

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

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

District Munsif, Sulur

Friday the 10th day of January 2025

I.A.No.22/2024 in O.S.No.334/2017

1. Subramaniam
 2. Dharmaraj ... Petitioners/ Defendants
- /VS/
1. Mandhiriappan
 2. Nachimuthu (Died)
 3. Thangavelsamy
 4. Smt.Subbulakshmi
 5. Sri.Ramesh
 6. Smt.Selvi ...Respondents/ Plaintiffs
 7. Sellamuthu
 8. Ranjitham
 9. Karuppusamy ...Respondents/ Proposed parties

This petition is coming on 04.01.2025 for final hearing before me in the presence of Mr.K.Gopalakrishnan, Advocate for the Petitioners and Ms.R.Krishnaveni, Advocate for the 1st to 6th Respondents and Mr.R.Maheshan, Advocate for the 7th to 9th Respondents/Proposed parties and upon perusing the records, and this court made the following:

ORDER

This petition filed Under Order 1 Rule 10 (2) and section 151 of CPC to implead the respondents/Proposed parties are as 3rd to 5th defendants in the suit.

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

- 1.1. The 1st petitioner is the 1st defendant and the 2nd petitioner is 1st

petitioner's brother. In the main suit the 1st petitioner/defendant have deposed evidence in chief and cross examined in part and the documents are marked on defendants side as Ex.B.1 to B.14. Thereafter the main suit was posted for further defendant side evidence.

1.2. The predecessors in title of the suit properties namely Muthugounder and Arunachalagounder both are sons of one Marappagounder were died without marriage. Therefore there is no legal heir to the said brothers to succeed their estate. While the real fact is being so, the plaintiffs created the alleged sale deed dated 08.10.2001 in their favour by impersonation and cheating in illegal manner stating that the plaintiffs vendors are the legal heirs of the said Muthugounder and Arunachalagounder. Therefore the sale deed dated 08.10.2001 is void-ab-initio not valid under law and no way convey any title to the plaintiffs in respect of the suit properties.

1.3. The defendants grandfather and father alone were enjoying the suit properties from the year 1947 till his death and thereafter the defendants are in exclusive possession and enjoyment of entire suit properties. After the 2001 sale deed, the plaintiffs had mutated the revenue records without the knowledge and consent of the defendants in illegal manner and the same was seriously objecting by petitioners/defendants.

1.4. The vendors of the plaintiffs had entered into a partition deed with one Palanisamygounder and Kandasamygounder to divide their other family properties by virtue of partition deed dated 22.10.1979. In the said partition deed the father of the plaintiffs' vendor is mentioned as Sellappagounder. The verification of the signature and thumb impression of the vendors found in the plaintiffs sale deed dated 08.10.2001 and the parties namely Mandhiriyapa gounder and Karuppusamy gounder to the partition deed dated 22.10.1979 will enlighten the real facts that both parties are one and the same.

1.5. The petitioners/defendants filed an application in IA.No.21/2024 as lost

resort to send the signature and thumb impression found in the plaintiffs sale deed dated 08.10.2001 and partition deed dated 22.10.1979 for verification by the Expert opinion. The IA.No.21/2024 was allowed on 14.03.2024 thereafter this court send the admitted documents and disputed documents to the hand writing expert and called for the detailed investigation report. The government expert scrutinized both the documents and reported that, thumb impression found in the both documents are identical. Thus it clearly proves that the vendors of the plaintiff are not the legal heirs of Muthugounder and Arunachalagounder. Hence, it is just and necessary to implead the vendors of the plaintiffs namely Mandiriappan and Karuppusamy are proper and necessary party tot he suit. The said Mandiriappan died intestate on 13.11.2023 Sellamuthu and Ranjitham are his legal heirs. Therefore the said Sellamuthu, Ranjitham and Karuppusamy are proper and necessary party to the suit. Hence, the petitioners/ defendants come forward with this application. Hence, the petition.

2. The brief averments of Counter statement filed by the 7th Respondent and adopted by 8th and 9th and 1st to 6th Respondents as follows:

2.1. The petition is false, frivolous not maintainable either in law or on facts of the case. The respondents/ proposed parties are unnecessary parties to the suit as the entire properties belonging to their family had been belonging to his family had been sold to the plaintiffs and 1st and 2nd defendants.

2.2. After receipt of this notice in the above application, they got certified copies of the pleadings in the suit and came to know that the suit is totally abuse of the process of law. The 7th respondent' ancestors, ie., great grandfather Marappa gounder possessed a total extent of Ac.2.35 in S.F.No.59/1 of Senjeriputhur village. Marappa gounder died as intestate leaving behind his legal heirs, viz., Sellappa gounder, Muthu gounder and Arunachala gounder by virtue of the release deed dated 21.07.1903.

2.3. Among the three sons, Sellappa gounder had sold his common 1/ 3rd consisting of Ac.0.78 ½ to Kandasamy, i.e., grandfather of the petitioners and the

remaining 2/ 3rd shares belonging to Muthu gounder and Arunachala gounder was jointly enjoyed the proposed respondents and their ancestors, as these respondents as the legal heirs of Muthu gounder and Arunachala gounder had been enjoying the properties. As Muthu gounder and Arunachala gounder have no direct legal heirs, Mandhiriappa gounder and Karuppusamy being the legal heirs became entitled to the 2/ 3rd shares in S.F.no.59/1 of Senjeriputhur Village.

