

**IN THE COURT OF THE DISTRICT MUNSIF-CUM-JUDICIAL
MAGISTRATE COURT, THIRUKALUKUNDRAM**

PRESENT: Tmt.Fanny Rajan, B.A, B.L., (Hons)
District Munsif-Cum-Judicial Magistrate,
Thirukalukundram. (FAC)

Thursday, the 17th day of December 2020

I.A. No. 53/2019

in

O.S.No.24/2018

1. Mr.Dillibabu
2. Mr.Nagappan
3. Mr.Annappan

... Petitioners/Plaintiffs

/Vs/

1. Mr.Perumal
2. Mrs.Papathi Ammal
3. Mrs.Kanniyammal
4. Mrs.Sivakami
5. Mrs.Parimala
6. Mr.E.Vijayakumar

... Respondents/Defendants

This Petition coming before me today for final hearing on 10.12.2020 in the presence of Thiru.K.Varadharajan and Thiru.S.Sarma, Counsels for the Petitioners/Plaintiffs and Thiru.S.Sundaravadivelu, counsel for the R1 to R3; R4, R5 & R6 being called absent set exparte and and upon hearing the submission of both Learned Counsels and on perusal of all material papers on record, and this Petition having stood over for consideration till this date, this court delivers the following.

ORDER

1. The Petitioners have filed this petition under Order I Rule 10 of CPC seeking to implead the 6th respondent/proposed defendant as the 6th defendant in the suit.

2. CONCISE STATEMENT OF THE AVERMENTS IN THE AFFIDAVIT

FILED BY THE PETITIONER:

The petitioner is the 1st plaintiff and it has been filed on behalf of the other petitioner. The petitioner has filed the suit to declare the Registered Sale deed dated 24.11.2006 as null and void and grant an order of permanent injunction against alienation or encumbering the schedule mentioned properties to any third parties.

It is the case of the Petitioner that one Kathan alias Kathavarayan and the second defendant are his parents. The 1st respondent/defendant and defendants 3 to 5 are brother and sisters. The plaintiff father possessed ancestral properties and out of the earning, he bought the Schedule mentioned properties. The plaintiff father was in possession and enjoyment of the same till his life time and that he died on 17.01.2012. There was no partition of the plaintiff's father's property and ancestral property and they are in joint possession.

During month of July 2018, the Plaintiff came to know about the attempt to sell the schedule mentioned family properties. Further, on verification he came to know that two sale deeds were registered in 2006 for the ancestral properties by the Petitioner's father. Hence, the instant suit.

Whiles, during the pendency of the suit, the 1st respondent/defendant has executed a sale deed in Document No.3551/2018 registered before Sub registrar Office, Thirukalukundram in favour of one Mr.E.Vijayakumar, S/o.Elumalai. Hence, the said Mr.Vijayakumar is a necessary parties to this suit. Therefore, this petition to implead and no prejudice would be caused to the respondents and the Petitioner has balance of convenience and otherwise irreparable loss and hardship would be caused.

3. CONCISE STATEMENT OF THE AVERMENTS IN COUNTER FILED BY THE RESPONDENT 1 to 3:

The 1st Respondent denied all the allegations and stated that the petition is not maintainable. There are no averments supporting what prompted filing of this Petition. The respondents are contesting the suit and the 1st Respondent is the real and absolute owner for the property. The petitioners/Plaintiffs are well aware of the same and the subsequent sale transactions in favour of the proposed defendant.

The 2nd Respondent / 2nd Defendant is the mother of the plaintiffs and defendants aged about 70 years and upon filing the written statement, it was insisted to take the suit for trial as she is very old. Further, with ulterior motive, the Petitioner has filed criminal complaint before the Inspector of Police, Thirukalukundram every week and harassing the aged 2nd Respondent. Further, they have obtained signature of the 1st Respondent in blank stamp papers. Now this frivolous and vexatious petition is filed to extract money from the vendee.

The presence of proposed 6th defendant is not at all necessary for the present case. The petitioners have to prove their rights to seek for reliefs in the present suit with respect to the suit schedule mentioned properties. The proposed respondent is in enjoyment of the suit property and not the Petitioners. This Petition has been filed to protect the proceedings without commencing the trial. When there is no relief against the proposed defendants, this petition is devoid of merits, frivolous, unwarranted and bad in law and has to be dismissed with costs.

4. The 4th and 5th Respondent have already been set exparte in the suit and whileso, the 6th Respondent was set exparte on 17.03.2020 for non filing of counter.

5. POINT FOR CONSIDERATION:

Whether the petition to implead the 6th respondent as the proposed 6th Defendant in the plaint under Order 1 Rule 10 of CPC is to be allowed?

