

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.09.2016

DELIVERED ON : 07.03.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

C.R.P. (PD) No.2579 of 2016

and

C.M.P.No.13325 of 2016

1.R.P.Krishnammachari
S/o.R.K.Parthasarathi

2.P.Ravindranath
S/o.P.Kannan

.... Petitioners/Defendants 1 & 2/
Petitioners

vs.

1.L.Nandakumar
S/o.V.Loganathan

2.L.Suriakumar
S/o.V.Loganathan

3.L.Komathy
W/o.C.Rajendran

4.L.Vijayalakshmi
W/o.S.Mahendran

5.L.Sumathy
W/o.V.P.Sridharan

6.V.Pattussamy
S/o.M.Venkatachalam

7.P.Senthamizh Selvan (Minor)

represented by Natural Guardian father
8.L.Padmavathy
W/o.V.Loganathan

9.G.Kousalya
W/o.R.Jayaseelan

10.G.Sushela
W/o.S.Sampathkumar

11.G.Kalavathi
D/o.Late C.Ganesh Pillai

12.G.Jayanthi
W/o.d.Padmanathan

13.G.Paranthanman
S/o.Late G.Ganesh Pillai

....Respondents/Plaintiffs/
Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned Additional District Judge, Chengalpattu, passed in I.A.No.33 of 2015 in O.S.No.200 of 2014 on 29.02.2016.

For Petitioners : Mr.K.S.Chandrasekaran

For Respondents : Mr.V.Manohar

ORDER

This revision arises against the order of learned Additional District Judge, Chengalpattu, passed in I.A.No.33 of 2015 in O.S.No.200 of 2014 on 29.02.2016.

2. By the suit, respondents/plaintiffs seek partition of the suit schedule property and mense profits. Contending that the suit is a vexatious abuse of

process of law, no cause of action arose therein and the plaintiff had no right to file the same, petitioners informed that first petitioner/first defendant had purchased an extent of 2.07 acres in S.No.67/2, 69/2, 69/2&3 and 69/3A1 in Zamin Pallavaram Village, Alandur Taluk, in the year 1981. Three sale deeds in his favour revealed that the property was the self-acquired property of the vendors, who had been absolute owners. Mutation of revenue records in favour of first petitioner/first defendant was effected and he obtained a Gazette Notification re-classifying the suit property from Primary Residential Use Zone to Light Industrial Use Zone (Tamil Nadu Government Gazette Notification dated 05.12.1984, Part II, Section 2, Page No.905). After obtaining due approval from the Pallavaram Municipality and MMDA, first petitioner constructed two factories by name Rajam Chemicals and Textan Chemicals Pvt. Ltd. in the year 1982. First petitioner, who had been running the factories round the clock employing 200 persons for over 25 years, shifted the factory to Thiruvallur at the request of Tamil Nadu Pollution Control Board. A Joint Venture Agreement with M/s.Vasavi Builders, (second petitioner being a partner) for construction of flats was entered into. Plaintiffs 1 and 2/respondents 1 and 2 had executed two settlement deeds dated 21.03.2012 and 05.03.2012 registered as document Nos.1782 of 2012 and 1333 of 2012 at the office of Sub-Registrar, Pallavaram, claiming that the property was Hindu Undivided Property and they had partitioned the property among themselves. Petitioners informed that they have purchased the property from one Duraikannu and his wife Palayammal. They

informed that respondents 1 and 2/plaintiffs 1 and 2, sons of Loganathan, the brother of the vendor Duraikannu, were aware that the property was not Hindu Undivided Property and the same had been sold 31 years prior to the suit. Petitioners informed that respondents 1 and 2/plaintiffs 1 and 2 were also aware of petitioners' possession and occupation of the same and had never objected thereto. First petitioner/first respondent preferred a complaint to the Commissioner of Police, Egmore, Chennai, resulting in registration of Crime No.124 of 2012 on the file of Inspector of Police, Central Crime Branch (CCB-II), Anti Land Grabbing Special Wing, Commissionerate, Egmore, Chennai, and arrest of respondents 1 and 2/plaintiffs 1 and 2. On the first respondent/first plaintiff undertaking not to be of disturbance, he was granted anticipatory bail and after effecting cancellation of the settlement deeds, respondents 1 and 2/plaintiffs 1 and 2 sought quash of the case registered in Crime No.124 of 2012 in Crl.O.P.No.11713 of 2013. Taking note of the compromise entered into between the parties and that first petitioner/*de facto* complainant was not interested in prosecution, this Court quashed such case under orders dated 04.10.2013. Petitioners submitted that one V.Loganathan, husband of the eighth plaintiff in the suit and the brother of the vendor Duraikannu was a witness to the sale deeds in their favour and hence, the claim of respondents/plaintiffs that the property was Hindu Undivided Property was not correct. Petitioners contended that respondents/plaintiffs relied on a Will executed by Palayammal, one of their vendors, but such Will had been executed in 1991

