

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Friday the 28th day of June 2024

I.A.No.4/2023

in

O.S.No.35/2022

1. Selvam
2. K.Karuppasamy
3. Selvam
4. Sababathi
5. Soundarrajan
6. Anbazhagan
7. Murugan

... Petitioners/ Plaintiffs

/VS/

1. Tmt.Balamani
2. Tmt.Thayammal
3. Tmt.Kanniammal
4. Sumathi
5. Palanisamy (Died)
6. Sub Registrar, Sulur
7. Revenue Divisional Officer
Covai South
8. Tahsildar, Sulur

... Respondents/Defendants

9. Senthil

...Respondent/Proposed Party

This petition is coming on 13.06.2024 for final hearing before me in the presence of Thiru.S.Radhakrishnan, Advocate for the Petitioners/ Plaintiffs and Thiru.R.Arunachallam, Advocate for the 9th respondent/proposed party and the 4th , 6th

to 8th respondents/defendants are ex parte in main suit and upon hearing both side enquiry and perusing the records, and this court made the following:

ORDER

This petition filed Under Order 1 Rule 10 of CPC to implead the 5th defendant's son P.Senthil as 9th defendant in the main suit.

1. The brief averments of the affidavit filed by the petitioners as follows:

1.1. The petitioner is the plaintiff in the main suit and filed the above suit for the relief of declaration of sale deed dated 16.09.2020 and 14.02.2007 as null void in respect of S.F.No.242/1B. The 5th defendant is died in the year 2015 leaving behind his son Senthil the proposed respondent. The sale deed dated 14.02.2007 is executed in favour of 5th defective by their brothers and sisters now the 5th defective died leaving behind the proposed 9th defendant the suit being for declaration the legal heir of 5th defendant also necessary party to this case. Hence, this petition is filed to add the 5th defendant legal heir as 9th defendant in the present suit.

2. The brief averments of Counter statement filed by the 9th respondent/ Proposed party as follows:

2.1. The petition is false, frivolous not maintainable either in law or on facts of the case. The present application is filed to implead the legal heirs of the deceased 5th respondent/ defendant viz Palanisamy.

2.2. The 5th respondent/ defendant expired even on 25.09.2015 ie., nearly 7 years before the filing of the suit. It is a settled position of law that a suit filed against a dead person is a nullity and cannot be subsequently amended to substitute the legal representatives of the deceased as defendants.

2.3. Further, on the date on which the suit has been presented, the 5th respondent / defendant viz Palanisamy was no more. In other words the suit had been filed against a dead person. A suit presented against dead person is nullity. On the date of the presentation of the plaint, since the defective was dead, there can be no cause of action as against the deceased. When the death of the 5th defendant/

respondent did not concur pending the suit, the petition to bring on record his legal representatives is not at all maintainable. The petitioners have failed to add the other legal heirs of the deceased 5th defendant i.e., the daughter Mrs.Bagyalakshmi and the wife Mrs.P.Mani and by stating that the latter died prior to her husband. It is to be noted that the wife of the 5th respondent/ defendant and his daughter is hale and healthy and the petitioners were so reckless from the very early of filing the suit.

2.4. It is immaterial that the suit was brought bona fide and in ignorance of the death of such person. The petitioners/plaintiffs were being ignorant and did not exercise minimum effort and were diligent with regards to death of a person of nearby village the bonafide mistake or ignorance on the part of the plaintiff is foreign to the suit and that no application for substitution of another person as defendant in the place of the defective who was no more on the date the suit was instituted, as his legal representative on record, is maintainable. The bonafides or mala fides of the petitioners/plaintiffs are material. The above application is abuse of process of court and law. There are no merits or bonafied in the application.

3. Point for consideration:-

Whether the petition under Order 1 Rule 10 of CPC to implead the 5th defendant's son P.Senthil as 9th defendant in the main suit is to be allowed?

4. Points:-

4.1. Heard both side, perused the records. The main suit is filed by the plaintiffs for the relief of declaration and permanent injunction against the 1st to 5th defendants that, to declare that the 4th defendant executed sale deed in respect of undivided suit property in favour of 5th defendant as doc.No.1997/2007 dated 14.02.2007 registered before Sub Registrar Sular is null and void.

4.2. On perusal of notes paper on 28.07.2023, the 5th defendant died at the time of summons stage and summons returned as died. This petition filed by the plaintiffs to implead the legal heirs of deceased 5th defendant on 09.11.2023.

4.3. By considering both side averments, the present suit, regarding the right, title, and interest over the property are the matter to be decided on merits. The

proposed party is being legal heir of the deceased 5th defendant. This court finds he is also necessary party to decide the matter on merits and to get binding judgment. Hence, this petition is allowed.

In the result, this petition is allowed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 28th day of June 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on Petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.4/2023 in
O.S.No.35/2022
Dated : 28.06.2024
DMC, Sulur