the suit properties set out in

the Plaintiff. Further the respondent pleads for partition through the title deeds filed by him and not by way of Patta at any point of time to any extent.

This petition is not maintainable and infructuous the reason being, he has pleaded in his affidavit that as if he is the joint title holder along with the defendants 26 - 28 and 30, where as early as on 30.10.2017, the petitioner along with the defendants 27 and 28 have relinquished their right to the defendants 26 and 30 pertaining to one of the schedule properties claimed by him. As such as from 30.10.2017, the petitioner not being a title holder cannot maintain this petition, when he is not the title holder to a property relinquished by him. The petitioner has filed this petition with an intention to harass this respondent and to just drag this respondent to his whims and fancies with setting out incorrect and untrue facts to this court.

On perusal of records it is seen with regard to limitation for filing the suit, the petitioner herein stated that the earlier suit filed in the year 1992 and the present suit is filed after 12 years of earlier suit and after 40 years of opening of the succession and hence it is barred by limitation, but the respondent stated in the plaint that the earlier suit was filed by the 2nd defendant in the present suit and the earlier suit O.S.No.347/1992, was dismissed for default in the year 2018 and the present suit is filed within limitation period. And with regard to declaration is sale deeds null and void, the respondent stated that all the sale deeds had been created only during the pendency of the previous proceeding and many sales were made by the plaintiff in the earlier suit during the pendency of

suit filed by him and that is the reason he has not prosecuted the case and not taken steps to restore the said suit which was dismissed for default and the subsequent purchasers who purchased during the pendency of the earlier suit were impleaded through the petitions filed by the respondent herein only and further stated that the petitioner's father had purchased a portion in item No.2 of the C schedule property during the pendency of the proceeding and soon after this respondent had filed a implead petition, the father of this petitioner herein O.S.No.347/1992, later he filed I.A.No.306/1998 in O.S.No.347/1992 for grant of temporary injunction not to put up any construction in the petition mentioned property which was later allowed and made absolute till the disposal of the suit on 10.09.1998. With regard to dispossession the respondent stated that the purchases were made during the pendency of the earlier proceeding and the possession of the present owners is mixed question of law and facts and it can be decided at the time of trial only.

The learned counsel for the petitioner relied upon the judgements reported in 2012(4) LW page 640 (Supreme Court), wherein it is held that, "While considering an application under Order 7, Rule 11 CPC, the court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant".

Further he relied upon another Judgment reported in 2012(4) L.W. page 385 (Supreme Court), wherein it is held that, "For the disposal of application filed for rejection of the plaint under Or.7, Rule 11 CPC, 2nd defendant is not a

necessary party and hence he need not be impleaded".

Further he relied upon another Judgment reported in 2021 (5) L.W. page 94 (Madras), wherein it is held that, "If the 2nd suit for Partition had been filed before the expiry of twelve years after filing of the 1st suit, then the present suit would have been in time – Twelve years has to be calculated not from the date of dismissal of earlier suit or from the execution but from the date of filing of suit by vendors of plaintiffs.

Their status as members of joint family got disrupted in 1992 itself and as per Sec.3 of the Limitation Act 1963, the Court is obliged to dismiss the suit, even if limitation has not been set up".

Further he relied upon the another judgment reported in 2022 (4) CTC page 590 (Madras), wherein it is held that, "Delay of 31 years in seeking partition after division of properties among brothers, fatal – No evidence to show joint possession and enjoyment as pleaded by Plaintiff. Rights of plaintiff extinguished under sec.27 of Limitation Act".

Further he relied upon another Judgment reported in 2010(6) MLJ page 351 (Madras), wherein it is held that, "Suit for partition filed 24 years after exclusion from enjoyment of property – barred by Limitation".

Further he relied upon another Judgment reported in 2020(2)CTC page 504 (Madras), wherein it is held that, "Plaintiff not entitled to pay fixed Court fee under Sec.37(2)(iii) unless and until joint possession of suit property is pleaded in Plaint. In absence of such averments in Plaint, Plaintiff must value suit at

Market value of share claimed by the Plaintiff and accordingly pay Ad-valorem Court fees – Civil revision petition dismissed".

Further he relied upon another Judgment reported in 2020(4) L.W. page 254 (Madras), where in it is held that, "Abuse of process of Court – Even without an application under Order 7, Rule 11 or under Or.6, Rule 16, the court is empowered to strike out the pleadings or even throw out the plaint, if it is found that the plaint is an abuse of process of court or re-litigation".

The learned counsel for the respondent relied upon the judgments reported in Madras High Court, Second Appeal No.408/2016 and CMP No.7136/2016, between K.Chandralekha Vs. S.Ravikumar and others, wherein it is held that, "It is well settled that for deciding the application filed under Order 7, Rule 11 CPC, the Court has to take into consideration only the Plaint averment and to see the case as projected by the plaintiff to find out whether such plaint can be sustained or rejected".

