

IN THE IV ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: Thiru.V.Pandiaraj, B.Sc. B.L.,
IV Additional Judge.

Thursday, the 09th day of January 2025

I.A.No. 8 of 2024 in O.S.No. 7147 of 2021

C.N.R.No.TNCH01-023775-2021

Mr. K.Lakshmi Narayana
S/o. K.Lakshmi Narasimha Rao,
aged about 69 years,
New No.19, Lakshmi Narayana Street,
West Mambalam, Chennai – 600 033.

...Petitioner/Proposed 3rd Defendant

/Vs/

1. Mr.Sagy.C.C
S/o.Cheru,
No.2/1, Kamala Nagar 1st Street,
Thiruvottriyur,
Chennai – 600 019.

...1st Respondent/plaintiff

2. Mr.M.K.Mustafa
S/o.M.K.Ibrahim,
No.50/32, I Block, 10th Street,
Anna Nagar East,
Chennai – 600 040.

3. The Sub Registrar
Office of the Sub Registrar, Kodambakkam,
No.37/5, Alagiri Nagar 5th Street,
100 Feet Road, Koyambedu,
Chennai – 600 024.

...2nd & 3rd Respondents/1st & 2nd Defendant

This petition came up before me for final hearing on 28.10.2024 in the presence of M/s.B.Natrajan, S.T.Vijay Sai Counsels appearing for the petitioner/Proposed 3rd Defendant and of M/s.V.B.Thirupathi Kumar, K.Senthilkumar, S.Ellammal Counsels appearing for the 1st respondent/1st plaintiff, and of M/s.R.Rajesh Kumar, G.Sivagami Counsels appearing for the 2nd respondent/1st defendant, upon hearing the arguments from the counsels for the both side and upon perusing the entire records of this case and having stood over for consideration till this day, this Court passed the following

ORDER

This petition has been filed by the Petitioner/Proposed 3rd Defendant to implead the 3rd defendant in the above suit in O.S.No.7147 of 2021 under Section 1 Rule 10(2) of Civil Procedure Code.

2. The averments found in the affidavit filed along with the petitioner are as follows:-

2.1) The petitioner is the proposed 3rd defendant in the main suit. The petitioner is the original join owner of the suit schedule property along with petitioner deceased brother Mr.K.Nageswara Rao, having inherited the schedule property from our mother Late Mrs.Lakshmi Devi W/o. Late K.L.Narasimha Rao and petitioner still in joint possession and enjoyment of the schedule property. Petitioner and his brother Mr.K.Nageshwara Rao had availed loan vide account No.M232 from M/s.Sri Muthukumarasamy permanent fund Limited for a sum of Rs.15,00,000/- in the month of march 1998 and mortgaged the suit schedule property in the favour of M/s.Sri Muthukumarasamy permanent fund limited. When M/s.Sri Muthukumarasamy

permanent fund limited, had initiated auction proceedings, it resulted in filing of suit and while the suit was pending, M/s.Sri Muthukumarasamy Permanent fund Limited claimed that they had sold the schedule property through an alleged public Auction on 04.10.2015 conducted by One Alwin & Company to the 1st defendant Mr.Mustafa for the sum of Rs.1,65,00,000/- The 1st defendant paid only a sum of Rs.41,25,000/- to the M/s.Sri Muthukumarasamy permanent fund limited and got the schedule property registered in his name by way of document No.4722/2015 dated 25.11.2015 on the file of SRO Kodambakkam. The 1st defendant thereafter defaulted in paying rest of the auction amount to the M/s.Sri Muthukumarasamy permanent fund limited.

2.2.) The alleged auction proceeding was a sham and no real auction was conducted by the M/s.Sri Muthukumarasamy Permanent fund limited on 14.10.2015. No public notice intimating about the public auction was published or circulated among the General public. There were no bidders in the alleged public auction except for the 1st defendant The 1st defendant did not pay any Earnest Money Deposit to participate in the public auction. There was no transfer of funds in any manner to show that the 1st defendant paid EMD to participate in the public auction.

