

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A., B.L.,
DISTRICT MUNSIF, KATPADI.**

Friday, this the 23rd Day of February – 2024

**I.A.No. 2 of 2023
In
O.S.No. 858 of 2009
(CNR.No.TNVL23-000017-2009)**

1. A.Kanakammal
2. A.Baskaran
3. A.Sankari
4. A.Sujatha
5. A.Saraswathy

.....Petitioners/Plaintiffs

-Vs-

M.Mohammed Ejas Basha

.....Respondent/Defendant

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. V.Jothiram, the Counsel for Petitioners, and Thiru. N.Krishnamurthy, the Counsel for Respondent, and upon perusing the petition with documents, counter and this entire case records, and having stood over for consideration till this date, this Court delivers the following:-

ORDER

This petition has been filed by the Petitioners/Plaintiffs under Order VII Rule 14(3) and Section 151 of Code of Civil Procedure, to grant leave to file the petition mentioned documents, and to receive the same in evidence.

1. **Brief averments of the affidavit filed by the 2nd petitioner is as follows:-**

1.1 The 2nd petitioner is the 2nd plaintiff in the lis, and the 1st petitioner/plaintiff is his mother, and the petitioners-3 to 5/plaintiffs are his sisters, and he swore this affidavit on behalf of them also, and submit that the respondent/defendant herein filed vexatious Suit before the Additional District Munsif Court, Vellore in O.S.No.414/2004, renumbered as O.S.No.909/2009, for which written statement as well as additional written statement was filed on their behalf, and in pertaining to the present suit, the respondent/defendant falsely defending the suit, as if Mr. Abdulla Basha did not right over the Suit property, and the respondent as well as his mother – K.Rehmathunnisa Begum, entered registered Sale Agreement in respect of Suit property on 08.08.2000 vide Doc.No.3322/2000, where they admitted the title of Mr. Abdulla Basha, but, for the purpose of the case, playing hide & seek game.

1.2 The respondent/defendant did not place the alleged Sale Deed dated 01.11.2000, and Sale Agreement dated 08.08.2000 vide Doc.No.3322/2000, for all these 19 years, and the respondent/defendant has not appeared this Court with clean hands who had putforth defence falsely, and furthermore, Mr. Abdulla Basha, sold his allotted share to the Thandalkrishnapuram Panchayat, represented by its president, by means of the Registered Sale Deed dated 27.02.1967, in turn, several Sale transactions occurred, by means of Registered Documents, which is filed for ready reference, and the petition mentioned documents relates to the averments Originally made in the plaint, and

defence put-forth by him in O.S.No.909/2009, pending on the file of this Court, and therefore, prays to receive the petition mentioned documents as evidence, on their side at the time of hearing of the Suit.

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

2.1 At the very outset, the present petition as filed by the petitioner is not maintainable in law and on facts and is a gross abuse of judicial process, and the respondent vehemently and emphatically denied each and everyone of the allegations contained in the petition, and submits that the petition mentioned documents could not be received in evidence and mark as exhibits on the plaintiff side since the plaintiff is neither a party to those documents and nor an author of the documents, and the parties to the documents are different persons, and the descriptions of property mentioned in the documents are different from the Suit property.

2.2 The petitioner can file the documents and mark as exhibits only those pertaining to the facts of his case, and suit schedule description and not otherwise, and the petitioner purposely to divert the case, and confuse the Court, and to seek the relief by hook or crook has filed those documents now, and the documents sought to be filed now were already with the petitioner, and he could have filed the same on the date of filing of the Suit in the year 2009 or soon thereafter, and now it is too late that is after a lapse of 15 years to file the documents which was already in his possession, and so the petition is not bonafide.

2.3 The petition mentioned documents are created now for undue purpose of supporting his false, and baseless claim, and these documents are cooked up by the petitioner to Suit his needs in the case, and these documents should not be entertained and never to be marked as Exhibits on the plaintiff side, and the facts remain that the respondent/defendant and his predecessors are only in possession and enjoyment of the Suit properties, and paying the cess till date, and the same is admitted by the petitioner/plaintiff in his cross examination.

2.4 The entire case of the petitioner is based on conjectures and surmises and is totally devoid of substances, and no amount of evidence can cure the glaring defects in the petition, and the petitioner has made false, frivolous, untenable, mischevious and misleading statements with deliberate intention of obtaining order from the Court, and the ulterior motive of filing the petition is to cause mental agony and subject the respondent to immense hardship, and the petition is devoid of merits and lack bonafide, and prays to dismiss the petition with exemplary costs.

3. Neither the petitioners nor the respondent have placed any oral or documentary evidence before this Court.

4. **Point for Consideration:-**

a) Whether this petition is entitled to be allowed or not?

5. **Answering to the Point:-**

Both sides has been Heard. Records perused. Upon careful perusal of this case records including the petition along with the documents relied, counter, and upon considering the arguments advanced in either sides, it is found that the Suit has been filed for declaring the title of the plaintiffs over the suit properties (i.e., in respect of Viruthampet Village S.No.25/1 & 25/2), and for consequential injunction restraining the defendant, and his men, agents from encumbering, transferring or dealing with or interfering with the Suit properties in any manner, and for costs.

6. The petitioners are the plaintiffs and the respondent is defendant in the said Suit. The petitioners have stated in petition affidavit that the petition mentioned documents relates to the averments Originally made in the plaint, and defence put-forth by him in O.S.No.909/2009, pending on the file of this Court, and therefore, prays to receive the petition mentioned documents as evidence, on their side at the time of hearing of the Suit.