after almost 10 years after the date of petitioners' purchase of property and such Will made no mention about the suit property and the survey number. The suit property never having been bequeathed under the Will, the property did not devolve on respondents/plaintiffs and hence, there is no cause of action. On such contentions, petitioners filed I.A.No.33 of 2015 seeking rejection of the plaint.

3. Respondents 1 to 8/plaintiffs 1 to 8 contended that they were the legal heirs of one V.Loganathan, who had definite and undivided share in the suit property through inheritance. Loganathan was the father of plaintiffs and he and Duraikannu were brothers who had one sister G.Umayavalli, all three being the children of Velu and Pushpammal, Velu having inherited the suit property and other estates. On his demise, the properties devolved on Duraikannu and Loganathan. Duraikannu represented the other branch of co-parceners and had one son Sugumaran who pre-deceased him. On the death of their son, Duraikannu and his wife Palayammal succeeded to his estate. Duraikannu died on 29.04.1982 leaving behind his wife and the wife of the other co-parcener V.Loganathan. Palayammal @ Palaiyathammal died on 19.03.1992 and the entire property of the Hindu Undivided Family devolved on V.Loganathan and his family members. On the death V.Loganathan on 10.09.2010, his wife, four daughters and two sons, plaintiffs 1 to 8 in the suit succeeded to the property. The other plaintiffs in the suit viz., plaintiffs 9 to 13 became entitled to a share

in the suit property through Umayavalli, the sister of Duraikannu and Loganathan. One Muthukrishnan had, in suit preferred in O.S.No.150 of 1985 on the file of Sub Court, Poonamallee, transferred to the Court of Principal Subordinate Judge, Chengalput and tried in O.S.No.123 of 2002, sought a declaration of title to the suit property, delivery of vacant possession and mense profits. The wife of Duraikannu viz., Palayammal and his brother V.Loganathan were defendants 1 and 2 therein. On the demise of V.Loganathan, plaintiffs 1 and 2 in the present action had been impleaded as legal heirs. The said Muthukrishnan claimed that he was the son of Duraikannu through his first wife and on his mother's death, Duraikannu had married the first defendant Palayammal. The entire property was self-acquired property of his father Duraikannu. On the death of Palayammal/first defendant in the suit, issue less, the properties which fell to her share through her husband Duraikannu reverted back to his legal heirs and thus as a sole legal heir of Duraikannu, he was solely entitled to the share of Duraikannu.

4. It is the contention of respondents/plaintiffs that in dismissing the suit in O.S.No.123 of 2002 on the file of learned Principal Sub Judge, Chengalpattu, moved by Muthukrishnan, positive findings stood rendered that all properties which stood in the name of Duraikannu were joint family properties and he had no independent resources to acquire any property. Properties had been purchased in the name of Duraikannu and his son only by using the joint family

resources and the same was meant for joint family benefit. The joint family property never had been partitioned. There was much evidence in support of claim of ancestral neclues. Palayammal, wife of Duraikannu, had acknowledged the same through execution of document (a sale during her life time) and documents (sale deeds) held by defendants executed in their favour by Duraikannu, Palayammal and their son were of no significance. Such vendors had no right whatsoever to effect sale of joint family property and at most, the same would be binding insofar as their interest was concerned. The same would not stand in the way of plaintiffs seeking partition of properties.