2.4. The averment in the affidavit along with this petition depicts that the common 2/ 3rd belonging to Muthu gounder and Arunachala gounder was enjoyed by Kandasamy, as they both have sold the properties to Kandasamy gounder but the later have not obtained registered sale deed is totally false. In order to grab the property illegally by fraud have narrated this false story. The story of the petitioners that Muthu gounder and Arunachala gounder was under the custody of Kandasamy gounder is totally false.

2.5. Except the 7th to 9th respondents, ie., heirs of Sellappa gounder, nobody can claim as legal and title to the property of Muthu gounder and Arunachala gounder. There is no necessity for the 7th to 9th respondents to create the sale deed dated 08.10.2001 in favour of the plaintiffs by impersonation is totally false. Since because the purchasers wrongly stated the father's name of the vendors, it does not mean that they have no right to execute the sale deed and they have created the sale deed by impersonation is totally false. The sale deed dated 08.10.2001 was executed by the legal heirs of Muthu gounder and Arunachala gounder by receiving proper sale consideration and the clear title has been transferred to the plaintiffs. Hence, the petitioners have no locus standi to challenge the sale deed as it was created by impersonation.

2.6. The Muthu gounder and Arunachala gounder have no sons and daughters to succeed them, then in such circumstances this respondent who is the legal heir of Sellappa gounder who is the brother of Muthu gounder and Arunachala gounder would naturally become the class II legal heirs and they are the correct persons to

deal with the estate of Muthu gounder and Arunachala gounder.

2.7. As the sale deed executed by the correct legal heirs and the plaintiffs are entitled to the same and the suit is for partition, this respondent is unnecessary parties to the suit. The plaintiffs are seeking for partition of their 2/ 3rd share in the suit properties and there is no necessary to implead the 7th to 9th respondents and they are unnecessary parties. Hence, the petition is liable to be dismissed in limini. The respondent is dragged to the court without any merits and the petition is liable to be dismissed.

3. Point for consideration:-

Whether the petition under Order 1 Rule 10 (2) and section 151 of CPC to implead the respondents/Proposed parties are as 3rd to 5th defendants in the suit is to be allowed?

4. Points:-

4.1. Heard the counsels for both the parties. The suit filed for the relief of partition by one Mandiriappan and Natchimuthu who is initially purchased the suit property from Karuppasamy and Mandiriappan under the sale deed dated 08.10.2001 and they are having 2/ 3rd share in the suit property. Subsequently, the 3rd plaintiff has purchased the suit property from the 1st and 2nd plaintiffs and he impleaded as party to the case. The defendants in his written statement has pleaded that the 1st and 2nd plaintiffs i.e., Mandiriappan son of Kumarasamy and Natchimuthu son of Arumugasamy are purchased the suit property from one Muthugounder son of Karuppasamy and Arunachala gounder son of Mandiriappa gounder on 08.10.2001. Originally the Mandiriappa gounder and Karupasamy gounder are not sons of Muthugounder and Arunachala gounder as mentioned in the document. They are the sons of one Chellappa gounder. They fraudulently impersonated their father name and executed the sale deed in favour of 1st and 2nd plaintiffs.

4.2. Further, pleaded that, the persons who sold the suit property to the plaintiffs Muthugounder, Arunachala gounder are not the real owners of the suit

property. Hence, the defendants as petitioners filed the petition to compare the thumb impression on the sale deed dated 08.10.2001 which is marked as Ex.A.6 through the PW.1 with the document alleged by the petitioners as a partition deed dated 22.10.1979 which is executed between Mandiriappa gounder and Karuppasamy gounder who are sons of Chellappa gounder with one Palanigounder which is marked as Ex.B.3 through DW.1.

4.3. The said Expert Report has been received and the signature found in the 08.10.2001 sale deed and signature found in 22.10.1979 partition deed are identical hence, the defendants filed present petition to implead the vendors of the 1st and 2nd plaintiffs Mandiriappa gounder and Karuppasamy gounder as a party to this proceedings. The proposed respondents in this application are 7th to 9th respondents have filed their counter by stating that they are the sons of Muthugounder and Arunachala gounder and executed sale deed in favour of 1st and 2nd plaintiffs on 08.10.2001. But the mistake arose in the sale deed in mentioning of the father's name of Mandiriappa gounder and Karuppasamy gounder.

4.4. Here the defendants denying the title of vendor of the plaintiffs and the plaintiffs filed the main suit for partition his title has been questioned by the defendants hence, in the interest of justice the vendors of the plaintiffs namely the proposed 7th to 9th respondents are to be added as necessary party to get the complete adjudication of the present case and to find decision for the real dispute between parties. Hence, this court allow this application.

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 10th day of January 2025.

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.22/2024 in
O.S.No.334/2017
Dated : 10.01.2025
DMC, Sular