

IN THE COURT OF THE SUBORDINATE JUDGE, KODUMUDI.

Present:Thiru.M.Ashfaq Ahamed, B.A.B.L.,

Subordinate Judge, Kodumudi.

THURSDAY, THE 5TH DAY OF JUNE 2025

I.A.No.1/2023 in O.S.No.348/2024

Nandhakumar

... Petitioner/3rd party

/Vs/

1. Senthilkumar

2. Rajeshwari

3. Rukmani

4. Thenmozhi

5. Muthulakshmi

... Respondents/Plaintiff/Defendants

This petition came up for final hearing before me in the presence of Thiru.T. Bhuvanewar Advocate for the Petitioner/3rd party and Thiru.K.Sivanandam, Advocate for 1st respondents/plaintiff and upon hearing both side arguments and upon perusing the pleadings and records and having stood over till this day for consideration and this court delivers the following:

ORDER

The petitioner/3rd party has filed the above application under order 1 rule 10 CPC to implead him as one of the defendant in the suit.

2. The contents of the affidavit filed the petitioner read as:

The contents of the affidavit filed by the petitioner read as, the petitioner purchased the property in Kolathupalayam B Village, Kodumudi Taluk in R.S.No.417 an extent of acre 2.47 under sale deed dated 22.01.2015 and the revenue records also sands in his name. After purchased of the property the petitioner was served with notice in I.A.169/2016 in O.S.27/2015 filed by the 1st respondent to

implead the petitioner as 5th defendant in the said suit and he was also impleaded. The petitioner also filed a suit for declaration and permanent injunction against the 1st respondent and others in O.S.476/2018 before the 1st Additional Sub Court, Erode and it is pending. Suppressing the pendency of the suit the 1st respondent filed the present suit in respect of the property purchased by the petitioner against respondents 2 to 5 for declaration and permanent injunction without impleading the present petitioner. The respondents colluded together suppressing the right and title of the property with an intention to create encumbrance over the property. The respondents are strangers to the property and the 1st respondent is attempting to obtain a collusive decree against the petitioner. If the suit filed by the 1st respondent is allowed to be decreed it would affect to the right of the petitioner and he will be put to much last and hardship. The petitioner is in possession and enjoyment of the 1st item of the property and the petitioner is the proper and necessary party to the proceedings. Hence the petition.

3. The contention of the counter filed by 1st respondent read as:-

The counter statement filed by the 1st respondent read as the petition is not sustainable. It is denied the petitioner is in possession and enjoyment of the 1st item of the property. It is true the petitioner was added as 5th defendant in the suit in O.S.27/2015 and the petitioner has filed the suit against the 1st respondent and others for declaration and injunction in O.S.476/2008 and it is pending. It is denied the 1st respondent suppressing the pendency of the suit had filed the present suit without impleading the petitioner and attempting to obtain a collusive decree. It is also denied the respondents 2 to 5 are strangers to the property. The 1st item and other properties are ancestral properties of the 1st respondent and as per the partition deed dated 30.07.1996 the suit properties and other properties allowed to the share of the 1st respondent as B Schedule. The respondents 2 to 4 have executed release deed and the 1st respondent is in exclusive possession by mutating revenue records. The petitioner

has not right title are interest in the 1st item of the property. One Paramasivam claims to have right in the property on the basis of the compromise final decree passed in O.S.208/2014 on the file of District Munsif cum Judicial Magistrate, Kodumudi. After verifying the compromise final decree the 1st respondent came to know the said Paramasivam had filed a false a suit for partition by including the 1st item of the property against his family members and obtain the compromise collusive and fraudulent final decree. On the basis of the said decree Paramasivam approached the revenue authorities to change the revenue records. The said Paramasivam and family members do not have any right title are interest in the property. As such the 1st respondent filed a suit in O.S.27/2015 challenging the compromise final decree and for declaration of his title in the 1st item of the property. During pendency the said Paramasivam have sold the property to the petitioner hearing and a such the petitioner was impleaded in the suit in OS.27/2015. The petitioner had also filed a suit O.S.476/2018 before 1st Additional Sub Court and it is pending. The petitiner has not a bonofide purchaser and he is not in possession and enjoyment of the property. The sale deed executed by the Paramasivam in favour of the petitioner is not binding on this respondent. As such it is not necessary to implead the petitioner and he is noted necessary party. There is no merits in the petition and prays for dismissal.

