

IN THE COURT OF THE MUNSIF, KOCHI

Present :-Sri.Praveen Kumar .G, B.A.L., LL.B, Principal Munsiff

Tuesday, the 29th day of September, 2015, 7th Aswina, 1937

I.A.No.743/2015 in O.S. No.348/2014

Petitioner:-

T.G.Prabhakaran, aged 75 years, S/o late T.K.Gopalan, Thundiparambil Veedu, Karuvelipady, Kochi-682 005.

By Advs. P.M.Benson & R.Rajesh

Respondents/Plaintiffs/Defendants:-

1. T.S.Asokan, aged 62 years, S/o late Sreedharan, residing at CC 16/571 A-1, T&R Cross Road, Kochi-5.
2. Kishorekumar, aged about 52 years, S/o late Sreedharan, residing at CC 16/571 A-1, T & R Cross Road, Kochi-5.
3. Smt. Sabitha, aged about 43 years, W/o Kishorekumar, residing at CC 16/571 A-1, T & R Cross Road, Kochi-5.

By Advs. K.S.Sathis Babu & Paul Parakal .D

This petition filed under Order I Rule 10(2) r/w section 151 of the Code of Civil Procedure to implead the petitioner herein as the 3rd defendant in the suit and 3rd respondent in all the Interlocutory Applications.

The petition having been finally heard on 19.09.2015 and the court on 29.09.2015, passed the following:-

ORDER

Application filed under O 1 R 10(2) CPC to implead the petitioner.

2. Petitioner is a stranger to the suit. 1st respondent is the plaintiff and the other respondents, the defendants in the suit.

3. Petitioners' case, in brief, is as follows: The disputed property belongs to him by way of registered Will executed by his mother Ittipennu

Kochuparu, who was a kudikidappukari of her landlord Paily. She applied for obtaining her kukidappu right and finally, the landlord accepted and acknowledged her rights over the kudikidappu and nobody objected to it and thereby, the mother became the absolute owner. It was that property, which was bequeathed in favour of the petitioner. The title deed of the plaintiff, sale deed No.3980/91, is not a valid and legally executed document and it does not bind the petitioner. The legal heirs of Paily had no right to assign the property to the plaintiff. Since the sale deed is a sham document, the plaintiff did not have any locus standi to institute the suit. If any decree is passed in this suit, the petitioner's rights would be effected. The plaintiff deliberately avoided to implead the petitioner. Petitioner is a necessary party to the suit and unless the application is allowed, his legal rights will be adversely affected.

4. Plaintiff filed counter affidavit stating as follows:- The allegation that Ittipennu Kochuparu was given kudikidappu right and that she had executed a Will in favour of the petitioner, is denied. Since Ittipennu Kochuparu is not a kudikidappukari, she could not have bequeathed any property. Petitioner is not the legal owner of the plaint property and he cannot claim any rights over it. No right is claimed against petitioner and it is for the plaintiff to decide as to who should be made a party to the suit. The remedy of the petitioner is to file a separate suit to establish his rights. Petitioner is neither a necessary party nor a proper party and hence, the petition should be dismissed.

5. Heard.

6. Either side has laid much emphasize on the question as to who is the owner of the property in dispute. It must be noted that the suit is filed for mandatory injunction to evict the defendants and to injunct them thereafter, from entering into the plaint schedule property. One must not that in a suit of the present nature, normally the title would not be relevant and for the plaintiff

to become a licensor, he need not be the owner too. Petitioner has specifically contended the plaintiff's title deed is a sham document and that infact, the petitioner is the real owner of the property. The court is short of materials at this stage to ascertain whether the predecessor of the petitioner, Ittipennu Kochuparu obtained any kudikidappu rights over the property and whether the legal heirs of Paily could have conveyed any property by virtue of the alleged sale deed. The question whether the plaintiffs' title deed is a sham document too, can be elicited only through evidence. It is settled law that the general law of impleadment is subject to the provisions contained in Sub Rule(2) of Rule 10 of Order 1. Plaintiff may be the dominus litus but, once the sale deed upon which he rests his title, is shown to be a sham document, his locus standi becomes doubtful and consequently, the rights of the petitioner would be affected. Petitioner is claiming an independent and exclusive right over the property. It appears that he has a direct and legal interest in the issues involved and it is quite evident that without his presence, an effective decree cannot be passed.

7. For the above reasons, the petition is allowed. Office to carry out impleadment.

Dictated to the Confdl. Asst. transcribed and typed by her corrected and pronounced by me in open Court on this the 29th day of September, 2015.

Praveen Kumar .G
Principal Munsiff

Appendix: Nil

Principal Munsiff

sks
compd by: