

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

Tuesday, this the 22nd Day of August – 2023

**I.A.No. 03 of 2023
In
O.S.No. 156 of 2012
(CNR.No.TNVL23-000069-2012)**

Veeravagu

.....Petitioner/Defendant

-Vs-

1. Deivanayagam (Died)
2. Selvanayagam
3. Nagalakshmi
4. Senthilnathan
5. Loganayagi
6. Easwari
7. Gayathri Devi

.....Respondents/Plaintiffs

This petition has come up today before this Court for orders, upon hearing the arguments of Thiru. M.Sathishkumar, the Counsel for the Petitioner, and Thiru. K.U.Salemurugan, the Counsel for the Respondents, and upon perusing the petition, counter & the case records, and having stood over before this court for consideration till this date, this court delivers the following:-

ORDER

This petition has been filed by the petitioner/defendant under Order 16 Rule 3 of Civil Procedure Code for permit him to examine the petition mentioned witnesses on his side further witnesses.

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

The petitioner is the defendant in the above suit, and in this suit, the respondents were divided the suit property into several plots, in which the 3rd respondent's brothers and 3rd respondent's husband were jointly divided the suit property into plots and sold to several persons, before filing of this suit. In which, the petition mentioned persons had purchased the same. Now only the following copies of the Sale Deeds have been made available to the petitioner i.e., 1) Doc.No.569/1996, 2) Doc.No.3142/2001, 3) Doc.No.3935/2001 & 4) Doc.No.7673/2008. In the aforesaid sale documents buyer and seller must be examined as witness in this case. Further, the 3rd respondent husband had sold the suit property to some persons. In order to inspect the same in Sub-Registration Office at Katpadi, the Sub-Registrar of Katpadi or the Subordinate Officer authorized by him needs to bring the encumbrance certificate, and also bring the above mentioned documents with particulars of its date of registration and valuation, and they have to be examined as witness. Further the petitioner submits that the respondents have left out the above mentioned persons, and have filed the suit only against him. Hence, the above said persons needs to examined as witnesses. Hence, the petitioner has filed this petition under Order 16 Rule 3 of CPC along with photocopies of Sale Deed (4 Nos'), and prays permission to examine the following witnesses on his side further witness:

- 1) K.Thunaiprakasam, S/o. Late.Kannusami, (3rd respondent's brother) who sold Plot No.2 in the suit property through Sale Deed Doc.No.7673/2008, dated 28.07.2008

- 2) K.Sujatha, W/o. Kuppan, (the Buyer of Plot No.2)
- 3) K.Thangaraj, S/o. Late.Kannusami (3rd respondent's brother) who sold the Plot No.7 in the suit property through Sale Deed Doc.No.3935/2001, dated 17.01.2001
- 4) C.Magimaidoss, S/o. Chinnappa (the Buyer of Plot No.7)
- 5) K.Vijayakumar, S/o. Late.Kannusami (3rd respondents brother) who gave Power of Attorney to sale the Plot Nos' 11 & 12 in the suit property under Power of Attorney Doc.Nos.211/1995 & 257/1997, dated 13.11.1995
- 6) A.Magboolbasha, S/o. Anwarbasha (he sold the Plot No.12 through his Power Agent)
- 7) M.Devakumar, S/o. Late.Murugesan (the Buyer of Plot No.12 under Sale Deed Doc.No.569/1996), dated 15.02.1996
- 8) G.Ashokkumar, S/o. Ganesan (the Buyer of Plot No.11)
- 9) The Sub-Registrar, Katpadi Sub Registration Office, Vellore District

2. **Brief averments of the counter filed by the 3rd respondent is as follows:- (Adopted by 2, 4 to 7)**

The Respondents are the Plaintiffs in the above suit and the 3rd Respondent filed this counter on her behalf and for the other Respondents. The Respondents submit that the averments made in the affidavit of the petitioner are denied as false, frivolous and vague. The witnesses are the persons trying to grab the land from the Respondents through the forged documents created by them, and the witnesses are not the bonafide purchaser and colluded with the trespasser (the petitioner herein) in this case. The

Respondents is going to file a separate suit against the all, the proposed petitioner's witnesses herein, for the cancellation of forged documents, and also civil damages against them. The petitioner after knowing the information wantonly filed this petition, and he has malafide intention to legalise all the forged documents which was created by them. The petitioner ignore the mandate of Order 16 Rule 1(2) which are binding in nature, as it did not make any mention as to the purpose for which the witnesses were proposed to be summoned and the petitioner did not proceed in accordance with mandate of Order 16 Rule 1(1), (2), (3), & (4) of CPC, hence the petition is not maintainable either in law or on the facts of the case. The proposed Witness in the petition is not necessary one, and the petitioner filed this unwanted petition with a view to drag on the proceedings, and to deviate the case from the ends of justice. Hence, this petition is liable to be dismissed with costs.