5. Informing that in O.S.No.123 of 2002 on the file of learned Principal Subordinate Judge, Chengalput, the claim of Muthukrishnan to be the son of Duraikannu through another wife had been found false and such finding was of no relevance in the instant case, petitioners contented that the first respondent and others had questioned the public notice issued by first petitioner in Indian Express and Dhinamani regarding the correction of the survey number which wrongly had been mentioned as 69/2 & 3 instead of 69/2, first petitioner having done so under an affidavit dated 11.06.1983 registered as document No. 2883 of 1982 on the file of Sub Registrar, Pallavaram. Petitioners were in possession and occupation of property for last 30 years and none had raised any objection despite a public notice dated 28.04.2009. Respondents 1 and 2/plaintiffs 1 and 2 resided a few streets away from the suit property and day in and day out they

pass there through to reach the railway station and other places. They having kept quiet over several years, the suit was barred by limitation. 115 flat owners peacefully were in ownership and possession of the complex called 'Maduram Complex'. Plaintiffs ought to have paid Court fee under Section 37(1) of the Tamil Nadu Court Fees Act. In their counter, respondents contended that the purchase of property from Duraikannu and Palayammal were not binding on other co-parceners. The question of vendors power to dispose of property was under challenge and a decision thereon has to be arrived at. Mere mutation of revenue records in favour of first petitioner and the fact that the husband of eighth plaintiff was a witness to the sale deeds executed in favour of petitioners was of no effect. Respondents' possession had never been dislodged at any point of time. Respondents had also contended that without leading any evidence in the case, the Court cannot come to any conclusion given judgment and decree rendered in O.S.No.123 of 2002 on the file of Sub Court, Poonamallee. Court below, under orders dated 29.02.2016, dismissed I.A.No.33 of 2015 giving rise to this revision.

6. Heard learned counsel for petitioners and learned counsel for respondents.

7. Learned counsel for petitioners submitted that one Velu and his wife Pushpammal had two sons by name Duraikannu, Loganathan and one daughter

Umayavalli. The property in S.No.67/2 of an extent of 53 cents had been purchased by D.Sugumaran S/o.Duraikannu under a sale deed dated 31.05.1960 (plaint document No.7). Sugumaran died leaving behind his mother Palayammal. The said extent of 53 cents in S.No.67/2 was purchased by the first petitioner from Palayammal and Duraikannu under a sale deed dated 20.10.1981 (plaint document No.12). Plaint document Nos.2 and 10 were sale deeds in favour of Duraikannu dated 27.01.1941 and 02.03.1954. An extent of 53 cents in S.No.67/2 had been purchased by Duraikannu under sale deeds dated 27.01.1941 and 02.03.1954. First petitioner had purchased such property under sale deed dated 17.10.1981 registered as document No.1946/82 (plaint document No.14). Under an affidavit of rectification (Plaint document No.15) dated 11.06.1983, the survey number had been rectified from 69/2 to 69/3A1. Palayammal had purchased the property in S.No.69/2 of an extent of 1.04 cents under a sale deed dated 17.02.1973 (plaint document No.8). First petitioner had purchased such property from her under a sale deed dated 17.10.1981 registered as document No.2883 of 1982 (plaint document No.13). The total extent purchased by first petitioner was 2 acres 10 cents and not 2 acres 59 cents as found in the plaint. Learned counsel submitted that the property had been purchased from individual owners who had absolute right thereto. While so, the respondents sought to inform the property to be joint family property and claimed right there to through V.Loganathan, the brother of Duraikannu and Umayavalli, his sister. The property had been in possession of petitioners for