2.3.) In reality no public auction took place on 14.10.2015 and the M/s.Sri Muthukumarasamy permanent fund limited has simply knocked off the Rs.7 crore value property to 1st defendant for just Rs.1,65,00,000/- by a sham arrangement and collusion between them and further the 1st defendant has paid only Rs.41,25,000/- out of the total consideration of Rs.1,65,00,000/- to M/s.Sri Muthukumarasamy permanent fund limited, till date. Aggrieved by the above illegal sale transaction, petitioner along with his brother Mr.Nageshwara Rao

had filed a suit in O.S.No.6936 of 2015 on the file of IV Assistant City Civil Court, Chennai against the 1st defendant Mr.Mustafa and M/s.Sri Muthukumarasamy permanent fund limited, Seeking declaration that the alleged sale deed vide document No.4722/2015 dated 25.11.2015 before SRO Kodambakkam is null and void, unjust and does not bind us.

2.4.) The petitioner come to know recently that the plaintiff has clandestinely entered into an agreement of sale dated 17.08.2018 with the 1st defendant Mr.Mustafa for the schedule property for a sum of Rs.80 lakhs and has paid a sum of Rs.30 lakhs as advance and subsequently the 1st defendant Mr.Mustafa refused to receive the balance sale consideration and register the property in favour of the plaintiff and hence the plaintiff has filed above suit in O.S.No.7147 of 2021 for specific performance against the 1st defendant Mr.Mustafa. The petitioner come to known recently that the 1st defendant Mr.Mustafa has filed a Written Statement in O.S.No.7147 of 2021 claiming that he is unable to comply with specific performance and register the schedule property in favour of the plaintiff due to the pendency of the suit filed by him in O.S.No.6936 of 2015 on the file of IV Assistant City Civil Court, Chennai against the 1st defendant Mr.Mustafa and M/s.Sri Muthukumarasamy Permanent fund limited. The averments in the above suit would show that petitioner of the suit schedule property and petitioner in absolute possession and enjoyment of the suit schedule property. The petitioner necessary party to the above suit in O.S.No.7147 of 2021 and it is in the interest of justice to implead him in the above suit as the 3rd defendant.

2.5.) The petitioner have absolute right, title and interest over the suit schedule property and as such it is in the interest of justice to implead petitioner

as proposed defendant in O.S.No.7147 of 2021. The petitioner a fair chance to succeed in O.S.No.6936 of 2015 on the file of the IV Assistant City Civil Court, Chennai as such there would be a conflict of interest if petitioner not impleaded in the above suit in O.S.No.7147 of 2021 as one of the parties to the suit. The petitioner would be put to irreparable loss and damage if the above application is not allowed while no loss or damage would occur to the respondents if the above application is allowed and further the balance of convenience is in favour of allowing the above application. Hence, he prayed to allow this petition.

3. The averments found in the counter affidavit filed by the 1st respondent/plaintiff are as follows:-

3.1.) The 1st respondent/plaintiff have filed the above suit for specific performance of the agreement of sale dated 17.08.2018 entered into between the plaintiff and the 1st defendant in the above suit. The impleading petitioner is not at all the owner of the suit property. In fact the 1st defendant herein purchased the suit property in the auction sale conducted by M/s.Sri Muthukumarasamy Permanent fund limited on 14.10.2015. Subsequently, the sale deed was also executed to and in favour of the 1st defendant on 25.11.2015 and the same was registered as Doc.No.4722 of 2015 at office of the Sub Registrar Kodambakkam. It is pertinent to point out that, the Mortgage executed to and in favour of M/s.Sri Muthukumarasamy Permanent fund limited pertaining to the suit property was also duly discharged by the said M/s.Sri Muthukumarasamy Permanent fund limited and they had also executed the receipt for the same. Therefore, the 1st defendant is the absolute owner of the suit property as on date.

3.2) The impleading petitioner along with his deceased brother K.Nageshwara Rao filed as suit bearing O.S.No.6936 of 2015 on the file of the IV Assistant City Civil Court, Chennai seeking declaration that the sale deed dated 25.11.2015, registered as Doc.No.4722/2015 at SRO Kodambakkam as null and void and not binding on them. In fact, the said suit is pending as on date and there is no interim order at all in the said suit with regard to the alienation of the suit property and the legal heirs of the deceased Nageswara Rao have not at all been brought on record in the said suit as on date.