3. Neither the petitioner nor the respondents 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 analysis of the entire case records including the petition, counter and considering the argument advanced by either side, it is found that the petitioner herein is the defendant and the respondents are the plaintiffs in the above suit, and the suit is filed for the relief of declaring the plaintiffs' title to the suit property, and for mandatory injunction to direct the

defendant, his men, his agent, to remove the superstructure put up in the suit property and to deliver vacant possession of the suit property to the plaintiff after demolish the superstructure put up in the suit property and in default to deliver vacant possession of the suit property to reimburse the costs incurred thereon from the defendant to remove the superstructure in the suit property and for costs.

6. On perusal of records, it reveals that on receipt of summons, the defendant entered appearance through his Counsel on 14.09.2012. In the mean while, on 19.09.2013 a memo filed stating that plaintiff died on 20.06.2013, and then the case was posted for steps. After that the respondents-2 to 7 the legal heirs of deceased plaintiff were impleaded in the suit, the defendant/the petitioner herein filed his written statement only on 02.07.2014. Then, issues were framed on 02.08.2014, and the case was posted for Trial.

7. On 19.11.2015, on the side of plaintiffs, the 3rd plaintiff was examined as PW-1, and marked Ex.A-1 to Ex.A-17 on 03.02.2016, and she was cross examined in part on 25.02.2016 & 09.03.2016, and she was cross examined in full on 30.03.2016. Then, the Secretary of Katpadi Co-operative Township Society was examined as PW-2 and marked Ex.X-1 to Ex.X-3, and he was cross examined on 02.11.2016, and posted for further PW's. At that juncture, PW-1 was recalled and through her, Ex.A-18 was marked, and then, when the case is posted for cross of PW-1, the defendant had filed Order 8 Rule 9 of CPC and the same was numbered as I.A.No.93/2017 and it was allowed on 11.01.2019. While pending of the said I.A, the plaintiffs have filed Order 26 Rule 9 of CPC to appoint an Advocate Commissioner and the same was

numbered in I.A.No.70/2018 and the same was dismissed on 23.01.2020. Thereafter, the case was posted for cross of PW-1. On 27.02.2020, the PW-1 cross examined in full and then, the case was posted for DW's.

8. Then the plaintiffs have filed several I.A's and those were dismissed by this Court, and again posted the case for DW's. At that Juncture, on 12.01.2023 the present petition has been filed by the defendant to summon the petition mentioned 9 witnesses to give evidence with regard to prove the fact that before filing of the suit, the 3rd respondent/plaintiff's brothers & her husband have divided the suit property and sold to several persons and sought to produce the encumbrance certificate, sale deed documents with particulars of its date of registration and valuation.

9. Before parting with the Order, this Court keeps in mind the Order of Hon'ble High Court of Madras, passed in C.R.P.No.258/2023 and C.M.P.No.2104/2023, dated 07.02.2023 in the matter of **V.Radhakrishnan & 5 Others., Vs. K.Duraisamy & 13 Others.**, unique neutral citation number 2023/MHC/555 wherein held in para-5 that;

“5. The parties to the suit are expected to establish their respective cases based on the documents and evidences. The Revenue authorities are bound to perform public duties and in respect of the private suits, they need not be summoned by the Courts unnecessarily, which would cause inconvenience for performing the public duties by those authorities. Only if the Court finds it necessary to summon those officials at the instance of parties to the suit, the Tahsildar or the Government

officials can be summoned for the purpose of giving evidences or for production of documents.”

10. On bare reading of the Written Statement, the defendant has taken a stand that the plaintiff had obtained an exparte decree against him in O.S.No.640 of 2003 on the file of Additional District Munsif, Vellore, and the same was came to his knowledge only after receipt of notice in E.P.No.72/2010, and then, he filed set aside the exparte decree in I.A.No.461/2012 before this Court. Though the plaintiffs had obtained exparte decree in the year of 2004, but they filed EP only in the year of 2010.

10.1 Indeed, the defendant had purchased the house site measuring 1710 Sq.ft., from one Thangaraj for a sum of Rs.23,790/- on 28.10.1999 for valid and binding consideration in the same S.No.77 (New Sub-division No.77/2) of Thandalam Krishnapuram Village, and from that date, he is residing with his family by constructed a Small Thatched House at beginning and after sometime in the year of 2007, and he applied for a housing loan in the Katpadi Township Co-operative Housing Society for a sum of Rs.60,000/- and after pursuing the all the documents, the co-operative housing society sanctioned the loan amount on 15.10.2007 with condition that he should repay the loan within the period of 10 years on equal monthly installment of Rs.900/- per month, and with that amount, the defendant constructed a pucca house with ACC Roof by raising wall builded with brick & cements and now living in the said house and with his family and paying the housing loan monthly till date without fail.

