

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

Thursday, this the 27th Day of June – 2024

**I.A.No. 2 of 2022
In
O.S.No. 80 of 2017
(CNR.No.TNVL23-000176-2017)**

1. Govindasamy Gounder (Died)
2. Anbazhagan
3. Malarkodi
4. Minnalkodi
5. Sampath
6. Muniyan
7. Pavalakodi

.....Petitioners/Plaintiffs

-Vs-

1. John
2. Banumathi Ammal

.....Respondents/Defendants

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. K.A.Sankarasivam, the Counsel for the Petitioners, and Thiru. M.Pugazhendhee, the Counsel for the 2nd Respondent, and the 1st Respondent was called absent & set ex-parte in the main Suit itself, and upon perusing the petition,

counter and the entire records pertaining to this case, 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 7 Rule 14 (2) of Code of Civil Procedure to grant permission to them to file petition mentioned documents.

1. **Brief averments of the affidavit filed by the 6th Petitioner is as follows:-**

The 6th Petitioner is the 6th Plaintiff in the Suit, and the Petitioners – 2 to 5 and 7 are his brother & sisters, and they are the Plaintiffs – 2 to 5 & 7 in the above Suit, and the 6th Petitioner is filing this affidavit for himself and on behalf of the other Petitioners also, and he states that the documents filed now are very relevant and the material to prove the Plaintiff case, and the delay in filing the document is not willful or wanton but due to reasons beyond on their control, and the document filed was mislaid and mingled with other papers. Since, the 1st Plaintiff passed away, the family was put up to hardship and inconvenience, and therefore, the Petitioners were able to get themselves acquainted with the proceedings which took considerable time before this Court, and prays permission to file the document and allow this petition.

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

The petition filed by the Petitioners is not sustainable either in law or on facts, and the Respondent denies the entire allegations made in the affidavit, and put the Petitioners to strict proof of the same. The 2nd Respondent states that the Hon'ble High Court passed Judgment in S.A.No.423/2005, dated 09.12.2016 by allowing the Second Appeal, and as per the S.A.No.423/2005, the trial Court shall re-admit the Suit, and proceed to determine the Suit, and the Suit was numbered as O.S.No.80/2017, and posted for trial. Further the 2nd Respondent states that the Petitioners have filed I.A.No.206/2018 to receive Additional Documents, the said petition was allowed on 02.11.2018, and then, the Petitioners have filed another petition for amendment in I.A.No.545/2018 and the same was dismissed on 30.01.2020, and again, the Petitioners have filed one another petition for receiving the Additional Documents in I.A.No.78/2021, and the same was also allowed on 01.11.2021, and now, the Petitioners have filed the above petition to receive Additional Documents, and the Petitioners only intention is to drag on the proceedings for Several years, and to harass the 2nd Respondent. Furthermore, the 2nd Respondent states that whenever this Court posted the above case for Trial, the Petitioners are filing any petition to drag on the Trial, and there is no merit in this application, and prayed to dismiss the petition.

3. Neither the Petitioners 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 argument has been heard. Records perused. Upon careful perusal of this case records, it is found that the Suit has been filed by the 1st Plaintiff/1st Petitioner herein as against the Defendants/the Respondents herein to direct them to execute and to register the Sale Deed in favour of the 1st Plaintiff in respect of the Suit Schedule mentioned properties on payment of balance of consideration of Rs.1,000/- within the time fixed by this Court, in default, this Court may execute and register the Sale Deed on behalf of the Defendants, and for costs.

6. The Petitioners/Plaintiffs have stated in their affidavit that the documents filed now are very relevant and the material to prove the Plaintiff case, and the delay in filing the document is not willful or wanton but due to reasons beyond on their control, and the document filed was mislaid and mingled with other papers, and since, the 1st Plaintiff/1st Petitioner herein was passed away, the family was put up to hardship and inconvenience, and therefore, the Petitioners were able to get themselves acquainted with the proceedings which took considerable time before this Court, and prays permission to receive the document i.e., the Certified Copy of Execution Petition and Order in E.P.No.145/2009 in O.S.No.283/2000 on the file of Vellore District Munsif

Court, (Vellore Sub Court O.S.No.349/1996), (O.S.No.80/2017 Katpadi District Munsif Court).