Further he relied upon another judgment reported in Supreme Court of India, Civil Appeal No.8221 of 2011, between Surjit Kaur Gill & another, Vs Adarsh Kaur Gill & Another, dated 30.01.2014, wherein it is held that, "The issue of Limitation is always a mixed question of facts and law, and therefore, it could not be held that no case was made out for proceeding for a trial".

Further he relied upon another Judgment reported in Supreme Court of India, Civil Appeal No.4665 of 2021 arising out of SLP (C) No.3899 of 2021, between Srihari Hanumandas Totala Vs. Hemant Vithal Kamat on 9th August,

2021, wherein it is held that, "(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to; (ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application; An application under Order 7, Rule 11 must be decided within the four corner of the Plaint".

The above citations relied upon by the respondent is applicable to the present case, because the earlier suit for partition disposed off in the year 2018 and in the earlier suit the alienations which were made during the pendency of the earlier suit were brought into the earlier suit itself and the purchasers were made as defendants in that suit and further the earlier suit is admittedly filed by the 2nd defendant in the present suit only and the said suit was dismissed for default in the year 2018 only even though the said suit was filed in the year 1992 and the present suit is filed within the limitation period. Even though the learned counsel for the petitioner stated that the limitation period is 12 years from the date of filing the earlier suit, but this cannot be applied to the present suit because the earlier suit was filed by the 2nd defendant in this suit and it was dismissed in the year 2018 only.

From the above discussions this court decides that the question of limitation in this suit is mixed question of fact and law and it can be decided only at the time of trial only and the plaint cannot be rejected on the grounds alleged by the petitioner herein.

In the result, this petition is dismissed. No cost.

Dictated to steno typist directly, typed by her through computer, corrected and pronounced by me in open court, this the 2nd day of March 2024.

**Additional District Judge(FTC)
Vellore.**

Petitioner's side witnesses and Exhibits:

NIL

Respondent's side witnesses:

NIL

Respondent's side Exhibits:

- Ex.R.1 / 10.09.1998 / Certified xerox copy of fair and decreetal order in I.A.No.306/1998 in O.S.No.347/1992.
- Ex.R.2 / - / Certified xerox copy of Petition and day today orders in I.A.No.307/1998 in O.S.No.347/1992.
- Ex.R.3 / - / Certified xerox copy of Petition and day today orders in I.A.No.43/2007 in O.S.No.347/1992.
- Ex.R.4 / - / Certified xerox copy of Petition and day today orders in I.A.No.400/2008 in O.S.No.347/1992.
- Ex.R.5 / - / Certified xerox copy of Petition and day today orders in I.A.No.453/2014 in O.S.No.347/1992.
- Ex.R.6 / - / Certified xerox copy of Additional written statement filed by this respondent in O.S.No.347/1992.
- Ex.R.7 / - / Online extract of orders in Suo Moto Writ Petition (Civil) No.3/2020
- Ex.R.8 / - / Certified xerox copy of the petition and affidavit in I.A.No.306/1998 in O.S.No.347/1992.

**ADJ(FTC),
Vellore.**

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE, VELLORE DISTRICT.

PRESENT: Tmt.P.Revathy, M.A.,M.L.,
Additional District Judge(FTC),Vellore.

Dated this the 2nd day of March 2024, Saturday.

I.A.NO.4/2023 in
O.S.NO.5/2022

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S.Karunakaran, aged 39 years, S/o.Late.V.Selvaraj, Business, residing at No.96,
New Street, Palavansathu Kuppam, Vellore.

.. Petitioner/29th defendant

//Vs//

M.Thiyagarajan, aged 50 years, S/o.M.Murugesan, residing at No.13/8,
P.M.Chetty Street, Saidapet, Vellore – 632 012.

..Respondent/Plaintiff

Petition filed by the petitioner under Or.7, Rule 11 and Sec.151 of CPC,
prays to reject the Plaint with cost.

This petition is coming before me on 27.02.2024 for final hearing in the
presence of Thiru.M.R.Ramanan & Associates, counsel for the petitioner and of
Thiru.C.Saranraj and Thiru.T.Sathyanarayanan, Counsels for the respondent
and upon hearing the arguments of both sides and upon perusing the written
arguments filed by the petitioner and upon perusing the entire case records and
having stood over for consideration, till this date this court doth order and
decreetal order as follows:-

DECREETAL ORDER

1. That the petition be and the same is hereby dismissed;
2. That there is no cost.

Given under my hand and the seal of this court, on this the 2nd day of
March 2024.

Additional District Judge(FTC),
Vellore.