3.3) The impleading petitioner thereafter filed another suit bearing O.S.No.6228/2018 for permanent injunction restraining the 2nd Respondent from in any way alienating or encumbering the suit property to any third parties. The said suit is also pending on the file of the IV Assistant City Civil Court Chennai as on date in which also no legal heirs have been brought on record for the deceased Nageshwara Rao. The petitioner has conveniently suppressed the said suit and also similar such suits filed by him for the very same suit property which were dismissed by various courts. In pith and substance the petitioner has no locus-standi at all to file the above petition before this court particularly when he has no semblance of right or tile over the suit property as on date. Unless and otherwise, the impleading petitioner gets decree in his favour in O.S.No.6936 of 2015 and till it attains its finality the petitioner has no right at all over the suit property and consequently the above impleading petition filed by him in the above suit is not at all maintainable in law and is liable to be dismissed with exemplary costs.

3.4) The averments made in the above paragraphs and the same would clearly prove the malafide intention on the part of the petitioner in filing of the

above petition. The allegations made in para 8 of the affidavit that the petitioner came to know recently that the plaintiff has clandestinely entered into an agreement of sale dated 17.08.2018 with the 1st defendant Mr.Mustafa for the scheduled property are hereby specifically denied. Equally all the allegations made in paras 9 to 14 of the affidavit filed in support of the impleading petition are hereby specifically denied. In fact, those allegations are made only for the purpose of filing the above petition before this court. The petitioner is not at all a proper and necessary party to be impleaded in the above suit particularly when he is not at all the owner of the suit property and he has not title deed at all to the suit property and the title deed in respect of the suit property stands in the name of the 1st defendant in the above suit. In these circumstances, unless the above petition is dismissed 1st respondent/plaintiff will be put to irreparable loss and untold hardship particularly when the above suit is in the stage of marking of documents by the plaintiff. In fact, the petitioner has filed the above petition only with a view to protract the above suit proceedings without any right or title over the suit property. There is absolutely no merits in the above petition and it is nothing but an abuse of the due process of court. The above petition is nothing but a vexatious one and has been filed by the petitioner with a malafide intention of protracting the above suit proceedings and also to harass the plaintiff in the above suit who has parted with his hard earned monies as an advance to purchase the suit property from the 1st defendant in the above suit who is the title holder of the said property. In these circumstances, unless the above petition is dismissed 1st respondent/plaintiff will be put to irreparable loss and untold hardship. No prejudice will be caused to the peititoner since he can ventilate his remedy with his suit already filed by him and pending this court of law as on date. Hence, he prayed to dismiss the application.

4. The averments found in the counter affidavit filed by the 2st respondent/1st defendant are as follows:-

4.1) The 2nd respondent/1st defendant each and every allegation set forth in the petition except those which are specifically admitted by him. The averments in the petition is totally contrary to the truth, it is an admitted fact by the petitioner that he had availed a loan of Rs.15 lakhs from the M/s.Sri Muthukumarasamy Permanent Fund limited in the year 1998 and as well created a registered simple mortgage over the suit property. Thereafter, the petitioner committed default in the repayment of the loan EMIs and the petitioner could not even fulfill the conditional Order passed by the VII Assistant City Civil Court in O.S.No.6041 of 2015 and further had filed O.S.NO.6304 of 2015 and O.S.No.6936 of 2015 before this court and failed miserably to get any interim order thus the petitioner clandestinely has filed O.S.No.6228 of 2018 before IV Assistant court to obtain the order by hiding all the facts. The M/s.Sri Muthukumarasamy permanent fund limited had brought the suit property for sale by public auction by exercising its right under Section 69 of the Transfer of property Act.

4.2) The petitioner had earlier filed suit O.S.No.3348/02-XVI Assistant City Civil Court and O.S.No.1369/2003 – XVIII Assistant City Civil Court namely a suit for redemption of the mortgage and the Court decreed the redemption suit on 23.06.2010, direction the petitioners to pay Rs.10,58,250 with @ 6 Per annum the date of plaint till date of payment within 3 months from the date of judgment that is on or before 23.06.2010. But the petitioners

did not comply with the aforesaid decree in the redemption suit till date, by effecting payment as per the said decree to the M/s. Sri Muthukumarasamy permanent fund limited.

