

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

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

Monday the 27th day of March 2023

I.A.No.5/2022
in
C.O.S.No.174/2021

Repcobank Ltd., Tambaram Branch,
Represented by its Deputy General Manager,
West Tambaram, Chennai - 600 045.

. . . Petitioner / Proposed 2nd defendant.

/Vs/

- | | |
|--------------|-----------------------------------|
| 1. A.Palani | . . . Respondent / Plaintiff. |
| 2. S.Perumal | . . . Respondent / 1st Defendant. |

This petition came up before me in this court for final hearing on 17.3.2023, in the presence of Tvl.P.S.Seetharaman and N.Prasanth, Advocates for the petitioner and Thiru.R.Sugumar, Advocate for the respondent, 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 is an application filed by the petitioner / proposed 2nd defendant under Order 1 Rule 10(2) CPC, praying to implead them as 2nd defendant in the suit in O.S.No.174/2021 and I.A.No.2/2021.

2. **The case of the petitioner in brief :**

The petitioner Bank has given a secured loan of Rs.618/- lakhs to the defendant herein by mortgaging his two properties which the suit properties belonging to the defendant against whom the plaintiff has filed the

summary suit. As such the petition bank has got the 1st charge over the properties for the loan advance and as the secured creditor the petitioner bank has got the absolute rights over the properties under mortgage and no other person including the plaintiff can claim any right over the petitioner bank herein. The petitioner is an interested person and a necessary party in the suit. Any order passed in the suit against the suit properties without hearing the petitioner will affect the petitioner bank and any petitions including petitioner for attachment before judgment of the suit properties in the event of failure on the part of the defendant to furnish security. Hence, the petition.

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

The allegations in the affidavit are very vague and it is not stated how the petitioner is a necessary party to the suit, especially the alleged mortgage properties are not the subject matter of the suit. As per law, nothing will be affected the petitioner, if the mortgaged properties are attached. The respondent has also sent notices to the petitioner / 3rd party and others on 12.8.2021 and disclosed the suit details. But the petitioner has filed the belated and vexatious application with untrue allegations. The petitioner / 3rd party has also given an additional mortgage to the 2nd respondent / defendant, after sending the said notice on 17.10.2022 for a sum of Rs.2,00,00,000/-. If this petition is allowed the respondent will be put to irreparable loss and hardship. Hence, prayed for dismissal of petition.

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

5. Point :

This application is filed to implead the petitioner as 2nd defendant in the suit. The petitioner is the bank who sanctioned secured loan to the defendant under registered equitable mortgage of the suit property. The legal notices sent by the counsel for 1st respondent / plaintiff dated 30.4.2021 and 12.8.2021 are marked as Ex.P1 and Ex.P2.

6. Per contra, the 1st respondent / plaintiff alleges that nothing will affect the petitioner, if the mortgaged properties are attached which the petitioner strongly objected. It is the allegation of the petitioner that the properties mentioned in the legal notices are mortgaged by the 2nd respondent / 1st defendant with the petitioner. Being so if any decision is taken by this court in respect of suit schedule properties, it will affect the petitioner since the said properties are mortgaged with the petitioner bank. Hence, the petitioner is a necessary party to the suit. Hence, this application has to be allowed in the interest of justice.

6. **As the result, petition allowed. No costs.**

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 27th day of March 2023.

Principal District Judge,
Chengalpattu.

Petitioner side witness :

Nil.

Petitioner side exhibits :

Ex.P1 30.04.2021 Legal notice.

Ex.P2 12.08.2021 Legal notice.

Respondents' side witness and exhibit :

Nil.

Principal District Judge,
Chengalpattu.