over 30 years and after shifting of two factories, a complex by name 'Majinam Complex' had been put up and the same housed 115 residents. Defendants 3 to 128 in the suit were the purchasers of the undivided share while defendants 129, 130 and 131 were the Commissioner, CMDA Pallavaram Municipality and the Tamil Nadu Electricity Board. The property in S.No.67/2 had been purchased by Sugumaran in his individual capacity and on his demise, devolved on his parents from whom first petitioner had purchased. Learned counsel submitted that such property fell outside the purview of suit. The suit had been preferred after 33 years of the first petitioner purchase of the property. In O.S.No.123 of 2002 on the file of Subordinate Judge, Chengalput, it had been the contention of second defendant/father of plaintiffs 1 and 2 that the property in S.No.69/3A1 was not the property of the joint family. He had also informed that the property in S.No.67/2 has also been sold and was in the hands of alienees. Property of an extent of 4 acres in S.No.69/2 had never been the subject matter of the earlier suit. Therefore, if the allegations in the plaint are read along with the said documents it would be seen that there is no cause of action in respect of the three properties. There absolutely is no material to support the plaintiffs' contention that the property originally was held by Velu, the father of Duraikannu and Loganathan and the cause of action informed by respondents is a myth. Learned counsel further submitted that the supervening event of respondents obtaining quash of criminal complaint preferred against them and undertaking not to be of disturbance and their having effected cancellation of

settlement deeds executed by them there towards, disentitled them from preferring the suit. Learned counsel also challenged the payment of Court fee u/s.37(2) of the Tamil Nadu Court Fees Act.

8. Learned counsel for respondents submitted that even without filing their written statement, petitioners have sought rejection of the plaint under Or.7 R.11 CPC. The contentions of proper purchase of property are raised by way of affidavit and the same are not to be looked into. The present suit was a distinct action and by referring to several plaint documents petitioners were seeking to non-suit the plaintiffs. In an earlier action in O.S.No.123 of 2002, it specifically had been found that Duraikannu had no individual means and the property was joint family property. The pleadings of the second defendant in the earlier suit viz., V.Loganathan were not supported by any evidence, he having died pending suit. As a co-parcener, the admission of such defendant even though he be the father of plaintiffs 1 and 2, would not be binding on plaintiffs. In O.S.No.123 of 2002, for issues (4) 'whether the suit property was purchased out of the amount of late' and (5) 'whether the plaintiff is entitled for partition as prayed for ? If so how much is his share ?', learned Judge found as follows:

“The suit properties self acquired properties of Doraikannu. The 2nd defendant has stated that they are not the self acquired properties of Doraikannu, but they are joint family properties of Doraikannu and the 1st defendant and that the sale deeds are standing in the name of Doraikannu who was the Vice

President of Pallavaram Panchayat and he was running lorry and the 2nd defendant was in fact working under him as evidenced from ex.B.37, wherein the daily wages paid to the 2nd defendant were mentioned in the said account book and that whenever a person alleges that a particular property is the joint family property, it is for him to prove that the said properties are joint family properties and in this connection, the plaintiff is relying on a citation as reported in 2000 Vo.II MLJ page 508 in which it has been held as "Hindu Law-Joint family property - Settled law that burden of proof on party who asserts that any item is joint family property - Mere proof of existence of Joint family - Does not lead to presumption that property held by members is joint family property. The counsel for the petitioner has further argued that it is settled law that when a party claims in a suit that any particular item is a joint family property, the burden of proving the same rests on the party asserting it and that the proof of the existence of the joint family does not lead to the presumption that the property held by any member the family is joint and the burden rests upon any one asserting any item of property is a joint family property and that unless this burden is discharged by the plaintiff the defendant cannot be found fault with for his failure to establish affirmatively that the property was acquired without the aid of the joint family properties.

18. The counsel for the plaintiff has further stated that Ex.B.22 and Ex.B.23 are in favour of the plaintiff's father which was originally belonged to his grand father Velu which were conveyed to third parties and there was no joint family nucleus and that as per Ex.A7 and Ex.A8 these properties are admitted as the properties of Doraikannu and that the 2nd defendant cannot

claim as legal heir. The counsel for the defendant has argued that in Ex.B1, the name of Velu i.e. the father's name of Doraikannu is found and it has been found in the name of Doraikannu by his father and in Ex.B.24, the name of Sugumaran, is found as a purchaser and that in Ex.B27 to Ex.B31 the pattas are in the name of Velu in Ex.A.34 the name of third defendant is found. Hence the suit properties cannot be construed as a self acquired properties and they are the joint family properties. All these above documents were perused. Since they have been in the name of Velu, the father of Doraikannu, in the name of Sugumaran, the son of Doraikannu, and also in the name Doriakannu, those properties are considered as joint family properties and not self acquired properties as contended by the plaintiff. Hence the judgment relied by the plaintiff is not applicable in the facts and circumstances of this case. Hence it cannot be construed that the suit properties were purchased out of the amount of late Doraikannu and the issue Nos.4 and 5 are answered accordingly."