4. No oral and documentary evidence adduced on both sides.

5. The point for consideration is whether the petitioner is a proper and necessary party to the suit?

6. Point:-

6.1. Heard both sides. Records perused. Admittedly the 1st respondent in this application has filed the present suit against the respondents 2 to 5 for the relief of declaration regarding the suit property. The suit property consist of two items. The

petitioner has filed the application on the ground that he is having a right and valid title over the 1st item of the property. Before delving into the issue certain facts are essential to decide the merits of this application. The 1st respondent has filed a suit in O.S.27/2015 for the relief of declaration of the compromise final decree passed in O.S.208/2014 on the file of District Munsif cum Judicial Magistrate, Kodumudi on the ground that his right over the property was put to cloud on the basis of the fraudulent decree in the suit filed by one Paramasivan and his family members. It is also contention of the 1st respondent the said Paramasivam or his family members do not possess any right, title or interest over the 1st item of the property. The petitioner here in is the purchaser of the 1st item of the property from the said Paramasivam who was allotted 1st item in the compromise final decree in O.S.208/2014. The petitioner who obtained right over the property on the basis of the sale taken by him has also filed suit for declaration of his right title and interest in the suit property in O.S.476/2018 against the 1st respondent and others before the 1st Additional Sub Court, Erode. Since the petitioner and the 1st respondent are battling over the title of the property in the suits filed by them. On an application taken by them in transfer OP 95/2018, the suit in O.S.27/2015 was also ordered to be transferred to the 1st Additional Sub Court to be tried along with O.S.476/2018. During the pendency of the said suits the 1st respondent has filed the present suit for declaration of his title over the property against the respondents 2 to 5.

6.2. Though the reading of the plaint in the present suit shows the 1st respondent has sought for correction of the re-survey Nos in the documents executed in his favour, the suit was filed for declaration of his title over the property. The petitioner has contented the suit filed by the 1st respondent against the respondents 2 to 5 is a collusive suit and the respondents do not have any right or interest over the said property. On reading of the plaint it is evident the respondents 2 to 5 are the sisters of the 1st respondent who have relinquished their right over the property in the

partition deed and the release deed executed by them. Admittedly the respondents 2 to 5 have also remained *exparte* in the suit and they have not challenged the documents executed by them or denied the contents of the description of the property or the allegations made against them. The 1st respondent has also sought for a permanent injunction and declaration of his absolute title in the present suit. Sec 34 of the Specific relief Act 1963 prescribes a suit for declaration can be made by a person with a legal right or character against persons who denies or is interested in denying that right or character is entitled for such relief. In the present case in view of the pendency of the earlier suits the question of title is in dispute between the petitioner and 1st respondent is very much explicit. In such circumstance the 1st respondent who has filed the present suit against parties to the earlier documents executed by them has not chosen to implead the petitioner as party to the suit, as the petitioner is the most competent person to deny the title of the 1st respondent as he also claims a rival title on the 1st item of the property. If really the 1st respondent is aggrieved that there was some mistakes in the documents regarding the survey numbers alone, it is sufficient for the 1st respondent to file a suit for *simpliciter* for rectification of the correct survey numbers. The respondents 2 to 5 who have already relinquished their right in the property cannot be a proper person to deny the title of the 1st respondent and therefore the relief of declaration of title sought for by the 1st respondent in the suit would have an indirect impact on the title put forth by the petitioner in the earlier pending suit. Since the question of title has to be gone into in the earlier suits as well as the present suits, the petitioner who is the purchaser of the 1st item and having a rival title over the suit property also has to be heard for deciding the issue. As such this court is of view the petitioner is a proper and necessary party who denies the right and title of the 1st respondent over the suit 1st item of the property has to be made as a party for an effective adjudication on the issue of title. Accordingly the point is answered in favour of the petitioner.

In the result, the petition is allowed. No cost.

Order directly dictated to the Steno-Typist, typed by her in computer and taken print out and after rectification of mistake, Pronounced by me in open court, this the 3rd day of June 2025.

Subordinate Judge,
Kodumudi.