

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

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

District Munsif, Sulur

Saturday the 6<sup>th</sup> day of January 2024

**I.A.No.14/2023**

**in**

**IA.No.2/2022**

**in**

**O.S.No.103/2022**

Chithra Murali

... Petitioner/Respondent/Defendant

/VS/

1. K.Sivasamy
2. G.Chinnakaruppasamy (Died)
3. M.Veerakumar
4. K.Vellingiri
5. M.Balasubramaniam
6. P.Arunachala Gounder
7. C.Sarojini
8. K.Sathesh Kumar
9. S.Premalatha

...1 to 9 Respondents/Petitioners/Plaintiffs

10. P.Kanagaraj

...10<sup>th</sup> Respondent/Proposed party to be impleaded as  
2<sup>nd</sup> Respondent

This petition is coming on 07.11.2023 for final hearing before me in the presence of Thiru.S.Yuvaraj, Advocate for the Petitioners/Respondent/Defendant and Thiru.P.Gopalakrishnan, Advocate for the 1 to 9 Respondents/Petitioners/Plaintiffs and the 10<sup>th</sup> Respondent called absent set exparte and upon perusing the records, and this court made the following:

**ORDERS:**

This petition filed Under Order 1 Rule 10 (2) and section 151 of CPC to implead the 10<sup>th</sup> respondent to the IA.No.2/2022, proceedings as the 2<sup>nd</sup> respondent for proper adjudication of the proceedings.

**1. The brief averments of the affidavit filed by the petitioner/ respondent/ defendant as follows:**

1.1. The petitioner is the respondent in IA.No.2/2022, and the defendant in main suit. The 1<sup>st</sup> to 9<sup>th</sup> respondents have filed suit for declaring the alleged right of the 1<sup>st</sup> to 9<sup>th</sup> respondents/plaintiffs to use the suit cart track to reach their respective lands without any interference and also for permanent injunction.

1.2. the 1<sup>st</sup> to 9<sup>th</sup> respondents/plaintiffs have filed an application in IA.No.2/2022, in the above suit seeking an order of appointment of Advocate Commissioner to visit and note down the physical features of the suit / petition mentioned property. The petitioner filed detailed counter and written statements.

1.3. The suit along with the petition in IA.No.1/2022 and IA.No.2/2022 are pending. In the meantime, the subject matter of the suit cart track is disputed by the petitioner/defendant and the 1<sup>st</sup> to 9<sup>th</sup> respondents/plaintiffs are claiming imaginary rights over the same without having valid right under law. The 1<sup>st</sup> to 9<sup>th</sup> respondents/plaintiffs have created the documents among themselves as if they are having the usage right of the alleged cart track, but on perusing their documents no other recitals regarding the cart track to reach their lands.

1.4. In fact, the 10<sup>th</sup> respondent/ 3<sup>rd</sup> party has built up a house on the front side of the lands belongs to petitioner/defendant and also the Electricity post is within his boundary limits and this fact known to the 1<sup>st</sup> to 9<sup>th</sup> respondents/ plaintiffs and however they have not chosen to implead the 10<sup>th</sup> respondent as a party defendant in the suit proceedings for proper adjudication. The 10<sup>th</sup> respondent being one of the user of the common pathway nearby the suit property and also petitioner/defendant property. During the time of filing the suit the 1<sup>st</sup> to 9<sup>th</sup> respondents/ plaintiffs have omitted to implead the 10<sup>th</sup> respondent in the suit and however the same has been brought to petitioner/defendant notice while preparing the proposed additional written statement and however the petitioner/defendant will file his detailed additional written statement after impleading of the 10<sup>th</sup> respondent as 2<sup>nd</sup> defendant in the suit. Now the petitioner/defendant taking steps to implead the 10<sup>th</sup> respondent the suit

proceedings for proper adjudication. Likewise the 10<sup>th</sup> respondent has to be impleaded as 2<sup>nd</sup> respondent in IA.No.2/2022, in the above suit. The 10<sup>th</sup> respondent is very necessary party to the suit and IA. proceedings. So it has become necessary to implead the 10<sup>th</sup> respondent as party 2<sup>nd</sup> respondent to the IA.No.2/2022, proceedings for proper adjudication. In no way, no one is going to be prejudiced in view of such impleading of the 10<sup>th</sup> respondent as 2<sup>nd</sup> respondent in IA.No.2/2022.

1.5. The 10<sup>th</sup> respondent is ordered to be impleaded as party 2<sup>nd</sup> respondent in IA.No.2/2022, in the above said suit, the petitioner will be put into much loss and hardship. Hence, this petition.

**2. The brief averments of Counter statement filed by the 1<sup>st</sup> to 9<sup>th</sup> Respondents / petitioners/ Plaintiffs as follows:**

2.1. These respondents have filed the above suit for declaration of their right regarding the suit cart track and for injunction against the petitioner since she tried to obstruct the suit cart track.

2.2. The petitioner is the sole defendant in the above suit has filed a written statement denying the existence of the cart track. According to the respondents/plaintiffs, the suit cart track branches from the East West public road and runs towards North through the lands of the petitioner in S.F.No.363 and several other survey fields to reach Mappillai gounder Kuttai on the East. It is being used by several land owners and the members of the public for several decades and it is a plan marked cart track. Since the petitioner tried to block the suit cart track with stone pillars and wire fence, the suit was filed for safe guarding the right of these respondents.