9. Learned counsel submitted that respondents/plaintiffs cannot be non-suited on the presumption that petitioners had validly purchased property from Duraikannu and his wife. The payment of Court fee u/s.37(2) of the Tamil Nadu Court Fees Act was being challenged since the father of the plaintiffs 1 and 2 had, in his written statement in the earlier action, informed of some of the properties being in the hands of alienees. Which of the properties were so held had not been stated. Learned counsel reiterated that filing of petition under Or.7 R.11 CPC after having failed to file written statement for over a period of

two years, was an abuse of process. On the face of it, plaint discloses a cause of action and it was not open to interpret every pleading at this stage.

10. By way of reply, learned counsel for petitioners submitted that the father of the plaintiffs 1 and 2 had specifically informed that the suit property was not available for partition and was in the hands of alienees. Therefore, the contention in the plaint that the first petitioner/first defendant was beyond the filing of the suit in O.S.No.123 of 2002 wherein one Muthukrishnan claimed absolute ownership was baseless.

11. The factual position that arises for consideration is as follows:

(i) The suit filed in O.S.No.150 of 1985 before the Subordinate Court, Poonamallee and tried in O.S.No.123 of 2002 by learned Principal Subordinate Judge, Chengalpattu, was an action wherein the plaintiff sought a declaration of title to suit property, injunction towards delivery of vacant possession as also mense profits claiming to be the son of one Duraikannu.

The suit was tried on the following issues:

1. Whether the plaintiff is the son of Duraikannu?
2. Whether the first defendant was the wife of Duraikannu?
3. Whether the first defendant is the 2nd wife of Duraikannu?
4. Whether the suit property was purchased out of the amount of late Duraikannu?
5. Whether the suit property is purchased from out of the income of joint

family income?

6. Whether the Will dated 04.12.1991 by the first defendant to defendants 5 and 6 is true & valid?
7. Whether the plaintiff is entitled for declaration and delivery of vacant possession as prayed for?
8. Whether the plaintiff is entitled for mesne profits as prayed for?
9. To what other relief?

Under judgment dated 16.06.2004, issues 1 to 3 were found against plaintiff. The finding over issues 4 and 5 was to the effect that the properties were joint family properties. On issue No.6, a Will dated 04.12.1991 was held to be valid. Rendering consequential findings on issue Nos.7 to 9, the suit was dismissed.

- (ii) The said suit is referred only to record the position that therein the second defendant was the father of plaintiffs 1 and 2 in the present action viz., O.S.No.200 of 2014 on the file of District Court, Chengalpattu and his specific contention by way of an additional written statement was that the property presently in suit either never belonged to the joint family or had already been sold and was in the hands of alienees. On the death of their father, plaintiffs 1 and 2 in present action O.S.No.200 of 2014 had been impleaded by way of orders in I.A.No.1301 of 1998 dated 25.04.2001. Plaintiffs 1 and 2 never had repudiated the contentions of their father nor had moved any application to amend the written statement informing the

errors, if any, in the additional written statement filed by their father.

(iii) Plaintiffs 1 and 2 in O.S.No.200 of 2014 executed two settlement deeds in respect of the suit properties. The contention of learned counsel for petitioner that the Will dated 04.12.1991 made no mention of property in S.No.69/3A1 is relevant. On the complaint of first petitioner/first defendant, a case was registered in Crime No.124 of 2012 on the file of Inspector of Police, Central Crime Branch (CCB II), Anti Land Grabbing Special Wing, Commissionerate, Egmore, Chennai, for offences u/s.420, 465, 466, 467, 468, 120-B r/w 34 IPC. Plaintiffs 1 and 2 were arrested. As a condition for grant of bail, plaintiffs 1 and 2 executed deeds of cancellation cancelling the two settlement deeds. Thereafter, taking on record the affidavit of the *de facto* complainant as also the second plaintiff, case in Crime No.124 of 2012 was quashed under orders in Crl.O.P.No.11713 of 2013 dated 04.10.2013. While the *de facto* complainant/first defendant had informed that he had no objection to such order provided both petitioners/plaintiffs 1 and 2 undertook not to interfere with his rights or peaceful possession of property, plaintiffs informed that they would not disturb first defendant's possession without resorting to due process permitted under law and 'subject to solving issues through civil courts of action'.