4.3) The petitioner continued to commit chronic default and since the outstanding accrued to more than 1.43 crores, notice was issued by the M/s.Sri Muthukumarasamy permanent fund Limited in this regard. Immediately the petitioner filed O.S.No.8469/2012 before the XII Assistant City Civil Court. The said suit which was listed in the special list for trial has been dismissed for default on 03.07.2012. The Petitioners continued to commit default the M/s.Sri Muthukumarasamy permanent fund limited once again attempted to conduct public auction on 18.01.2012 against which the petitioner filed O.S.No.56 of 2012 before the VII Assistant, City Civil Court and obtained ad-interim injunction. The ad-interim injunction granted in I.A.No.114/2012 in O.S.No.56/2012 was not extended, and as there was no restraint order against the M/s. Sri Muthukumarasamy permanent fund limited it once again attempted to bring the property for public auction sale, against which the petitioner filed O.S.No.6041/2015 on the file of the VII Assistant City Civil Court. In I.A.No.14967 in O.S.No.6041/2015 the VII Assistant Court granted ad-interim injunction order on the condition that the petitioners shall pay to M/s.Sri Muthukumarasamy permanent fund limited a sum of Rs.12 lakhs on or before 14.10.2015 before 11 AM failing which the temporary injunction granted shall stand automatically vacated. The petitioners did not comply with the conditional order as directed by the court, and hence the interim injunction stood vacated automatically. The petitioners have filed the following suit as on date as known

to him as per their plaint and the information collected through the other respondent

Sr.No.	Suit No	Court No.
1.	O.S.No.3348/2022	XVI Asst City Civil Court, Chennai
2.	O.S.No.1369/2003	XVIII Asst City Civil Court, Chennai
3.	O.S.No.8469/2012	XII Asst City Civil Court, Chennai
4.	O.S.No.56/2012	VII Asst City Civil Court, Chennai
5.	O.S.No.6041/2015	VII Asst City Civil Court, Chennai
6.	O.S.No.6304/2015	IV Asst City Civil Court, Chennai
7.	O.S.No.6936/2015	IV Asst City Civil Court, Chennai
8.	O.S.No.6228/2018	IV Asst City Civil Court, Chennai

4.4) The petitioner by abusing the process of law by filing suits and IA's for the same cause of action, as and when the suit property is brought to sale and having successfully stalled the conduct of the auction the petitioner did not take any steps to comply the conditional order and would contend that the entire happenings is Sub Judice, Lis-pendency. Since there was no injunction restraining the conduct of the auction sale, the M/s.Sri Muthukumarasamy permanent fund limited conducted the auction sale on 14.10.2015 and 2nd respondent herein participated in the same and has been declared as the highest bidder. Even after the 2nd respondent had bid and declared as the successful bidder, the M/s.Sri Muthukumarasamy permanent fund limited granted 15 days time to the petitioners, to pay the entire amounts due and payable by them to the M/s. Sri Muthukumarasamy permanent fund limited and also intimated the

petitioner that if they fail to pay the money as demanded M/s.Sri Muthukumarasamy permanent fund limited would execute sale deed in favour of 2nd respondent.

4.5) The sale deed was executed in 2nd respondent/1st defendant name and all revenue records have been mutated and still the petitioners are squatting over the property and illegally occupying the suit schedule property without any authority. In the present suit is dispute with regard to the plaintiff and myself and the petitioners have no locus standi to implead since there is no prayer has been sought against the petitioner. The petitioners do not have any right or title over the suit schedule property. If at all the petitioner is aggrieved, they have to approach the suitable forum for the redressal of their remedy. The petition itself is not maintainable since the petitioners have not come before this court with clean hands and voluntarily not disclosed the outcome of all the suits with regard to the schedule of property and further the suit is hit by order 2 rule 2 since the cause of action of the present suit and all the previous suit are same and the parties are same and the suit schedule property is same. Hence, he prayed to dismiss the application.

