

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
CHENGALPATTU DISTRICT.**

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A., M.L.,**
Principal District Judge, Chengalpattu.

Friday the 16th day of August 2024

I.A.No.3/2022
in
O.S.No.84/2013

Nithyakalyani

. . . Petitioner / Plaintiff.

/Vs/

1. R.Ramalingam

2. R.Sridharan

3. R.Lalitha

4. Ramalakshmi

. . . Respondents / Defendants.

5. V.N.Shanmugasundram

6. P.Thangavel

7. S.Vijay

8. M.Magesh

9. P.Swaminathan

10. R.Sharmila

11. S.Elango

12. V.Prakash

13. S.V.Perumal

14. S.R.Jayalakshmi

15. P.Renganayagi
16. N.Karthik
17. G.Jayakumar
18. N.Gaushik
19. S.Illayaraj
20. S.Vigneshwaran
21. R.Banumathi
22. G.Selvaganapathy
23. Ravi Raju
24. M.Mani
25. Raja Rathishkumar
26. Subbaiah Ponnazhagu
27. Selvamuruan
28. Poornima . . . Proposed Respondents / Proposed Defendants.

This petition came up before me in this court for final hearing on 22.7.2024, in the presence of Tvl.Anthony Elangoan Raj, S.Ramachandran and P.Venkatesan, Advocates for the petitioner, Thiru.R.Sugumar, Advocate for the 4th respondent, the respondents 5, 17, 19, 20, 22, 26, 27 and 28 set exparte after paper publication was effected, the respondents 6, 8 to 18, 21 and 24 endorsed no counter, the respondents 1, 2, 3, 7 and 25 set exparte for not filing the counter, upon hearing the

arguments of both side counsel, perusing the entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition is filed under Order 1 Rule 10(2) CPC, to implead the proposed respondents as defendants 5 to 28 in the suit for proper adjudication.

2. The case of the petitioner in brief :

the petitioner is the plaintiff in the suit. The suit was filed for partition of the suit property. The 4th defendant filed additional written statement raising the plea of partial partition and non-joinder of parties. In para 3 of the additional written statement, the 4th defendant mentioned twenty four purchasers of UDS of 16 cents in S.No.290/1 in Medavakkam Village, Tambaram Taluk, Chengalpet District. The above persons are to be added as defendants 5 to 28 in the suit in the interest of justice. Hence, the petition.

3. The averments of counter filed by the 4th respondent in brief :

The alienation made by the 1st defendant in the year 2007. Thus the said alienation should have been challenged by the petitioner within 12 years from the date of alienation made by the petitioner's father / 1st respondent / 1st defendant as per Article 109 of the Limitation Act, 1963. The further alienations were made in the year 2010 and 2011 itself. Thus the present application to implead the proposed parties is hopelessly

barred by limitation and not maintainable in law and on facts. The petitioner suppressed the material facts and approached this court with unclean hands. The petitioner has no prima facie case. Balance of convenience lies in dismissing the application. Hence, prayed for dismissal of petition.

4. The respondents 5, 17, 19, 20, 22, 26, 27 and 28 set exparte after paper publication was effected, the respondents 6, 8 to 18, 21 and 24 endorsed no counter and the respondents 1, 2, 3, 7 and 25 set exparte for not filing the counter.

5. The point that arises for consideration is whether the application is liable to be allowed.

6. Point :

This petition is filed under Order 1 Rule 10(2) CPC to implead the proposed respondents as 5 to 28 defendants in the suit. Notice was sent to all of them. Some of them appeared and many of them remained exparte. The suit was filed for partition in the year 2013. The suit is at the stage of PW1 cross. In the meantime this application is filed stating the defendant raised a claim that these parties are necessary parties for proper adjudication and partial partition is not maintainable.

7. Additional written statement was filed on 29.9.2021. Thereafter additional issues were framed with respect to non-joinder of necessary parties and partial partition. The suit was posted for trial on

6.12.2021. The evidence of PW1 was already commenced on 6.10.2020. Thereafter IA 1/2021 filed for receiving additional written statement and was pending till 29.9.2021. The defendant raised a plea in the said additional written statement that necessary parties to the suit not impleaded and the suit is bad for partial partition. Therefore, issue was framed to that effect on 22.10.2021 and the suit was posted for cross examination of PW1 on 12.8.2022. Thereafter when the case was posted for cross of PW1 on 7.9.2022 this application was filed.

8. In the counter of 4th respondent, it is stated, the alienation of the property was made by 1st defendant in the year 2007. It is admitted in the counter that 1st defendant through his power of attorney sold property to an extent of 6976 sq.ft., in survey No.290/1 in the year 2007. Therefore, it is alleged that the alienation should have been challenged within 12 years, the present application to implead the proposed parties are hopelessly barred by limitation. The 4th respondent claimed this application is frivolous and vexatious.

9. It is an admitted fact the defendant filed petition in IA 1/2021 to receive additional written statement, wherein he claimed necessary parties are not impleaded, thereby suit is bad for non-joinder of necessary parties and partial partition. Therefore, the contention of the defendant by way of additional written statement necessitated to file this application. The

question of limitation would be decided only during trial. Therefore, this petition has to be allowed.

10. **As the result, petition allowed. No cost.**

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the the 16th day of August 2024.

Principal District Judge,
Chengalpattu.

Both side witness and exhibit :
Nil.

Principal District Judge,
Chengalpattu.