(iv) Relevant portion of paragraph No.11 of the plaint reads as follows:

“11. Since properties specified in the suit schedule are the ancestral nature and there is existence of the due share and enjoyment in common all along as claimed and supported by the

judgment and records the said common enjoyment was never been divested through any legal process and the said common enjoyment still exist and continue irrespective of the false claim made by the defendants through their various insignificance transactions and dealings. Hence the lawful constructive possession still remains to be with the plaintiff in the legal consumptions in favour of the plaintiff in all respect. Hence the plaintiffs are well within their right to initiate this appropriate proceeding under the provision enumerated hereunder for the purposes of the relief stated.”

- (v) In the application under Or.7 R.11 CPC moved in I.A.No.33 of 2015, defendants 1 and 2 *inter alia* submitted as follows:

“5) We respectfully submit that the 1st of us had purchased the properties measuring a total extent of 2.07 acres in Survey No's 67/2, 69/2 and 69/3A1 at 46, Zamin Pallavaram Village, bearing old No-67/2 and New No.-6, Zamin Pallavaram, Chennai - 600 043 in the year 1981.

6) We respectfully submit that, the suit property lands above mentioned were purchased from one Sri V.Duraikannu and Smt.D.Palayammal of Thiruvengadamudaiyan Kovil Street, Old Pallavaram, Chennai 600 117 by way of three registered sale deeds, bearing No's-1946/1981 dated 17/10/1981, 2883/1981 dated 17/10/1981 and 1810/1981 dated 20/10/1981 at the Sub-Registrar Office, Pallavaram. We respectfully submit that the said sale deed clearly reveals that the said property is a self acquired property of the vendors and they are the absolute owners of the said property. In the circumstances we respectfully submit that the vendors have the full power to dispose of the property.

7) We respectfully submit that after purchasing the property, the 1st of us applied for name change in the revenue records i.e. Chitta, Adangal, Patta etc and all the records have been changed in the name of 1st petitioner. We respectfully submit that the 1st of us had also got a Gazette Notification dated 05/12/1984 re-classifying the suit property land from Primary Residential Use Zone to Light Industrial Use Zone (Tamil Nadu Government Gazette Notification dated 05/12/1984, Part II, Section 2, Page No-905). Similarly after getting MMDA (CMDA) permission and as well as Pallavaram Municipality approval, the 1st of us had constructed two factories inside the premises in the name of Rajam Chemicals and Textan Chemicals Pvt. Ltd. in the year 1982.

8) We respectfully submits that the 1st of us had employed about 200 people in the said property and the factories were running round the clock i.e. all the three shifts. After running the factories for over 25 years i.e. from 1982 to 2007, the 1st of us shifted the factories to Thirvallur at the request of Tamil Nadu Pollution Control Board.

9) We respectfully submit that subsequently, myself entered into a joint-venture agreement with Vasavi Builders (the 2nd petitioner) and started construction flats in the said premises. In the circumstances to our shock and surprise, it came to our knowledge that in 2012 two settlement deed were executed by Mr.Suryakumar and Mr.Nandakumar, the 1st and 2nd plaintiffs dated 21/03/2012 and 05/03/2012 by way of registered documents No-1782/2012 and 1333/2012 respectively at the Sub-Registrar Office, Pallavaram, claiming that the said property is a Hindu Undivided property and both of the persons partitioned the

property among themselves.

10) We respectfully submit that Suryakumar and Nandakumar are sons of one Mr.Loganathan, who is the brother of the vendor of the 1st of us Duraikannu and other being Duraikannu's wife Palayammal. We respectfully submit that both the plaintiffs 1 and 2 are well aware that the property is not a Hindu Undivided Family property and has been sold before 31 years above. They are also aware that we have been in possession and occupation of the same for 31 years and they have never objected to the same. However suddenly with an ulterior motive of grabbing our property, in connivance with the Sub-Registrar, Pallavaram, Mr.Sridhar Rajesh, the 1st and 2nd plaintiffs have executed an invalid settlement deeds dated 21/03/2012 and 05/03/2012 by registered document numbers 1782/2012 and 1333/2012 respectively at Sub-Registrar Office, Pallavaram.

