

IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
DHARMAPURI.

Present: Tmt.U.Monica,M.L.,  
Additional District Judge,  
Dharmapuri.

Monday, the 14<sup>th</sup> day of October 2024

**I.A.No.1/2024**  
**in**  
**O.S.No.229/2023**

1. S.Vasanthi  
2. S.Radha

...Petitioners/plaintiffs

/versus/

1. K.Munusamy  
2. G.Rajkumar  
3. M.Govindasamy  
4. C.Munusamy  
5. G.Madhaiyan  
6. C.Govindasamy

...Respondents/defendants

This petition is coming on 25.9.2024 for final hearing before me in the presence of Thiru.T.Nehru, Advocate for petitioners and Thiru.S.Senthilnathan, Advocate for sixth respondent and respondents 1 to 5 called absent and set exparte and upon hearing both side arguments and on perusal of the entire case records and having stood over till this day, this court pronounced the following:

**ORDER**

This petition has been filed under Order-1, Rule-10(2) and section 151 of CPC to remove/exonerate the 2nd respondent/2nd defendant from the suit.

**2. The case of the petitioner in brief is as follows:**

i) The 2nd respondent/2nd defendant in the above suit is a fictitious person, created by the other defendants for the very purpose of grabbing the suit property. There is no person with the said description of the said Rajkumar and he has been created by the defendants. The defendants 1, 3 to 6 for the purpose of grabbing the suit property from the petitioners, has created the said fictitious person. The 1st defendant alleged to have entered into an unregistered sale agreement between himself and the said fictitious person Rajkumar. Subsequently, he has filed a suit before the Hon'ble Sub Judge, Dharmapuri in O.S.No.261/2014 for the relief of specific performance and got an exparte decree in his favour. Subsequently, the 1st defendant filed an execution petition in E.P.No.48/2016 for execution of sale deed, got an exparte order and got the sale deed in his name. Following that, the 1st defendant filed an EP.No.7/2016 for delivery of property and in the said EP, petitioners filed a petition seeking obstruction of the same and the same is still pending before the Hon'ble Principal Sub Judge, Dharmapuri.

ii) Wherein both the said suit and the EP for execution of sale deed, the summon and notice were served to the said Rajkumar, to the address mentioned in the suit and it was shown that the said Rajkumar has received the same, but failed to appear. However, on perusal of the records, it was found that the signatures in the said sale agreement, summon and notices are different and forged for the purpose of abusing the process of law and for grabbing the suit property.

iii) In this suit, the petitioners tried to serve the suit summons to the above fictitious person on several times, however, all the summons were returned stating that there is no such person in the said address. In the above EP.No.7/2016, petitioners have filed an obstruction petition in REA.No.50/2016 in E.P.No.7/2016 and on service of the notice to the respondents in the above petition, the notice was not served to the said Rajkumar and returned with an endorsement of the VAO, Annasagaram Village stating that "there is no such person in the said address."

iv) However, petitioners had filed the above suit also against the said fictitious person, hence for the aforesaid reasons, the fictitious person Rajkumar has to be removed and exonerated from the above suit.

**3. The counter filed by the sixth respondent in brief is as follows:**

It is false to state that there is no person by name Rajkumar. The respondents have produced identity card, Notary affidavit stating that second defendant is residing at Malaysia and marked the same in I.A.No.2/2020. When the petitioners have filed suit stating that second defendant has executed sale agreement in favour of first defendant and obtained judgment and decree in O.S.No.261/2014, now cannot be permitted to exonerate second defendant from the suit. If the second defendant is exonerated, it will lead to unnecessary legal disputes. The question whether the second defendant is a fictitious person or real person can be decided only during the trial. Hence the petition is liable to be dismissed.

**4. The point for consideration:**

Whether the petition is liable to be allowed or not?

5. No oral or documentary evidence adduced on both side. Heard both side.

**6. Point:**

6.1) The petitioners allege that second defendant is a fictitious person created by other defendants for the purpose of grabbing the suit property. In spite of their repeated efforts, they were unable to serve notice on the second defendant. Hence the second defendant may be exonerated from the suit.

6.2) The sixth respondent resisted the petition by contending that the second defendant is alive and if he is exonerated it will lead to multiplicity of proceedings.

6.3) This is a suit for declaration of title, permanent injunction, to declare the decree dated 13.1.2015 in O.S.No.261/2014 on the file of Sub Judge, Dharmapuri as null and void and for declaration of documents as null and void. The case is in the stage of serving of summons to D2. The petitioners allege that there is no person by name Rajkumar and the second defendant is a fictitious person, hence he has to be exonerated from the suit as they were unable to serve summons upon him. Even according to respondents, the second defendant has remained exparte in O.S.No.261/2014 and in E.P.No.48/2016 and sale deed has been executed in the name of first defendant. Presently the second defendant has no right over the suit property. In such circumstances, the petitioners are at liberty to exonerate the second defendant from the suit and conduct the case. No prejudice would be caused to respondents.

Hence in the interest of justice, to provide the petitioners an opportunity to prove their case and to prevent multiplicity of proceedings, this petition has to be allowed.

Hence point for consideration is answered in favour of petitioners.

**In the result, the petition is allowed. In facts and circumstances of the case, no cost is ordered.**

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 14th day of October 2024.

Additional District Judge,  
Dharmapuri.

**Petitioners Side Evidence, Exhibits: Nil**

**Respondents Side Evidence, Exhibits: Nil**

Additional District Judge,  
Dharmapuri.

**Fair Order**

I.A.No.1/2024 in

O.S.No.229/2023

Dated:14.10.2024.