6. DISCUSSION AND FINDINGS:

6.1. Contentions of the Learned Counsel for the Petitioners: The Learned counsel for the Petitioner had contended that he had become aware of the execution of the Sale deed registered as document No. 3551/2018 in favour of the proposed 6th defendant by the 1st Defendant. The said sale had taken place during the pendency of the suit. The instant suit is filed for the prayer of the declaration and consequential injunction. During the consideration of the declaration prayer, it is necessary to discuss about the subsequent fraudulent sale by the 1st Defendant and for better appreciation of evidence, the proposed 6th defendant is a necessary party to the suit. Hence, the petition has to be allowed.

6.2. Contentions of the Learned Counsel for the Respondents 1 to 3: Per contra, the Learned counsel for the Respondent 1 to 3 had contended that the Petitioner has no right in the suit property. The 1st Respondent being the absolute owner of the property, he is fully entitled to sell the property to the 6th respondent and the Petitioners cannot question the same. Further, the possession and enjoyment of the

property is with the 6th Respondent and therefore, there is no basis for the allegations made by the Petitioner. As the contesting respondents 1 to 3 have already filed their written statement and when the suit is ripe for trial filing of the instant petition is only an attempt to delay the proceedings and mislead the court. Hence, the petition has to be dismissed with exemplary costs.

6.3. This Court considers the submissions of both the counsels and perused the materials on records. This Court finds that there are no disputes regarding the fact that the proposed party is the buyer of 1st item of the suit schedule property from the 1st respondent herein. On perusal of the plaint, this Court finds that the suit has been filed seeking for the prayer of declaration that “*the sale deed dated 24.11.2006 vide document No. 7108/2006 and 7109/2006 on the file of SRO Thirukalukundram by the Late Kanthan @ kanthavarayan to the 1st defendant with respect of item no. 1 and 2 of the schedule mentioned properties is null and void.*”

6.4. On perusal of the certified copy of the Sale deed dated 3551/2018 dated 30.08.2018 filed by the Learned Counsel for the Petitioner during his oral submissions, shows that the Sale Deed has been executed by the 1st Defendant in favour of the proposed 6th defendant. The schedule of the property is “.....”. The schedule mentioned in the Sale deed is the same as that the item no.1 suit schedule property. Therefore, this court finds that the underlying issue in this suit regarding the title of the petitioner herein over the suit schedule properties.

6.5. The instant suit has been filed on 16.07.2018 and the sale deed in favour of the proposed 6th defendant was executed on 30.08.2018. Hence, this court is of the considered view that the sale was executed after the initiation of the suit. During the pendency of the suit, when a sale deed has been executed, any outcome in the instant suit may have a direct impact on the sale. Therefore, this Court is of the considered view that even though there is no specific relief sought for against the proposed 6th defendant, the result in the suit may have impact his alleged ownership rights over the 1st item of the suit properties.

6.6. Further, this Court finds that the impleading of the proposed party will not in any manner cause prejudice to both the parties. Instead, it will only assist in finding out the true title and ownership of the suit property. Therefore this court finds that in the interest of justice the proposed party shall be impleaded as the 6th defendant in the suit.

6.7. At this juncture, this Court finds it necessary to take into consideration the contentions of the Learned Counsel for the Respondents 1 to 3 that this Petition is only a delay tactic intended to cause inconvenience to the Respondents. On perusal of the notes paper it is evident that Written Statement of the 1st and 2nd Respondent herein was filed on 04.09.2018 and 3rd Respondent was filed on 22.01.2019. However, the instant petition was filed only on 02.04.2019, when the suit was in the trial stage. It is pertinent to note that the sale deed in favour of the proposed 6th defendant has not been mentioned in the written statements. Further, there are no

material evidence adduced by the Respondents 1 to 3 to show that the Petitioners have deliberately delayed filing of the instant Petition. In light of the above discussion, this Court is of the considered view that there are no delay in filing thus petition.

6.8. Considering the nature of the suit and the relationship between the Petitioner and respondents, this Court is of the considered view that both the parties shall bear their own costs.

7. In the result, this petition is allowed and the Petitioner herein is permitted to implead the proposed 6th Respondent as the 6th Defendant in the suit. No costs.

Dictated to Steno-typist, typed by her in the Computer directly, printed, corrected and Pronounced by me in open court on this the 17th day of December 2020.

Sd/-Fanny Rajan, 17.12.2020

**District Munsif-cum-Judicial Magistrate,
Thirukalukundram. (FAC)**

BOTH SIDE WITNESSES AND EXHIBITS:- NIL

Sd/-Fanny Rajan, 17.12.2020

**District Munsif-cum-Judicial Magistrate,
Thirukalukundram. (FAC)**