10.2 In the Additional Written Statement, the defendant has stated that the Vendor Thangaraj owned 0.78 cents in S.No.77, New S.No.77/2, in that he sold portion of land measuring 0.56 cents to the 1st plaintiff namely late. T.Deivanayagam as early as on 04.04.1983, and the balance land of 0.22 cents was retained by him for his own. After long period of 16 years, the said Vendor Thangaraj sold portion of property measuring 4 cents (1710 Sq.ft) to the defendant on 28.10.1999 vide Registered Sale Deed Doc.No.4247/1999, and from the date to till date, the defendant is enjoying the same as lawful owner and the said Vendor Thangaraj was enjoying the remaining 18 cents of land in his own. The said Thangaraj on 17.01.2001, sold 6 cents of land to one Magimadoss vide Registered Sale Deed Doc.No.3935/2001, and then, the said Thangaraj was enjoying the balance 12 cents till his death and after his death, his legal heirs are enjoying the same as lawful owner. That being so, the plaintiffs claims that S.No.77/2 totally belongs to them.

11. It is necessary to refer the Order 16, Rule 1 of CPC which gives guideline to the Court, how the witnesses should be summoned for their attendance to give evidence. Sub-Rule 2 to Rule 1 of Order 16 of CPC reads:

“(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.”

The rule does not say, it is an automatic or for mere asking, without reason and it is evident, that there must be a reason, not only from the reading of sub-rule (2), but also by the reading of sub-rule (3). In sub-rule (2), when the party applies to the Court,

he must state 'the purpose' for which the witnesses are proposed to be summoned or examined. If reasons are assigned, then it is the duty of the Court, for the reasons to be recorded, to permit the application to call the witnesses either by summoning through Court or otherwise, thereby making it clear that a party desirous of obtaining any summons, for the attendance of any person which should include a party to the suit, also should assign reasons viz., the purpose. If the purpose is not stated, then the Court is competent to deny the demand, refuse to issue summons, which cannot be questioned. In this context, this Court have to see, what is the purpose of summoning the proposed witnesses.

12. In the petition affidavit the petitioner/defendant states that, the respondents were divided the suit property into several plots, in which the 3rd respondent's brothers and 3rd respondent's husband were jointly divided the suit property into plots and sold to several persons, before filing of this suit. In which, the petition mentioned persons had purchased the same. Now only the following copies of the Sale Deeds have been made available to the petitioner i.e., 1) Doc.No.569/1996, 2) Doc.No.3142/2001, 3) Doc.No.3935/2001 & 4) Doc.No.7673/2008. In the aforesaid sale documents buyer and seller must be examined as witness in this case. Further, the 3rd respondent husband had sold the suit property to some persons. In order to inspect the same in Sub-Registration Office at Katpadi, the Sub-Registrar of Katpadi or the Subordinate Officer authorized by him needs to bring the encumbrance certificate, and also bring the above mentioned documents with particulars of its date of registration and valuation, and they have to be examined as witness.

13. From the above reading of the averments, it is evident that the petitioner/defendant has not filed the List of witnesses within 15 days after the issues are settled as per Sub-Rule (1) of Rule 1 of Order 16 of CPC, and except the list of witnesses 3 & 4, nothing was specifically pleaded either in his written statement or his additional written statement. It is duty of the petitioner/defendant to prove his possession with valid documents. The petitioner/defendant need not take steps for proving the same. Herein, it is pertinent to mention that, in this case, the defendant has not examined himself to prove the averments of his written statement or additional written statement at first. But, the defendant has straight away filed this petition to examine 9 witnesses including the Sub-Registrar, Katpadi on his side further witnesses. That apart, the documents, which is sought to be bring through the witness i.e., Sub-Registrar, Katpadi, are all public documents. Hence, it is always open for the petitioner/defendant to get the certified copies of the same, and mark it through witnesses if it really requires.

14. Without adducing substantial oral or documentary evidences on the defendant side, and more particularly, beyond the pleadings, the petitioner/defendant has sought summon to 9 witnesses including the Sub-Registrar in the present petition without assigning the proper purpose. Thus, on cumulative consideration of entire facts and circumstances of the case, and this case is filed in the year of 2012, and the plaintiffs side evidence was closed as early as on 27.02.2020. Since then, this case was opened for defendant side evidence to till date. The defendant filed the written statement on 02.07.2014 & additional written statement on 08.03.2017, and left the

stipulated time at the settlement of issues stage to produce list of witnesses, and even after the case is opened for defendant side evidence from 27.02.2020, he waited for almost 3 years to file this present petition without assigning valid reasons for calling the proposed witnesses, would clearly shows the intention of the petitioner/defendant. From the above discussions, this Court is not inclined to allow this petition. Accordingly, the point is answered against the petitioner.

15. **Result:-**

In fine, in the interest of justice, this petition is dismissed and no orders as to costs.

-//Dictated by me to the steno-typist, who directly typed the same and corrected and pronounced by me in the open court, on this the 22nd Day of August – 2023.//-

DISTRICT MUNSIF
KATPADI

Both sides documents and witnesses: **NIL**

DISTRICT MUNSIF
KATPADI