

**In the Court of the Additional District & Sessions Judge,
Srivilliputtur.**

**Present : Tmt. Gajara R. Jiji, M.A., LL.M.,
Additional District Judge,
Srivilliputtur.**

Wednesday, the 20th day of December 2023

I.A.No. 5/2023

in

O.S. No. 139/2010

.....

Thanraj

.. Petitioner / Plaintiff

.. VS ..

- 1) John Selvaraj (Died)
- 2) John Jeyakumar
- 3) John Rajkumar
- 4) John Vethamuthu
- 5) Sankareswari
- 6) Edison
- 7) Esthar Thayammal
- 8) Victoria
- 9) Lilli
- 10) Arulmani
- 11) Christopher
- 12) Kirubaharan

.. Respondents / Defendants

This petition came before me for final hearing on 06.12.2023 in the presence of Thiru.A.S. Chandrasekaran, Advocate for the petitioner, and of Thiru.P. Pandiselvam, Advocate for the 3rd respondent, and of Thiru.S. Umapathy, Advocate for the respondents 4, 6, 11 and 12 and upon hearing arguments on both side and perusing the case records, this Court passed the following

ORDER

This is a petition under Order 8 Rule 1(A)(3) and Section 151 of IPC to receive the additional documents.

1) Averments in the petition in brief are as follows:

The petitioner is the plaintiff. The suit has been filed for specific performance. The petitioner was examined as PW1 on 31.03.2021 and filed his chief proof affidavit. Whiles since the counsel who was appearing for the respondents/defendants withdrew his vakalat, notice was issued to the respondent/defendant and they filed their additional written statement. The petitioner also filed I.A. No. 1/2022 for amendment and the same was allowed on 21.04.2023. The petitioner filed 9 documents along with I.A. 1/2022 and those documents are important and necessary to prove the case of the petitioner. Documents produced along with I.A. No. 1/2022 could not be filed earlier which is not wanton. Hence prays to receive the documents in I.A. No. 1/2022 as exhibit on the side of the petitioner/plaintiff.

2) Averments in the counter statement filed by the 4th respondent and adopted by the respondents 3, 6, 11 and 12 in brief are as follows :-

The petitioner/plaintiff knowing very well that he will not be entitled to any relief is trying to delay the proceedings of the case with an intention to harass the respondents. The petitioner is carrying on Paddy business under the brand name of Garuda's brand. The suit was filed in the year 2020. The 5th respondent/6th defendant

filed I.A. No. 506/2011 to implead him as party in the suit and the petition was allowed on 30.03.2012. The other legal heirs of the 1st respondent/1st defendant namely respondents 7 to 10 were impleaded in the suit as per order in I.A. 576/2012. After the petitioner filed his chief proof affidavit, the 2nd defendant died and his legal heirs namely respondents 11 and 12 herein were impleaded as per Order in I.A. 1/2021 and the amendment petition in I.A. 1/2022 was allowed on 22.06.2022. The plaint thus was amended three times. The defendants 2 and 3 are stated to have executed new sale agreement. Further the 2nd defendant died and the 3rd defendant was set exparte. The document produced as if the 11th respondent executed a consent deed is not true. The respondents 11 and 12 are having many acres of agricultural land in Mayiladuthurai and hence they have no necessity to get money from anyone. The 11th respondent was aged only 17 years on 20.06.2011. Since the 2nd defendant was leading wayward life, the 4th respondent was taking care of the respondents 11 and 12. The respondents 11 and 12 filed suit against the 2nd respondent before the Principal District Munsif Court, Mayiladuthurai in O.S. No. 320/2010 and also got an injunction in I.A. 421/2010. The 4th respondent was maintaining the respondents 11 and 12 as guardian.

3) The petitioner has filed some Bank challans stating that the 3rd respondent, his friend Pavunraj, Karthick, Balasubramani and his wife Jayarani had received money on various dates in the year 2011. The 3rd respondent has many acres of agricultural land in Mayiladuthurai and has no necessity to receive money from anyone.

4) The petitioner filed bank challans as if money was transferred to Srinithi jewellers and the wife of 4th respondent as instructed by the 4th respondent, the 4th respondent had never ever asked the petitioner to send any amount to Srinithi Jewellers or to his wife's account. The 4th respondent has many acres of agricultural land in Mayiladuthurai and hence no necessity to receive amount for his daughter's marriage expenses from anyone. The petitioner has filed bank challans as if he transferred amounts to the accounts of the 6th respondent in the year 2010 and the petitioner is put to strict proof of the same.

5) The 3rd respondent had not signed in Ex.A1 Sale agreement even on 16.12.2009, whileso the petitioner's claim that the 3rd respondent had received amounts from him is not sustainable. If the contention of the petitioner that he had transferred amounts to Srinithi Jewellers and the wife of the 4th respondent as directed by the 4th respondent and had sent money to the account of the 6th respondent, the petitioner could have mentioned the same while he amended the plaint thrice. The petitioner ought to have filed suit within three years from the alleged transactions in the year 2011 and hence the claim is barred by limitation and the petitioner has no cause of action. The contention of the petitioner that he had transferred amounts to the respondents who had not executed sale deed that too during the pendency of the suit is farcical.

