

**IN THE COURT OF THE I ADDITIONAL SUBORDINATE JUDGE,
VILLUPURAM.**

Present: Thiru.N.S. Jayaprakash, B.Sc.,B.L.,

I Additional Subordinate Judge, Villupuram.

Monday, the 20th day of March 2023

IA No.418/2022

in

OS No.411/2013

C. Elumalai

.... Petitioner/Plaintiff

//Vs//

1. Karthikeyan

2. Vinothkumar

.... Respondents/10 and 11 Defendants

This petition having been taken on file on 12.09.2022 and came up for final hearing in the presence of Tr.D.Natarajan, learned Counsel on behalf of the Petitioner/Plaintiff and Tr.S.Murali, learned Counsel on behalf of the R1, R2, upon perusing the case records, upon hearing arguments of both side and having been stood over for consideration till this date, this court delivered the following:-

ORDER

The Petitioner/Plaintiff has filed this petition under Order 6 Rule 17 of CPC to amend the plaint as detailed separately.

2. The petition in Brief is as follows:-

The Petitioner is the Plaintiff in the main suit. The suit filed for Specific Performance as against the defendants 1 to 9 as well as the respondents herein. The respondents had claimed to be bonafide purchasers for value without notice of agreement which he had specifically denied even at the earliest stage both in his plaint as well as in the chief affidavit that was already filed. The petitioner also

submit that long after he filed the suit the respondents herein had filed a cross suit in OS 262/2015 on the file of the Principal District Munsif, Villupuram in respect of the same properties and as against his seeking for declaration and for consequential injunction therein. It is significant to see that he had filed an injunction petition in that suit against his which after enquiry was dismissed on merit and petitioner filed the relevant documents as additional documents in this suit. While the matter thus stood the respondents herein as plaintiffs did not press their suit itself viz., OS 262/2015 and thereby the suit was dismissed as not pressed on 23.04.2018. He now filing the decree copy which would go to show that when the counter suit is filed they have not right to contest the suit now pending on the file of this court. The petitioner that the dismissal of the suit filed by the defendants herein had occurred only in 2018 and not when he filed the suit in 2015 and even filed the chief affidavit earlier and as such he have to amend the plaint with due diligence which could be done only now. By virtue of the dismissal of the cross suit filed by the respondents herein they had no right to contest their suit now pending as they were estopped as well as by constructive resjudicata which facts the petitioner have to bring in by additional pleading in the plaint by way of amendment as detailed separately. Hence this petition.

3. The brief contents of the R1 and R2 Counter is as follows:

The petition filed by the petitioner is more vexatious, unsustainable both on law and on facts and liable to be dismissed in limine. The affidavit filed by the petitioner are specifically denied except those which are admitted. The petitioner/plaintiff filed the above IA 418/2022 in OS No.411/2013, to amend the plaint that the respondents had no right to contest the suit is not maintainable in law and on facts, and the same is deserved to be dismissed in limine. The petitioner falsely averred that this respondents had no right to contest the suit on the ground of estoppel and by constructive res-judicata which is totally false and incorrect, and also it is mis-representation and misleading the court itself, through abuse of process of law and hence on this ground alone the above petition in IA No.418/2022 in OS 411/2013 is liable to be dismissed. They filed the suit in OS No.262/2015 on

