

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**
PG.D.PM/IR.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Thursday, the 29th Day of February 2024

I.A. No.52/2020

-in-

I.A. No.18/2011

-in-

O.S. No. 284/ 2004

R. Kasthuribai ... Petitioner / 12th Proposed party

Vs

1. Shaliyakani ... 1st Respondent / Petitioner/ Plaintiff

2. Mohammed Aniba (died)

3. Aaishakani

4. Basheerulhak

5. Mohammed Ishdeen

6. Asmabegam

7. Poodisamy

8. Valliammal

9. Abdulhak

10. Mohammed Abdul Kadar (died)

11. Syed Sulthanbeevi Respondents / Defendants

This petition came on 15.02.2024 before this Court for final hearing in the presence of Tvl. P. Lakshmanan, K. Kannan, G.Arputhavanan, K. Soundarraaj, Advocates for the petitioner / 3rd party. Thiru. S.M. Loganathan, Advocate for 1st respondent / plaintiff. Thiru. I. Shahul Hameed, Advocate for 3rd respondent. Tmt. A. Subbulakshmi, Advocate for 7th respondent. Thiru. V. Ramalingam, Advocate for 8th respondent. Respondents 2 and 10 died and the respondents 4 to 6 and 11 are called absent and set exparte, the petition against 9th respondent was dismissed on 08.09.2023 and after hearing the arguments on both side and upon perusal of records, this Court delivers the following :

ORDER

1. Petition filed by the petitioner /12th Proposed party, under Order 1 Rule 10 (2) of C.P.C. to implead herself as 12th Respondent in the final decree petition.

2. **Contention of the Petitioner:**

The petition in I.A. No. 18/2011 is filed by the plaintiff for passing of final decree based on preliminary decree passed in the suit on 08.11.2010. The petitioner has purchased the 'E' schedule property from Jainubkani and the Power of Attorney of the legal heirs of S.M. Yagub and Maimuna Beevi. She is a bonafide purchaser for value. But she was not impleaded as a party in

the suit and the preliminary decree was passed in her absence. The fact of passing of preliminary decree for partition came to the knowledge of the petitioner only when the Advocate/Commissioner appointed in the final decree came to the suit property for inspection and measurements. Until then the petitioner had no knowledge about either the suit or the passing of preliminary decree. The said property purchased by her is included in the suit and hence she is a necessary party to the final decree proceedings. In the mean time, the petitioner filed O.S. No. 379/2019 before Principal Sub Court, Dindigul for injunction and has also obtained temporary injunction in I.A. No. 1/2019. Since, the property purchased by this petitioner is also included in the suit schedule and the final decree petition, this petitioner is a necessary party to the final decree proceedings. Unless, she is impleaded as a respondent in the final decree proceedings. She will put to irreparable loss and hardships. So, she prays to implead her as a respondent in the final decree proceedings.

3. **Contentions of the Respondent / Plaintiff:**

The respondent / Plaintiff has stated that the vendors of the petitioner never had any title and the sale deed executed by them is invalid. He has stated that the vendors had conceded the right of the plaintiff and the suit was decreed in favour of the plaintiff by passing preliminary decree for partition. The parties entered into a compromise in A.S.No.20/2011 and it was

recorded. All these facts are well known to the present petitioner / 3rd party. The sale deed claimed by the petitioner is *sham and nominal* and is created by Abdul Rajak and Jainubkani to defeat the right of the plaintiff. This petitioner is neither a necessary party nor a proper party to the proceedings and she has filed this petition colluding with the said Abdul Rajak and Jainubkani. Hence, the petition has to be dismissed.

4. Point for consideration in this petition is, **Whether the petition be allowed ?**

5. Heard both sides.

6. **POINT:**

The petitioner has claimed to have purchased the 'E' schedule of the suit property from the legal heirs of S.M. Yagub and Maimuna Beevi under a registered Sale deed dated 02.06.1989. The validity of the sale deed and whether the vendors had any title to convey, can be decided in the final decree proceedings only if this petitioner is impleaded as a party. The said sale deed is dated 02.06.1989 and was executed even before the filing of the suit and passing of the preliminary decree. Therefore, when the property already sold to a person is impleaded in a suit, the purchaser of the said party is a necessary party. More particularly, in this suit the decree has been obtained behind the back of this petitioner and it is well settled that the purchaser prior

to the suit has to be impleaded as a party in the final decree proceedings. This proposition has been upheld by the Hon'ble Madras High Court in ***“R. Anitha and others Vs Ramakrishnan and others (2002 (3) LW 472)”***.

7. Therefore, it is held that the petitioner is a necessary party to the proceedings and she is entitled to claim equity if the sale deed is held to be valid. The objections that the vendors had no title and the sale deed is created by collusion can be decided only in the final decree proceedings, after the petitioner is impleaded as a party. Hence, it is held that the petition be allowed. This point is decided accordingly.

In the result, this petition is allowed and the petitioner / 12th proposed party is directed to be impleaded as 12th Respondent in the final decree petition in I.A.No. 18/2011.

Dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 29th day of February 2024.

Additional District Judge,
Dindigul.