

IN THE COURT OF SUBORDINATE JUDGE, MADURANTAKAM.

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam.**

Thursday, this 27th day of March 2025

I.A.No.4/2025

in

O.S.No.14/2016

(CNR.No.TNCG13 – 000086-2016)

B. Suresh.

...Petitioner/Proposed 2nd Defendant

..Vs..

1. Rukmaniammal(Died)

2. Thenmozhi

3. Kamatchi

4. Murugan

5. Vanitha

6. Manikandan@Mani.

...Respondents 1 to 6/Plaintiffs

7. Radhakrishnan.

...7th Respondent/Defendant

This petition coming up for final hearing on 13.03.2025 in the presence of Sri. N. Sakthimurugan, Counsel for petitioner, Sri. V. Agoram, Counsel for the 7th respondent and Respondents 1 to 5 endorsed no counter and having heard the arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner under Order 1 Rule 10 r/w Section 151 of CPC to implead himself as proposed 2nd Defendant in the original suit.

2. Petition in brief:

1st Respondent/1stPlaintiff had executed a registered sale deed dated 19.08.2022 in favour of petitioner in respect of her undivided 1/5 share over the suit properties. The 1st Respondent/1stPlaintiff died on 14.02.2020 leaving behind the respondents 2 to 6 as her class one legal heirs. During her lifetime she had executed sale deed in favour of the petitioner and as per sale deed the petitioner entitled 1/5 share over the suit properties. Therefore the petitioner is a necessary party to the suit. Hence the petitioner have filed this application to implead himself as proposed 2nd Defendant in the original suit. Unless if this application is allowed the petitioner will be put to great loss and hardship, on the other hand by doing so no hardship will be caused to other side. Hence this petition.

3. The respondents 1 to 6 had endorsed no counter in this application.

4. Counter of 7th respondent in brief:

The petition to implead the petitioner as 2nd Defendant in the suit is incorrect, vexatious and unsustainable both in law and on facts. Rukkumaniammal had no right over the suit property. She had had no right to execute the document. Hence, the document executed by the 1st plaintiff Rukumaniammal in favour of petitioner is void document and it is a created document. Suit property was purchased by the father of this Respondent. The 1st item was purchased on 09.08.1977 and 2nd item was purchased on 21.08.1971, 27.11.1970 by the father of the Respondent. This Respondent's father purchased the suit property out of his own income. Hence, the suit property is self-acquired property of this Respondent's father Murugesan. Murugesan executed a will in favor of this Respondent. After the death of Murugesan, as per will this Respondent alone owner of the suit property and he is in possession and enjoyment of the suit property.

The petitioner had no right over the suit property. The document dated 19.08.2022 is created document. The said Rukmaniammal died on 14.02.2020. As per the affidavit allegation the petition is not at all maintainable in law. As per

allegation mentioned the affidavit the document is created document. The petition is not at all maintainable in law. Only to drag the proceedings this vexatious petition is filed. Hence this petition is liable to be dismissed.

5. No oral or documentary evidence adduced by petitioner and respondent.

6. Heard both sides and perused the records.

7. Point:

“Whether this application can be allowed?”

Petitioner who is third party to the suit filed this application to implead him as party to the suit as he purchased the 1/5 share of 1st plaintiff in the suit properties under the registered sale deed dated 19.08.2019.

The respondents 1 to 6 endorsed no counter. The 7th respondent namely the defendant defend the application as such the suit properties are self acquired properties of his father and that the 1st plaintiff had no right to sell the same to the proposed party.

At the outset it is pertinent to note that the suit was filed by the respondents 1 to 6 for partition and separate possession of their 4/5 share in the suit properties. The 1st plaintiff namely Rukkumani ammal sold his 1/5 share to the petitioner herein under a registered sale deed dated 19.08.2019, where the registration copy of the same was filed by the petitioner along with the petition. No doubt that a cosharer has right to sell his share over the properties in which he is entitled for partition. But the respondent defend that the suit properties are absolute properties of his father. On keen perusal, the defendant is the son of the 1st plaintiff who sold her share to the petitioner. In nutshell the 1st plaintiff claims that though she has absolute right over the suit property, she claims only 1/5 share in the same as her husband and father of defendant namely Murugesan died. Defendant claims absolute title to the suit properties as his father bequeath the suit properties through a will. So, the core question to be decided was whether the will executed by Murugesan in favour of

defendant is true and valid. If the defendant prove the will, then the plaintiffs case fails. If the defendant fails to prove the will, then the plaintiffs are entitled to share in the suit properties.

Now the 1st plaintiff was no more. Hence the petitioner has right to get his share in this suit itself, as a separate suit will multiply the proceedings for the same dispute. Apart from that no loss or prejudice will cause to the 7th respondent, if this application is allowed. So, there is no bar to allow this application. But it is pertinent to note that the petitioner purchased the property in the year 2019 and that the 1st plaintiff died in the year 2020. Petitioner came up with this application in the year 2025, after 5 years from the date of purchase and from the date of death of 1st plaintiff. There is no reason set out in the affidavit for the delay in filing this application. Hence this court decided to allow this application by imposing cost for the delay in filing this application and this point is decided accordingly.

8. Result:

In fine this application is allowed on conditions that the petitioner shall pay a sum of Rs. 2000.00 (Rupees Two Thousands) only to the 7th respondent on or before 04.04.2025. call on 05.04.2025.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 27th day of March 2025.

Subordinate Judge,
Madurantakam.

I. Petitioner side evidence and Exhibits: Nil

II. Respondent side Evidence and Exhibits: Nil

Subordinate Judge,
Madurantakam.

Fair / Draft order
IA No.4/2025
in
OS No. 14/2016
D.D: 27.03.2025,
Subcourt,
Madurantakam