7. On the other hand, the 2nd Respondent/2nd Defendant contended that the Hon'ble High Court passed Judgment in S.A.No.423/2005, dated 09.12.2016 by allowing the Second Appeal, and as per the said Judgment, the trial Court shall re-admit the Suit and proceed to determine the Suit. At the stage of trial, the Petitioners have filed I.A.No.206/2018 to receive Additional Documents, the said petition was allowed on 02.11.2018, and then, they have filed another petition for Amendment in I.A.No.545/2018 and same was dismissed on 30.01.2020, and again, they have filed one another petition in I.A.No.78/2021 to receive Additional Document and the same was also allowed on 01.11.2021, and now once again, the Petitioners have come forwarded and filed the above petition to receive Additional Document which only shows their real intention of the Petitioners is to drag on the proceedings for Several years, and it was filed to harass him.

8. On careful perusal of records, it reveals that Originally the Suit was filed before Subordinate Judge Court, Vellore and numbered as O.S.No.349/1994 and then, transferred to District Munsif Court, Gudiyattam wherein it was numbered as G.O.S.No.509/1996 and thereafter, the case was transferred to District Munsif Court, Vellore, wherein it was numbered as O.S.No.283/2000, and passed Ex-parte Judgment on 22.09.2003, and the Suit was restored as per Order passed in I.A.No.1476/2003 on

20.10.2003, and posted for trial, and after full fledged trial, the said Suit was decreed on 31.03.2004.

9. Further, it is seen from adjudication dated 06.07.2017, the entire case records was received from Hon'ble Subordinate Judge Court, Vellore, and observed as an Order copy was received on 03.03.2017 from the Hon'ble High Court of Madras in S.A.No.423/2005, dated 09.12.2016 wherein the Second Appeal was allowed, and accordingly the Judgment & Decree of the Lower Courts were set aside, and ordered to remand back the case to the trial Court for de-novo trial and directed the trial Court shall re-admit the Suit under its Original Number in the Register of Civil Suits and proceed to determine the Suit. The Suit property is situate within the Jurisdiction of the District Munsif, Katpadi. Hence, as per the proceedings of Hon'ble Principal District Judge, Vellore dated 21.07.2017, the said case was transferred to this Court from Principal District Court, Vellore on the point of Territorial Jurisdiction.

10. It also reveals from records that the entire case was received by this Court on 28.07.2017, and numbered as O.S.No.80/2017. On 28.08.2017, the Plaintiff Counsel reported that the Sole Plaintiff died on 01.12.2016, and this Court ordered steps for Plaintiff, and the same was done in I.A.No.317/2017 and the Plaintiffs-2 to 7/the Petitioners herein were added, and then, the necessary amendment was done in the Plaint as per order passed in I.A.No.432/2017. Then, as per the direction of Hon'ble High Court in S.A.No.423/2005 dated 09.12.2016, the issues were framed for de-novo

trial on 03.02.2018, and this Court directed the Plaintiffs to commence trial afresh, and posted the matter for Trial.

11. In such scenario, the present Petitioners/Plaintiffs-2 to 7 have filed petition under Order 7 Rule 14 of CPC to receive Additional Documents and the same was allowed in I.A.No.206/2018 on 02.11.2018, and in the meanwhile, the Plaintiffs-2 to 7/the Petitioners herein have filed petition under Order 6 Rule 17 of CPC to amend the Plaint for adding the Particulars of the above A.S.No.23/2004 filed by 2nd Defendant as against the O.S.No.283/2000 and the E.P.No.145 of 2009 filed by the 1st Plaintiff for execution of Sale Deed as per Decree in the above O.S.No.283/2000, and in the said E.P proceedings, the execution of Sale Deed executed by the Court in favour of the 1st Plaintiff on 09.01.2012, and those are subsequent events in respect of the Suit properties after disposal of A.S.No.23 of 2004, and prays permission to amend.

12. The said petition was numbered as I.A.No.230 of 2018, and it was dismissed by this Court on 30.01.2020 by observing that the Judgment & Decree of the District Munsif Court, Vellore & Hon'ble Sub-Court, Vellore as well as the Sale Deed executed by the Execution Court, are becomes invalid in the eye of law & unenforceable after passing of Judgment by the Hon'ble High Court of Madras in S.A.No.423/2005 dated 09.12.2016, and the proposed amendments are allowed that would cause the delay of trial, and those are unnecessary after the Judgment of Second Appeal, and also, if the same is allowed that would give an opportunity to the Plaintiffs' to fill up the lacuna.

13. Thereafter, again the present Petitioners/Plaintiffs-2 to 7 have filed petition under Order 7 Rule 14 of CPC to receive Additional Documents, and the same was numbered as I.A.No.78/2021 and it was allowed on 01.11.2021, and again the case was posted for trial. At this juncture, Once again, the Plaintiffs-2 to 7/the Petitioners herein have come forward and filed similar petition to receive the document i.e., the Certified Copy of Execution Petition and Order in E.P.No.145/2009 in O.S.No.283/2000 on the file of Vellore District Munsif Court, (Vellore Sub Court O.S.No.349/1996), (O.S.No.80/2017 Katpadi District Munsif Court).