2.3. Now this petition has been filed by the petitioner for impleading a third party, by name Kanagaraj. The paragraph 3 of the affidavit it is alleged "the 10<sup>th</sup> respondent/ 3<sup>rd</sup> party has built up a house on the front side of the lands belongs to petitioner and the fact known to the 1<sup>st</sup> to 9<sup>th</sup> respondents/ plaintiffs and however they have not chosen to implead the 10<sup>th</sup> respondent as party defendant in the suit for proper adjudication".

2.4. It is not clear what the petitioner means by it. It appears that the petitioner is aggrieved about some alleged encroachment committed by the proposed party in to the lands of the petitioner. If it is true, the petitioner is at liberty to take necessary steps against the proposed party by way of a separate suit. It is not in any way connected with the scope of the present suit.

2.5. The suit is only for safeguarding the right of the plaintiffs to use the suit cart track. According to the plaintiffs the suit cart track was sought to be obstructed by the petitioner and therefore the suit has been filed against her. The plaintiffs have no grievance or cause of action against the proposed party. As the dominus litus, the plaintiffs can choose their own defendant against whom they have a cause of action and want relief. The plaintiffs do not want any relief against the proposed party. It is not for petitioner/defendant to thrust another defendant in to the suit and compel the plaintiffs to seek relief against him also.

2.6. The proposed party has nothing to do with the suit cart track. His land is situated in S.F.No.361 on the West of the suit cart track. As the lands of the proposed party in S.F.No.361 is abutting the main road he has no need to use the suit cart track. He is not in any way connected with the suit cart track and or the dispute between the respondents/ plaintiffs and the petitioner/defendant.

2.7. This petition has been filed only to delay the trial land disposal of the suit. In fact these respondents have filed a petition in IA.No.2/2022 for the appointment of a commissioner to note down the physical features. In that petition the present petitioner who is the respondent in that petition, has filed a counter statement saying she has no objection for the appointment of a commissioner and to measure the lands with the help of a surveyor. Now in the IA.No.2/2022 the impleading petition has been filed to prevent or delay the appointment and visit of the commissioner. Hence, the petition ought to be dismissed.

### **3. Point for consideration:-**

Whether the petition under Order 1 Rule 10 of CPC to implead the 10<sup>th</sup> respondent to the IA.No2/2022 is to be allowed?

**4. Points:-**

4.1. Heard both side perused the records. The main suit is filed by the respondents 1 to 9 / plaintiffs for the relief of declaration to declared the plaintiffs right to use suit cart track and permanent injunction to restrained the petitioner/defendant from interfering plaintiffs' right to use the cart track. Admittedly the plaintiffs' land is situated in S.F.No.361/2A, 361/1, 354/3, 351/1, 2, 3 and 353/1B2, 362/2A, 362/1A. The defendants land in S.F.No.363 of Kaniyur village, Sulur Taluk.

4.2. The suit cart track is started from the East West Sellampalaya to Mapillai gounder Kuttai road towards North it reaches through S.F.No.363, 361, 362, 353, 354, 352 and several other land for the distance about 3 kilo meters till reaches Mapillai gounder Kuttai.

4.3. The suit cart track has been going through on western side of defendant property and east and western side of plaintiffs property. At the southern end at starting point of the suit cart track the defendant attempted to made some encroachment and obliterate it to and prevent the plaintiffs from using the suit cart track to reach their land. Hence, the plaintiffs filed this suit for declaration to declare their right over the cart tract and permanent injunction to use their cart track without any disturbance.

4.4. The defendant filed this petition to add the 10<sup>th</sup> respondent / proposed party to party to this suit by stating that the plaintiffs are sold some property to the proposed party and in such document about the recitals regarding suit cart track to reach their lands are have not been mentioned. Further the proposed party built a house on the front side of land belongs to the defendant and also installed electric post within his boundary limits. Hence, the proposed respondent is also a user of the common pathway near by the suit property and also the defendant property. He should be added as necessary party to the suit. But the plaintiffs filed this suit by stating the defendant alone disturb their usage right over the cart track and the defendant in his written statement have denied the existence of cart track. Hence,

here the plaintiffs having initial burden to prove the fact there is existence of suit cart track as set out in the plaint. Further their usage right has to be proved by the plaintiffs alone. Hence, plaintiffs being a dominant litus according to cause of action they have filed the suit against the defendant alone.

4.5. Hence, further in the affidavit petitioner/defendant have stated reasons to implead the proposed party is, he constructing building and house abating to his land. Hence, as a user he also necessary party to the this suit. Further the said cart track is not been stated in the proposed party sale deed, it might be relevant fact to this case, the defendant can very well place such material before this court at the time of trial to disprove the plaintiffs claim, but without specific cause of action has stated against the proposed party, he is not necessary party to decide the issue in the main case. Hence, the proposed party is not necessarily to be impleaded in the main suit and the connected applications. Hence, this court decides the proposed party is not necessary party to this case.

***In the result, this petition is dismissed. No cost.***

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 6<sup>th</sup> day of January 2024.

District Munsif,  
Sulur.

**List of witnesses and documents on Petitioner side:-**

Nil

**List of witnesses and documents on Respondents side:-**

Nil

District Munsif,  
Sulur.

Draft/ Fair Order  
I.A.No.14/2023 in  
IA.No.2/2022 in  
O.S.No.103/2022  
Dated : 06.01.2024  
DMC, Sulur