the file of the Principal District Munsif Court, Villupuram, for declaration and injunction and later the same was dismissed on 23.04.2018, as not pressed. It will not hit by the principle of Res-judicata. Res-judicata denies that a decision must be arrived finally or finality must be arrived. But, in the said case in OS No.262/2015 Principal District Munsif, Villupuram no finality or decision is finally arrived by any court of law on any suit, and hence the principle of Res-judicata does not arise at all. Moreover the rights of the parties are not finally determined, decided by any Court of Law. Hence, on this ground the petition in IA No.418/2022 is liable to be dismissed at the threshold. The previous counsel who conducted the case in OS No.262/2015, before the Principal District Munsif Court, Villupuram has not informed the respondent' about the withdrawal of the case, on the ground as not pressed. As the respondents are the bonafide purchaser in title of the suit properties, the Respondents have every right to prosecute the case before the appropriate forum and this petitioner who is alleged to have a sale agreement and alleged to have filed the suit for specific performance on the strength of agreement, cannot have any right to curtail the rights of the title holder of the property, from any manner and in fact, no cause of action, the petitioner filed the IA No.418/2022 in OS.No.411/2013 is liable to be dismissed. The petitioner is only entitled to receive the consideration, if any, from his vendors in pursuance of the alleged agreement, if any and in case of proving the agreement, from his vendors only and cannot seek right of title over the purchasers title over the suit property, and hence the same will not bind on the rights of this respondents. They are not the contracting party to the alleged agreement dated 10.03.2010 and hence their rights over the suit property cannot be curbed, or curtailed by abuse of process of law. Further, all the parties to the suit are not impleaded in this petition and thus they were not given notice in respect of this petition, and hence on this ground of non-joinder of necessary parties, this petition has to be dismissed. The petitioner filed the petition to amend the plaint under Order 6 Rule 7 of CPC in a vague manner and without complying with the material as contemplated under law, and unknown to law and so the petition cannot be allowed by any stretch of imagination. Hence the petition is liable to dismissed with costs.

4. Heard both sides. Perused Records. Neither Petitioner nor Respondents have examined any witnesses and marked exhibits.

5. Point for Consideration:-

- (i). Whether the petitioner has shown sufficient cause to allow the petition in IA No.418/2022 in OS No.411/2013?
- (ii). Whether the petition is to be allowed or not?

6. On Point:-

6(1) The contention of the petitioner is that the respondents herein, who are defendants 10 and 11 in the main suit have filed a suit in OS No.262/2015 on the file of Principal District Munsif, Villupuram in respect of the same properties in this suit and the said suit was dismissed as not pressed on 23.04.2018. The petitioner further states that the respondents have no right to contest this suit and hence necessary amendments regarding the filing and disposal of suit in OS No.262/2015 has to be brought on record by necessary amendments. The petitioner also filed the details of amendment, in which it is stated that the respondents are estopped and barred by constructive resjudicata.

6(2) The respondents contended that the suit in OS No.262/2015 was disposed without hearing both sides and so, the principle of resjudicata is not applicable to the facts of this case. The respondents further stated that the suit in OS No.262/2015 was dismissed as not pressed without the instruction by the respondents who are the bonafide purchasers of the suit properties.

6(3) The main suit was filed for the relief of specific performance by the petitioner/plaintiff against defendants 1 to 11 based on a sale agreement dated 10.03.2010. The respondents in this petition are defendant Nos.10 and 11. It is stated in the plaint that these respondents have purchased the property on 25.11.2010. The petitioner has stated that these respondents have filed the suit in OS No.262/2015 before the Principal District Munsif, Villupuram and the same was dismissed as not pressed on 23.04.2018.

6(4) The respondents admitted filing of suit in OS No.262/2015 and also the result of dismissal as not pressed. The petitioner sought to make amendments by including the filing and disposal of the said suit. The petitioner has stated in the proposed amendment that the respondents in this petition are estopped and barred by constructive resjudicata. The respondents stoutly denied the same and contend that the earlier suit in OS No.262/2015 was not heard in full and disposed on merits. The contention regarding constructive resjudicata can be decided only at the time of trial. The amendments sought for by the petitioner is verymuch necessary and avoid multiplicity of proceedings. The respondents have all rights to file the additional written statement for the amendments made and the claim by the petitioner and the denial by the respondents could be decided in the main suit. As of now, this petition deserves to be allowed.

In the result, this petition is allowed. No order as to costs.

Dictated to the Steno-Typist, typed on computer, corrected, print out was taken and pronounced by me in the open court, on this 20th day of March 2023.

(Signed:- Tr.N.S. Jayaprakash)
I Additional Subordinate Judge,
Villupuram.

Petitioner's side Witness and Exhibits: -
NIL.

Respondent's side Witness and Exhibits: -
NIL.

(Signed:- Tr.N.S. Jayaprakash)
I Additional Subordinate Judge,
Villupuram.