

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, DHARMAPURI.

Present: Tmt. C. Thirumagal, M.L.,
Principal District Judge

Friday, the 14th day of February, 2025.
I.A.No.10/2024 in O.S.No.31/2016

1. Poongodi
2. Ranjanadevi

... Petitioners/3rd and 4th Plaintiffs

/Vs/

1. Arulmurugan

... Respondent / Defendant

2. Govindammal
3. Vasanthi
4. Ramadevi

... Respondents / 1st, 2nd & 5th Plaintiffs /Proposed defendants 2, 3 & 4

This petition came up before me for final hearing on 03.02.2025 in the presence of Thiru. R. Thanigai Arasu, Advocate for the Petitioners and of Thiru. S. Senthil Nathan, Advocate for the respondent and of Thiru. S. Jeevanan, Advocate for the Proposed Defendants No.2 to 4 and upon perusing the petition and other connected records and upon hearing the arguments of petitioner side and having stood over for consideration till this day, this court delivered the following:

ORDER

The petitioner / Plaintiff filed this petition under Order 1 Rule 10 (2) r/w Section 151 of CPC to transpose the plaintiffs 1, 2 and 5 namely Govindammal, Vasanthi and Ramadevi as defendants 2, 3 and 4 in the above suit.

The averments in the affidavit filed in support of the petition in short as follows:

2. The petitioners is the is 3rd & 4th plaintiffs in the main suit. Initially, the 1st

plaintiff and plaintiffs No.2, 3 & 5 have filed the suit seeking relief of partition against the defendant. During pendency of suit, the 1st, 2nd and 5th plaintiffs have agreed for compromise with the defendant. The above suit has reached the stage of arguments. Since the petitioners are not willing for compromise, the 1st, 2nd and 5th plaintiffs have represented that they are withdrawing the suit. However, the petitioners are willing to continue and contest the suit by transposing the 1st, 2nd and 5th plaintiffs as defendants 2, 3 & 4. Hence, the petition.

2. The respondents not filed any counter.

3. In the enquiry, no witness was examined on both sides. No other document was marked on either side.

4. Heard arguments of petitioner side and perused the records.

6. The point for consideration:

Whether the proposed defendants are necessary party to the suit ?

Answer to the Point:

7. The 1st plaintiff along with other plaintiffs have filed the present suit for partition and for other reliefs against one Arulmurugan, the 1st defendant. While pending suit, the 1st, 2nd and 5th plaintiffs have compromised with the 1st defendant. But the petitioners being 3rd and 4th plaintiffs are not willing for compromise and instead they are willing to contest the suit. It was stated that the 1st, 2nd and 5th plaintiffs have represented that they are going to withdraw the suit. The petitioners claims to be legal heir of their

father Krishnan. The petitioners having sufficient right to contest the suit and their rights cannot be nipped in the bud. In this stage, what the section of law has referred is to be considered. Order XXIII Rule 1-A of CPC is extracted hereunder:

“Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.”

8. The respondents have no counter. Hence, at this stage, the 1st, 2nd and 5th plaintiffs are to be transposed as defendants No.2, 3 & 4 respectively in the suit and to contest the suit onward. The rank will change as per the amendment of the plaint. The point is answered, accordingly, in favour of the petitioner.

Result:

In the result, the petition is allowed. The 1st, 2nd and 5th plaintiffs are ordered to be transposed as defendants 2, 3 and 4 in the suit. The plaint shall be amended suitably by filing the necessary petition. No cost.

Dictated to the steno-typist, computerized by him, after making corrections pronounced by me in open court, on this 14th day of February, 2025.

Principal District Judge,
Dharmapuri.

List of witness and document on both sides: Nil

Principal District Judge,
Dharmapuri.

Draft/Fair Order in
I.A.10/2024 in O.S.No.31/2016
Dated: 14.02.2025.