15) We respectfully submit, it is important to note that the co-brother of the vendor Mr.Duraikannu, one Mr.P.V.Loganathan (Retired Major), who is the husband of the 8th plaintiff, has signed as witness in all the sale deeds and hence the claim of the plaintiffs that the property is Hindu Undivided Family property is not correct.

17) We respectfully submit that, most importantly the plaintiffs are relying upon the will executed by one Palayammal, who is also one of the vendors. The said will was executed in the year 1991 i.e. after nearly 10 years of the 1st of us purchase of the property, and in the will, there is no mention about the suit property and the survey number. In these circumstances, the claims of the plaintiffs are misconceived and hence there is no right for them in the suit property. In these circumstances, as the

suit property was never bequeathed, in the said will, the property did not devolve on the plaintiffs and there is no cause of action has arisen to file the present sit. We respectfully submit that, the plaint has to be rejected by this Hon'ble Court on this ground.

19) We respectfully submit that, Mr.Nandakumar and others also questioned the public notice issued by the 1st of us in The Indian Express and Dinamalar regarding a survey number which was mistakenly mentioned as 69/2, 3 instead of 69/2 and the same was corrected by the 1st of us under a Registered Affidavit dated 17/06/1983, bearing Document No-2890/1983 at Sub Registrar Office, Pallavaram. We respectfully submit that, thus they have been aware of the possession and occupation of the property by us for the last 30 years, and they have suppressed the same while filing the suit. We respectively submit that we have also given this public notice on 28/04/2009, asking that if there is anyone to object they can do so within 7 days of issue of the notice. We respectfully submit that no such objections were received. We respectfully submit that, the 1st and 2nd plaintiffs who are the main plaintiffs, are living only a few streets away from the said property. Day i nand day out they have to pass through our factory to reach the railway station and other places. If that being the case, in 30 years they could have sent any notice to us or demanded rent for the property. They have kept quite all these years. In these circumstances, the plaintiffs cannot maintain the suit and the same is barred by limitation and the present suit is an abuse of process of law.

20) We respectfully submit that, there are nearly 115 flat owners in the complex which is called Magilam Complex

and all the flat owners are peacefully living with electrical connections, water and sewage connections etc. In these circumstances the plaint filed by the respondents/plaintiff herein ought to be rejected as the plaintiffs are out of possession and they have to pay court fee under Sec.37(1) of the TNCF Act. Hence the relief claimed by the plaintiffs have been grossly undervalued and insufficiently stamped.”

(vi) The position of defendants 1 and 2 having been in possession of property purchased by them, having constructed factories thereupon and subsequently having raised a residential complex utilizing the services of the second defendant have not been controverted. Quite strangely, plaintiff's contention is that the conduct of the petitioner in obtaining patta, changing of the classification and running the industry in the property and the developments of apartments are all have nothing to do nor affect the rights of the plaintiffs in this suit. They contend those issues are not the deciding factors of the title and when the petitioner had misused the situation or manipulate the records without any notice to the other lawful owners there cannot be any binding nature to the same or they can claim the proper support to their title. More so when the said fabrication and manipulations are being done during the pending proceeding of the earlier suit in other forum at the instances of one of the petitioner wherein who had set down a contestant in this regard. The averments in paragraphs 7 to 9 are not the grounds to decide the suit under Or.VII R.11 CPC. The developments claimed by the petitioner in the suit property are subsequent to the dispute raised and

proceedings are initiated in this regard. Hence the question acquaintance about the construction of 115 flat and naming the same as Magilam Complex has no relevance. On the other hand it is needed to be looked into all the flat owners are made as party in this proceeding and they were put on notice for necessary purposes. The said possessions of the said persons are illegal and in joint possession with us as our possession in the property right from the property were not dislodged at any point of time in the legal appropriation and the joint owners' possession is the possession of ours also in the legal implication for the purposes as explained in the plaint.

