

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.2774 of 2014
and
M.P.No.1 of 2014

1. Mrs.Kavitha Rani
2. Mr.Chandrasekar
3. Mr.Udayakumar

Petitioners

Vs

1. Mrs.G.Mohanambal
2. Mr.G.Radhakrishnan Pillai
3. Mr.G.Ravikumar Pillai
4. Mrs.Yasodha @Priyadjarshini
5. Mr.Sathiyamoorthy
6. Mr.Senthilkumar
7. Mrs.Rukmani Achi

8. The Sub-Registrar
Neelangarai
Chennai – 600041

9. Kamalammal
- 10.Yosadha
- 11.Dhanalakshmi
- 12.Nagavalli
- 13.D.Janaki

- 14.Shamundeshwari

Respondents

(R9 to R14 brought on record as LRs of the deceased 1st respondent vide order of this Court dated 06.10.2016 by KKSJ in CMP Nos.2014 to 2016 of 2016 in CRP No.2774 of 2014)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in OS No.405 of 2012, on the file of District Munsif Court, Alandur.

For Petitioners : M/s.J.Nandagopal

For Respondents : R1 - died
For R2,R3, R9 to R14 – Mr.V.Rajendran
For R4 & R5 – Mr.N.Selvaraju
For R6 – Given up
For R7 – No appearance
For R8 – Mr.S.Jaganathan
(Government Advocate (CS))

ORDER

The defendants 3 to 5 in OS No. 405 of 2012, on the file of District Munsif, Alanthur are the petitioners herein. They have preferred this Civil Revision Petition and pleaded to strike of the above referred plaint.

2. The respondents 1 to 3 in this Civil Revision Petition has filed the suit as against the revision petitioner and the respondents 4 to 8, seeking the relief of declaration declaring that the various sale deeds dated 23.03.1988, 10.05.1993, 09.06.1993, 22.11.2004, 29.03.2004, 25.02.2005, 23.01.2006, 01.04.2005 and 07.10.2010 are null and void. They have also prayed to pass an order of mandatory injunction directing the 8th defendant not to register the ratification deed dated 10.01.2012 and for permanent injunction restraining the defendants, their men, servants, agents and others in any manner encumbering the suit schedule property.

3. According to them, the present suit schedule property belongs to one Mr.Gopal Pillai. After the demise of the said Gopal Pillai, his legal heirs Sabapathi Pillai, Ganapathi Pillai and Santhiappa Pillai, inherited the said property. Patta has also been issued in favour of the plaintiffs family. The said Ganapathy Pillai had settled the portion of property measuring an extent of 1 acre and 0.50 cents each to his sons G.Radhakrishnan and G.Ravikumar vide two settlement deeds dated 17.08.2006. Only in that occasion, some third parties without any right had created some forged and fabricated documents in respect to the suit schedule properties, as if one Thangammal had executed General Power of Attorney Deed, dated 10.05.1993 in favour of Mr. Sundaresan to deal with the suit property. The said Sundaresan illegally and without any title had sold out the portion of the suit property in favour of various persons. The defendants 1 to 3 with an ulterior motive without any right and title have encumbered the property for unlawful gain and subsequently sold the property in favour of Mr.Chandrasekar and Mr.Udhayakumar. Since the subsequent documents executed by those persons are all forged and thereby the relief of declaration declaring the said sale deeds are null and void, is necessary. Only in the said circumstances, the defendants 3 to 5 had knocked the door of this Court for striking out of the above said plaint.

4. The learned counsel appearing for the petitioner would contend that one late Narayanasamy Naicker also owned some lands adjacent to the lands in S.F.No.378 and he died leaving behind his sons (1) S.N.Kannappa Naicker (2) S.N.Bakthavatsalu Naicker, (3) S.N.Ratna Naicker, (4) S.N.Sarangapani Naicker, (5) S.N.Venu Naicker, (6) S.N.Sundara Naicker as his legal heirs. The learned counsel further submitted that the above six persons jointly sold the 4 acres of lands in the year of 1968 itself without any legal right to some 3rd parties. Among the above six persons, Bakthavatsalu Naicker was VAO at the relevant point of time, hence taking advantage of his official position, he had fabricated some documents to show them as they are the owners of 4 acres. Though the said lands were disposed of by the legal representatives of the said Narayanasamy Naicker, possession is not handed over to their purchasers pursuant to those sale deeds.

5. At the outset, it is the case of the plaintiff that the suit property originally belongs to one Ganapathi Pillai and thereafter his legal representatives are entitled to the suit property. On the other hand, all the defendants 2,3, and 9 to 14 are the legal heirs of one Narayanasamy Naicker, who fabricated the documents and sold out the property to various persons by mentioning as the same belongs to the family of Narayanasamy Naicker

6. In the said circumstances, the plaintiff alleges that he is having the duty to prove the same by producing the relevant documents and evidence. Per contra, the defendants have pleaded as some third parties created forged documents and sold out the suit property to various persons. So, all the plea of forgeries have also to be proved by the respondent party by way of filing the relevant document.

7. Without adducing any evidence with respect to the forgery, we cannot decide that the documents now required to be declared as null and void are forged. In otherwise, the question of abuse process of law does not arise in the case instituted by the plaintiff, since both parties raised allegations each other. Hence, it is necessary for them to prove the same by way of trial.

8. More than that the plaintiff has filed the suit initially as against eight defendants, but, only the defendants 3 to 5 have filed this Civil Revision Petitioner stating that the suit filed by the plaintiffs is abuse process of law. In this connection, it is necessary to see the judgment of our Honourable Apex Court reported in CA No. 5126 of 2019 arising out out SLP (C) No. 31579 of 2018, wherein it was held as follows:-

“11.We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the

objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7, Rule 11 (d) of CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, exercise of power Order 7, Rule 11(d) of CPC. Indeed, the learned single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of Sejal Glass Limited is directly on the point. In that case, an application was filed by the defendant(s) under Order 7, Rule 11 (d) of CPC stating that the plaint disclosed no cause of action. The Civil Court held that the plaint is to be bifurcated as it did not disclose any cause of action against the director's defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against defendant No.1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7, Rule 11 (d) of CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/ or properties, Order 7, Rule 11 (d) of CPC will have no application at all, and the suit as a whole must then proceed to trial.”

Applying the said principle in the case in our hand, if the ground raised in this Civil Revision Petition is true one, it is not possible to allow the Civil Revision Petition as against three defendants only, since the suit is filed as against eight defendants.

9. In the light of the above detailed discussions, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10. On considering other aspects, it is to be noted that the suit pertains to this Civil Revision Petition was filed in the year of 2012. Hence, it is appropriate to issue some direction to the learned District Munsif, Alandur, for early disposal of the suit. Accordingly, the learned District Munsif, Alandur is directed to dispose of the suit as early as possible, preferably within a period of six months from the date of receipt of copy of this order.

15.11.2019

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To

The District Munsif Court, Alandur.

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R.PONGIAPPAN, J.,

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