7. On the other hand, the respondent had stated that the petition mentioned documents could not be received in evidence and mark as exhibits on the plaintiff side since the plaintiff is neither a party to those documents nor an author of the documents, and the parties to the documents are different persons, and the descriptions of property mentioned in the documents are different from the Suit property, and for the purpose of divert the case & confuse the Court, the petitioner has filed those documents, and the

documents sought to be filed now, were already with the petitioner, and he could have filed the same on the date of filing of the Suit in the year 2009 or soon thereafter, and now it is too late that is after a lapse of 15 years to file the documents which was already in his possession, and so the petition is not bonafide, and it is filed only to cause mental agony to the respondent.

8. In this case, the defendant filed written statement in the year of 2008 itself and issues were framed on 11.01.2010, and when the case is posted for trial, the defendant filed joint trial memo is allowed by this Court on 30.10.2018 and ordered this case is to be tried along with the O.S.No.909/2009. When both the cases are pending at trial stage, the petitioners have filed similar petition to receive documents and the same was allowed in I.A.No. 1 of 2022 on 15.10.2022, and then, on 20.12.2022, the 2nd plaintiff was chief examined himself as P.W-1 by way of Proof Affidavit, and marked Ex.A-1 to Ex.A-8 only on 06.01.2023, and he was duly cross examined in full on 31.01.2023, and thereafter the case was posted for further P.W's. At this juncture, the petitioners have filed this petition seeking for the leave of this Court to receive the petition mentioned the following documents:-

- 1) The Encumbrance Certificate relating to the Suit property, issued by the Sub-Registrar Office, Katpadi dated 22.08.2008, for the period from 01.01.1967 to 31.12.1986 in respect of Viruthampet Village S.No.25/1 & 25/2.

2) The Registration Certified Copy of Sale Agreement as Doc.No.3322/2000, dated 08.08.2000 executed between the defendant's mother K.Rehmathunnisa Begum, W/o. Asghar Ahmed Sahib, and the defendant – Mohammed Ejas Basha, S/o. Asghar Ahmed Sahib, in respect of Viruthampet Village S.No.25/1 & 25/2.

3) The Registration Certified Copy of Sale Deed as Doc.No.598/1967, dated 27.02.1967 executed by Abdulla Basha Sahib in favour of the President of Thandalakrishnapuram Village, in respect of Viruthampet Village to S.No.25/5.

4) The Registration Certified Copy of Sale Deed as Doc.No.1421 of 2968, dated 02.05.1968, executed by E.Thangavelu in favour of V.Krishnan, in respect of Viruthampet Village S.No.25/5.

5) The Registration Certified Copy of Sale Deed as Doc.No.227 of 1969, dated 30.01.1969, executed by V.Krishnan in favour of V.B.Kaleel, in respect of Viruthampet Village S.No.25/5.

6) The Registration Certified Copy of Sale Deed as Doc.No.3621 of 1967, dated 06.12.1967, executed by A.M.Selvaraj Mudaliyar in favour of E.Thangavelu, in respect of Viruthampet Village S.No.25/5.

9. Before parting with order, it is useful to refer the provisions of Order 7 Rule 14 CPC which obligates the plaintiff to produce document upon which he has relied upon at the time of the presentation of the plaint, and if not produced at that stage then

such a document can be received in evidence only with the leave of the Court and not otherwise.

10. Further, in terms of Order 7 Rule 14 of the Code, where a plaintiff sues upon a document in his possession or power in support of his claim, he shall enter such document in a list, and shall produced it in Court when the plaint is presented by him and shall, at the same time deliver the document and a Copy thereof to be filed with the plaint. Sub-rule (3) of Rule 14 thereof clearly provides that a document which ought to be produced in Court by the plaintiff when the plaint is presented or to be entered in the list to be added or annexed to the plaint but it is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the Suit.

11. In the present case on hand, it is stated by the petitioners/plaintiffs in petition affidavit that the petition mentioned documents relates to the averments Originally made in the plaint, and defence put-forth by them in O.S.No.909/2009. But, on perusal of case records, it is found that the petition mentioned documents are not filed at the time of filing of the Suit, and not listed as documents in the List of Documents in plaint. On careful scrutinization of the plaint filed by the petitioners/plaintiffs in the present Suit, as well as the written statement filed by them in O.S.No.909/2009, and even in the evidence of P.W-1, there was no pleadings in respect of the said petition mentioned documents. The above said facts are being so, the petitioners/plaintiffs have

filed this petition to receive the documents which are not pleaded nowhere in the plaint, written statement in O.S.No.909/2009.

12. It is a well settled principle that in the absence of *pleading*, any amount of *evidence* will not help the party. In this connection this Court wants to bank the full bench judgment of our Hon'ble Supreme Court of India in the case of **Biraji @ Brijrahi & Another vs. Surya Pratap and others**, reported in **2020 (8) MLJ 266 (SC)**, wherein reiterated it's stance on the fact that if a pleading has not been made by the party, no amount of evidence produced later in a Civil Suit will help.

13. From the light of the above judgment, the said petition mentioned documents cannot be received in evidence on the petitioners/plaintiffs side as no pleadings. Considering the said settled preposition of law, and the facts and circumstances of the case, this Court is not inclined to allow this petition. Accordingly, this point is answered against the petitioners.

14. **Result:-**

From the above discussions, in the interest of justice, this petition is dismissed and there shall be no order as to 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 23rd Day of February – 2024.//-

DISTRICT MUNSIF
KATPADI

Both side documents and witnesses: Nil

DISTRICT MUNSIF
KATPADI