4. Point for consideration :

Whether the petition is to be allowed or not? is the question to be decided herein.

5. No document was marked and no oral evidence was adduced by either side.

6. On Point:-

Both side heard. Record perused.

This petitioner is a 3rd party and filing this application to implead him as 3rd defendant in the main suit. It is pleaded by the petitioner that, he and his deceased brother Nageswara Rao inherited suit properties from his mother Lakshmi Devi and his brother Nageswara Rao mortgaged the said property during March 1993 in favour of M/s.Sri Muthukumarasamy Permanent Fund Limited and it heard sold the property in public auction to the 1st respondent here in for a sum of Rs.1.65 crores and actually the 1st respondent paid Rs.41,25,000/-only and get the sale deed executed on 25.11.2015 vide document No.4722/2015 and thereafter defaulted in payment to the said M/s. Sri Muthukumarasamy Permanent Fund Limited. It is further pleaded that a said auction was sham and nominal, and auction was conducted without giving public notice and without participation of other parties, except 1st Respondent/plaintiff and no Earnest Money Deposti (EMD) was paid to participate in the public auction. It is pleaded that, this petitioner challenged the said auction sale in O.S.No.6936/2015 before IV Assistant City Civil Court and the same is pending. It is further argued and pleaded that 1st respondent in collusion with 2nd respondent filed this suit on the basis of a forged sale agreement and hence he ought to be impleaded in this case.

7. The auction purchaser/R1 pleaded that, this petitioner has filed as many as eight suits as detailed the tabular Column

Sr.No.	Suit No	Court No.
1.	O.S.No.3348/2022	XVI Asst City Civil Court, Chennai
2.	O.S.No.1369/2003	XVIII Asst City Civil Court, Chennai
3.	O.S.No.8469/2012	XII Asst City Civil Court, Chennai
4.	O.S.No.56/2012	VII Asst City Civil Court, Chennai
5.	O.S.No.6041/2015	VII Asst City Civil Court, Chennai
6.	O.S.No.6304/2015	IV Asst City Civil Court, Chennai
7.	O.S.No.6936/2015	IV Asst City Civil Court, Chennai
8.	O.S.No.6228/2018	IV Asst City Civil Court, Chennai

and this petition is filed with mala fied intention and he never complied the direction of the court and filed to deposited money in the redemption of the mortgage suit.

8. The plaintiff/R1 pleaded that this petitioner the owner of the property and there is no stay order or final order in O.S.No.6936/2015 and this petitioner filed this application with malafide intention and hence, he prayed for dismissal of this application.

9. The petitioner had pleaded that he is the previous owner with his deceased brother Nageshwarar Rao and mortgaged the property with M/s. Sri Muthukumarasamy permanent fund limited and it has conducted a sham and nominal auction and the 2nd defendant participated in the auction without any EMD and there is no issuance of public notice and therefore the suit in O.S.No.6936/2015 is pending before this 4th Assistant City Civil Court, challenging the said auction sale. Since the auction sale itself is under challenge the present suit for specific performance without the so called M/s.Sri Muthukumarasamy permanent fund limited and this proposed petitioner would definitely lead to contradictory conclusions. Though the M/s. Sri Muthukumarasamy permanent fund limited has not come forward, it becomes necessary to implead this petitioner as 3rd defendant. Impleading this petition would not cause any harm to the parties in the presence suit. Since the very auction sale itself is under challenge in O.S.No.6936/2015 filed by this petitioner, this petitioner becomes, a necessary party to be heard for the fair disposal of this case. Hence this court come to the conclusion that this petitioner is a necessary party to this case. Hence this court inclined to allow this application and this point is answered accordingly.

In the result, in this petition is allowed.

This Order has been dictated by me to the steno typist, transcribed and computerized by her, corrected and pronounced by me in the open Court on Thursday, the 09th day of January 2025.

IV Additional Judge,
IV Additional City Civil Court, Chennai.

List of witness examined and exhibit marked
on the both side:

Nil

IV Additional Judge,
IV Additional City Civil Court, Chennai.