

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga., B.A., B.L.,**
District Munsif, Sulur

Monday the 25th day of March 2024

I.A.No.6/2024

in

O.S.No.221/2021

1. Nagathal (Died)

2. Shanthamani

... Petitioner/ Proposed plaintiff

/VS/

1. T. Shanthamani

2. T.Navaneethakrishnan

3. T.Karthikeyan

4. Hemalatha

...Respondents/Defendants

This petition is coming on 11.03.2024 for final hearing before me in the presence of Thiru.P.P.Suresh Kumar, Advocate for the Petitioners and Thiru.P.Suresh, Advocate for the Respondents 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 and section 151 of CPC to implead the petitioners as 2nd plaintiff in this suit.

1. The brief averments of the affidavit filed by the petitioner/ Proposed party as follows:

1.1. The 2nd petitioner/proposed plaintiff's mother 1st petitioner/plaintiff has filed the main suit for declaration and permanent injunction. The sole 1st plaintiff Nagathal died on 18.10.2023 with her last WILL dated 01.12.2006 in favour of 2nd petitioner/ proposed plaintiff and after death of her mother the said WILL come into force and the 2nd petitioner/proposed plaintiff succeeded the suit properties and in possession and enjoyment of the same and absolute owner of the suit property by

virtue of registered WILL dated 01.12.2006 executed by her mother in favour of 2nd petitioner / Proposed plaintiff and the same also stated in the plaint. Therefore the 2nd petitioner/ Proposed plaintiff entitled to proceed the suit as per law. Hence, the 2nd petitioner/ Proposed plaintiff is a proper, just and necessary party to proceed the suit. Hence, this petition.

2. The brief averments of Counter statement filed by the 2nd Respondent and adopted by the 1st, 3rd and 4th Respondents as follows:

2.1. The petition is false, frivolous not maintainable either in law or on facts of the case. The plaintiff doesn't known about physical location of suit property, but illegally she is always trying to project her property has been located over defendants belonged property. The plea of adverse possession stands in favour of the defendants. The plaintiff is never been in possession of the suit property. The plaint is filed with insufficient court fees with entire suppression of facts and liable to be dismissed and also these are grounds for rejection.

2.2. The affidavit alleging that Nagathal died on 18.10.2023 is true. The alleged WILL dated 01.12.2006 in favour of the impleading petitioner governs by the Hindu Succession Act. As such she had the liability to prove the same. Further, other legal heirs of the deceased if so got any interest towards claiming the suit properties. Then those persons also needs to be adjudicated before the court of law. Further, the impleading petitioner failed to file the legal heirship certificate. Without prejudice the impleading petitioner don't have her legal rights towards proceeding with the case in accordance of law without other legal heirs. As such this petition is liable to be dismissed.

3. Point for consideration:-

Whether the petition under Order 1 Rule 10 and section 151 of CPC to implead the petitioner/proposed plaintiff 2nd plaintiff in this suit is to be allowed?

4. Points:-

4.1. Heard both side, perused the records. The suit is filed by the plaintiff Nagathal for declaration to declare sale deeds dated 12.07.1995 in doc.No.3652/1995

on the file of Sular Sub Registrar Office and to declare the sale deed dated 10.09.2007 in doc.No.9916/2007 on the filed of SRO, Sular as null and void and for consequential permanent injunction.

4.2. During the pendency of the suit the plaintiff Nagathal died and his daughter Shanthamani filed petition to implead herself as legal heir of her mother Nagathal under the WILL dated 01.12.2006 said to be executed by Nagathal in favour of the proposed plaintiff.

4.3. Defendants have filed their counter objections stating that, the other legal heirs also a necessary parties to adjudicate this claim and the proposed party alone can't be the legal representative on the basis of alleged WILL. On perusal of records the suit is in nature of declaration if any other legal heirs including the proposed party is in existence in the absence of WILL the all legal heirs of deceased Nagathal are the necessary parties to this suit. But the proposed party here claims her right through the WILL dated 01.12.2006.

4.4. Further to prove the WILL and considering the facts the other legal heirs of the deceased Nagathal also must be added as proper party for the final adjudication of this case. Hence, the plaintiff claims her right through the WILL. Hence, any other legal heirs are in existence they also to be added as proper party hence this petition is allowed with the condition by directing the plaintiff to implead all other existing legal heirs of deceased Nagathal as a proper party to this main case.

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 25th day of March 2024.

Sd/N.Renuga
District Munsif,
Sular.

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.6/2024 in
O.S.No.221/2021
Dated : 25.03.2024
DMC, Sulur