6) The petitioner has crores of rupees turn over in his Paddy business and if the

petitioner had transferred amounts as stated by him then he ought to have filed his daily book, ledger copies along with this petition. The petitioner has used the challans prepared by him to transfer money to other persons and produced them as if he transferred money to the respondents with an intention to prevent the respondents from selling the property to third parties.

7) The 6th respondent has clearly stated in the letter dated 22.11.2010 that the properties belong to the grand children of Joseph Nadar as per Will dated 30.04.2002. The interest of justice warrants that notice has to be issued to the respondents 3, 5 to 10 and decide this petition only after hearing respondents 3, 5 to 10 lest irreparable loss and hardship may be caused to them. Since this petition has been filed after the lapse of 11 years, it is affected by limitation. The documents produced by the petitioner are old documents and affected by limitation. If at all the documents are genuine, the plaintiff ought to have filed the documents within three years. Hence prays to dismiss the petition.

8) No oral or documentary evidence were let in on either side. Heard both side. Records perused.

9) **Point for Consideration**
Whether the petition is to be allowed or not?

10) **Point and answer :-**
The petition has been filed to receive the documents mentioned in the petition on the side of the petitioner/plaintiff. The suit is one filed for specific performance.

The case of the petitioner is that the suit sale agreement was executed by defendants 1, 2, 4 and on behalf of the 3rd defendant by his wife in favour of the petitioner/plaintiff. Now the plaintiff seeks to receive the sale agreement, bank challans showing transfer of money to the defendants and the consent deed executed by the 11th respondent. The learned counsel for the 4th respondent would vehemently contend that the plaintiff had amended the plaint three times but has not mentioned about the bank challans and consent deed in the plaint and that the plaintiff could have amended the plaint regarding the same. Even as per the counter of the 4th respondent the first amendment on 30.03.2012 was made after impleading the 6th respondent, the second amendment was made after impleading the legal heirs of the deceased 1st respondent namely the respondents 7 to 10 herein, and the third amendment was made after impleading the legal heirs of deceased 2nd respondent namely the respondents 11 and 12 herein. Hence it is clear that the all three amendments were carried out after impleading of parties.

11) The petitioner however filed I.A. 3/2022 seeking to amend the plaint in order to correct the name of the 6th defendant and also to incorporate the amendments regarding the sale agreement dated 27.09.2010, transfer of amount through bank challans to the defendants and also the consent deed allegedly executed by the 11th defendant. I.A. 3/2022 was allowed by this court on 21.04.2023 on payment of cost. The plaintiff now requests to receive the documents regarding the pleadings about the subsequent sale agreement, consent deed and bank challans. The first objection of the

learned counsel for the respondent was that the petitioner could have made these amendments when he had thrice amended the plaint. This court already allowed the amendment application in I.A. 3/2022 and as such the contention regarding delay in amendment need not be looked into in this petition. The learned counsel for the 4th respondent had denied that the respondents had not received any amounts as stated by the petitioner. The petitioner has pleaded that the respondents have received amount through bank and had also executed the sale agreement and consent deeds. Whether such documents were executed or not could be decided only after letting evidence on such documents. Hence merely because the respondents deny execution of documents or receipt of money cannot be taken as sufficient reason to refuse receipt of the documents produced on the side of the petitioner. The respondent has fair chance to raise his objections regarding the documents and also cross examine the witnesses regarding the alleged documents. The learned counsel for the 4th respondent submitted that it is necessary to issue notice to the respondents 3, 5 to 10 and give them chance to put forth their objections regarding the documents. The 3rd respondent is already party in the petition and has adopted the counter of 4th respondent. The respondents 5, 7 to 10 are already *exparte* and hence it is not necessary to issue notice to the respondents who are *exparte* in the suit.

12) The suit is of the year 2010 and even the evidence of PW1 has not been completed in the suit. The mere receipt of the document or marking of documents will not mean that the said documents are relied upon. The admissibility, reliability

and proof of the document has to be established by letting in oral evidence and this court could decide regarding whether the documents are reliable and proved only at the stage of judgment. Mere receipt of documents will not cause any prejudice to the respondents for they have the fair chance of contesting regarding the documents by cross-examination of the witnesses and by recording their objections thereto. Hence this court finds that the delay in producing the documents may be condoned and receive the documents in evidence.

13) In the light of the above discussions, this court finds that the delay in producing the documents mentioned in the petition may be condoned and the documents may be received in evidence.

In the result, the petition is allowed. No costs.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 20th day of December 2023.

Additional District and Sessions Judge,
Srivilliputtur.

*Additional District & Sessions Court,
Srivilliputtur,
I.A. 5/2023 in O.S. No. 139/2010
ORDER (Web copy)
Date: 20.12.2023*