14. On deep scrutinize the said document, it is found that though it was mentioned in the docket sheet as the Certified Copy of petition & order in E.P.No.145/2009 in O.S.No.283/2000 but it was not annexed thereso. It shows that the Certified Copy of petition and its adjudication orders passed in E.P.No.388/2006 in O.S.No.283/2000 (Vellore Sub-Court in O.S.No.349 of 1994), and the said Certified document was made ready as early as on 23.04.2018 & delivered on 25.04.2018 as per the endorsement of Examiner.

15. It is evident from records that the 1st Plaintiff has filed the above Suit for Specific Performance by way of presentation of the Plaint in O.S.No.283/2000, and the same was duly contested by parties, and an Decree was passed therein on 31.03.2004 by the District Munsif Court, Vellore in favour of 1st Plaintiff. As against the said Decree, the 2nd Defendant has preferred first Appeal before the Hon'ble Sub Court, Vellore and

the same was dismissed. Hence, the Plaintiff has filed Execution Petition before this Court for execution of Sale Deed in his favour as per the Decree in O.S.No.283/2000, and the same was executed in his favour on 09.01.2012.

16. In the continuation of same proceedings, as assailing the Judgment and Decree of first Appeal Court i.e., Hon'ble Sub-Court, Vellore, the 2nd Defendant has preferred Second Appeal before the Hon'ble High Court of Madras, and the same was allowed in S.A.No.423/2005, dated 09.12.2016 wherein the Judgment & Decree of the Lower Courts were set aside, and the case was remanded to the trial Court for de-novo Trial and proceed to determine the Suit.

17. As already observed by this Court in I.A.No.230/2018 dated 30.01.2020, this Court opines that the Judgment & Decree passed in favour of Plaintiff, and the Sale Deed dated 09.01.2012 executed on the basis of said Decree are become invalid, and those are not have any legal enforcement after passing of the Judgment in Second Appeal.

18. In obedience to comply the direction of Hon'ble High Court in S.A.No.423/2005 dated 09.12.2016, already this Court has framed issues for de-novo trial as early as on 03.02.2018, and also, this Court directed the Plaintiffs to commence trial afresh, and this Case is still pending at the fresh trial stage since 21.02.2018, and this Court is waiting for the co-operation from the Plaintiffs. Instead of commencing the

trial, the Petitioners/Plaintiffs-2 to 7 are filing one after another petition and delaying the trial.

19. It is seen from the petition mentioned document is nothing but the Execution Petition filed for execution of Sale Deed as per Decree passed in the above O.S.No.283/2000 dated 31.03.2004, and the same is arised out of earlier Decree passed by the Lower Courts, and the same has been set aside by the Hon'ble High Court of Madras in S.A.No.423 of 2005 dated 09.12.2016. Since, the earlier Decree passed by the Lower Courts in favour of Plaintiffs was set aside, and in pursuance of Decree, the Execution Proceedings & its order and the Execution of Sale Deed by the Execution Court are becomes nullity & does not have any validity in the eye of law, and on the basis of earlier findings & its further proceedings of this Court could not be binding in nature to this Court for consider and thereby, the Plaintiffs cannot take any advantage over the same.

20. On mere reading of Plaint averments, it is found that there is no specific assertion in respect of the petition mentioned document. That the Petition mentioned document is the subsequent to filing of the Suit, which is enough to show that the said document is not available at the time of filing of the Plaint, and not listed as document in the List of Documents in plaint, and on careful scrutinization of the Plaint, that there was no pleadings in respect of those documents. The said facts are being so, the

Petitioners/Plaintiffs have filed this petition to condone the filing of the document which are not pleaded nowhere in the Plaint.

21. 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.

22. From the light of the above judgment, the said petition mentioned document cannot be received in evidence on the Petitioners/Plaintiffs side as no pleadings. Moreover, Considering the said settled preposition of law, and as per the de-novo trial direction of Hon'ble High Court in S.A.No.423/2005 dated 09.12.2016, this Court is not inclined to allow this petition. Accordingly, the Point is answered against the Petitioners.

23. **Result:-**

In fine, from the above cumulative discussions, in the interest of Justice, this petition is dismissed. No costs.

-//Dictated directly to the Steno-typist and typed by her in computer and after rectification taken print out and pronounced by me in the Open Court, on this the 27th Day of June – 2024.//-

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI

Both sides documents and witnesses: **NIL**

(Sd/-).. K.Venkatesan
DISTRICT MUNSIF
KATPADI