(vii) The reason informed for not enforcing their legal right earlier is

“9. The plaintiffs submit that in fact it was revealed in later that the 1st defendant was instrumental to back and sponsored the plaintiff in O.S.No.150/1985 to frustrate and hook the defendants of the said suit to compel them to submit to their rights. The said person figured as plaintiff in the said suit happened to be the tout working in the registrar office had acted on behalf of the 1st defendant to grab the property of the joint family by initiating the frivolous suit in O.S.No.150/1985 on the file of Poonamallee Sub Court. The said suit was originally initiated against the said Smt.Palaiyammal wife of late Mr.Duraikannu and Mr.V.Loganathan. Later the time added Sarathambal, Mythili and the plaintiffs 1 & 2 herein as a party to the said proceeding. All along the said suit maintained to keep the other quarter of the joint family claimants to be at bay and take advantage through the said litigation. In the subsequent developments the said suit filed on the file of Poonamallee Sub-

Court was transferred to the Principle Subordinate Judge at Chengalput renumbered as O.S.No.123/2002 was decided finally only on 16th June 2004. Due to the said situation and entanglement in the said legal proceedings, the plaintiffs herein could not able to take necessary legal initiative against the defendants herein during the said periods. Since the status and nature of property was in question before the said suit, the plaintiffs herein could not able to derive any conclusion to proceed against others.”

12. The decision of Supreme Court in ***T.Arivandandam v. T.V.Satyapal and another [AIR 1977 SC 2421]*** directs that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, and if clear drafting (sic clever) has created an illusion of a cause of action, the same must be nipped in the bud. It is apparent that only towards circumventing their failure to seek establishment of their right to the property within time, that the plaint makes no whisper of factories that earlier stood upon the premises or the existence of a residential complex thereon presently. Failure to do so even while admitting the purchase of undivided share by defendants 3 to 128 is seen as intended to deceive.

13. In circumstance where there can be no denial that the first defendant had exercised right of exclusive ownership and possession of suit property, initially had put up factory buildings thereon and subsequently had raised a

residential complex, it is incongruous to contend that the plaintiffs had 2/3 rights in the property and were in joint ownership and possession with the first defendant. When so, the payment of Court fees in a mere sum of Rs.28,250/- u/s.37(2) of the Tamil Nadu Court Fees Act wholly is unacceptable. Court fee would have to be paid in keeping with section 37(1) of the Tamil Nadu Court Fees Act and upon the market value of the property. The contention of respondents/plaintiffs that the action in O.S.No.200 of 2014 precluded them from filing an earlier action towards establishing their rights has absolutely no legal basis. On no account can the pendency of such action be read as a bar to the plaintiffs moving an action for establishing rights, if any, over property.

14. Rights of exclusive ownership exercised by first petitioner through obtaining a Tamil Nadu Government Gazette Notification dated 05.12.1984, Part II, Section 2, P.No.905 reclassifying the suit property from primary residential use zone to light industrial use zone cannot be denied. Exercise of right of possession by constructing two factories in the property in the name Rajam Chemicals and Textan Chemicals Pvt. Ltd. in the year 1982 is not denied. Therefore, even if the claim of respondents that the property was joint family property is to be accepted, they clearly have been excluded there from and for a period very much beyond 12 years prescribed under Article 110 of the Limitation Act.

15. In the circumstances of the case, no occasion arises to permit the plaintiffs to explain/controvert the admission of some items of the suit property never having been held by the joint family and others having been in the hands of alienees, made in O.S.No.123 of 2002, first by the father of defendants 1 and 2 and who was a witness to the sale deed in favour of defendants and even subsequently by plaintiffs 1 and 2 despite their having been made parties to such action as early as on 25.04.2001.

The Civil Revision Petition shall stand allowed. O.S.No.200 of 2014 on the file of learned Additional District Judge, Chengalpattu, shall stand struck off of the file. No costs.

07.03.2017

Index:yes
Internet:yes
gm

To
The Additional District Judge,
Chengalpattu.

C.T.SELVAM, J

gm

Pre-delivery order
in
C.R.P. (PD) No.2579 of 2016

07.03.2017

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