

IN THE COURT OF THE DISTRICT MUNSIF, SANKARAPURAM**Present: Thiru. C.P.MULLAI VANAN, B.A., B.L.(Hons).,**

District Munsif, Sankarapuram.

Tuesday, on this 23rd day of July 2024

I.A.No.1375/2021

In

O.S.No. 130/2020

CNR.NO: TNVP16-0000165-2020

Vadivel

...Petitioner/proposed 2nd defendant**..vs..**

1) Munusamy

...1st respondent / plaintiff

2) Rajakannu

.. 2 respondent/defendant

This petition was taken on file on 06.12.2021 and came before this court for final hearing on this day in the presence of Tr.B.C.Prabakaran counsel for the petitioner/proposed 2nd defendant and Tr.G.Kathiravan, counsel for the 1st respondent/plaintiff and Tr.M.Elamaran counsel for the 2nd respondent/ defendant. Upon perusing the entire case records, on hearing both sides arguments and having stood over for consideration till this date, this court delivers the following:-

ORDER

1) Petition filed by the petitioner/proposed 2nd defendant U/O I Rule 10 of CPC seeking to add the petitioner as 2nd defendant to this suit.

2) Brief averment of the Petition:

2.1) The 1st respondent has been filed the suit for the relief of permanent injunction as against 2nd respondent. The suit property was originally belonged to father of the petitioner namely Tr.Ayyankutti and after his demise his sons namely Arjunan, Samikannu, Sakkarai and the petitioners were inherited the above property. The 1st respondent is having property near to the petitioner property and without having any right in the suit property the 1st respondent fraudulently created a sale deed with an intention to grab the petitioners ancestral property.

2.2) The petitioner is having possession of suit property along with their ancestral property for himself and for his brothers and filed this petition on behalf of his

brothers also. The petitioner is the necessary party in this suit and the petitioner ought to be added as 2nd defendant in this suit. Hence, filed this petition to add the petitioner as 2nd defendant in the suit.

3) Brief averment of the counter filed by the 1st respondent :

3.1) The respondent denied the averments made by the petitioner in his petition and pleads to put the petitioner for strict proof of the same. The respondent contended that the suit survey number consists of 1 acre was originally belonged to sons of one Azhagan namely Munusamy and Ayyankutti who was the father of the petitioner and sons of another Munusamy namely Chinnasamy and Chinna payan and they were orally partitioned the above property before 65 years and to an extent of 75 cents was jointly allotted as share to Munusamy and Ayyankutti and 25 cents was jointly allotted as Chinnasamy and Chinnapaiyan. Thereafter Munusamy and Ayyankutti partitioned the above extent and 50 cents was allotted to Munusamy and 25 cents allotted to Ayyankutti.

3.2) After the demise of Munusamy his legal heirs were partitioned the above 50 cents and 20 cent was allotted to Krishnan and he sold the same to his brothers Anandan and Rajakannu on 14.08.2001. The 1st respondent has been purchased 10 cents from said Rajakannu and the remaining 10 cents vested with Tr.Anandan. The share of Ayyankutti to an extent of 25 cents is vested with his legal heirs Samikannu petitioner Vadivel and Sakkarai. The legal heirs of Ayyankutti has no right in the suit property. Further joint patta bearing no.111 was issued infavour of 1st respondent along with legal heirs of Ayyankutti the suit property is not related to share of Ayyankutti. The legal heirs of Ayyankutti were having possession of 25 cents and they are not having any right in the suit property. The petitioner is not a necessary party to the suit and it is not necessary to add the petitioner as party to this suit and no merits in the petition and prays to dismiss the petition.

4) Brief averment of the counter filed by the 2nd respondent :

The respondent denied the averments made by the petitioner in his petition and pleads to put the petitioner for strict proof of the same. The respondent contended that the suit property was leased to the family of 2nd respondent for cultivation by Ayyakannu. Thereafter the legal heirs of Ayyakannu were recovered the suit property along with other

property and having possession over the same. The said Krishnan and Munusamy were forced the 2nd respondent to execute sale deed for the suit property who does not have any right in it and the 2nd respondent also executed sale deed the petitioner alone having possession of the suit property

5) Both side no witness examined and no exhibits marked.

6) Point for consideration. Whether the petition to liable to allowed or not?

7) Both sides heard. records perused.

8) Upon perusal of records this suit was originally filed by the 1st respondent for the relief of permanent injunction. This petition is filed by the petitioner seeking to add the petitioner as 2nd defendant to this suit.

9) The learned counsel for the petitioner contended that suit property was originally belonged to father of the petitioner namely Tr.Ayyankutti and after his demise his sons namely Arjunan, Samikannu, Sakkarai and the petitioners were inherited the above property and the petitioner is having possession of suit property along with their ancestral property for himself and for his brothers and the petitioner is the necessary party in this suit. Hence, filed this petition to add the petitioner as 2nd defendant in the suit.

10) Per contra the learned counsel for the respondent contended that the petitioner is not a necessary party to the suit and no necessity to add petitioner as party to the suit and prays to dismiss this petition with cost.

11) Both side rival submission heard and upon perusal of records both parties were admitted that the property comprised in suit survey number was earlier belonged to Ayyankutti and admitted that the petitioner is the one of the legal heirs of Ayyankutti. Therefore there is dispute of title arose between the petitioner and the plaintiff in the suit property. Since the petitioner claims right over the suit property through inheritance from his father Ayyankutti he becomes the necessary party to the suit and adding of petitioner in this case is necessary to determine the dispute between the both parties. In this case adding of petitioner would not cause any prejudice to respondents and considering the fact and circumstance of the case this court finds that the petitioner claiming right in the suit property he become necessary party to the suit and without his appearance no proper adjudication should be made in this suit .

12) Hence, the petitioner is necessary party to the suit for effective adjudication. On considering the above discussion, this court forms opinion that the proposed party is a necessary and proper party to the suit proceeding and his presence is necessary in order to arrive a complete and final adjudication in the real matter in dispute between the parties. It is well settled in catena of decisions, that it is the duty of the court to conclude and settle the dispute between the parties instead of driving them to multiply the proceedings. Further, adding the petitioner would not change the entire nature and character of the suit and such adding of party in the suit would not cause any prejudice to the respondent. Therefore, this comes to the conclusion, that it is just and necessary to implead the proposed party in the original suit. Hence, in the interest of justice this petition is allowed without cost and it is hereby ordered the 1st respondent to add the petitioner herein as 2nd defendant in the original suit.

13) In the result this petition is allowed without cost and it is hereby ordered the 1st respondent to add the petitioner herein as 2nd defendant in the original suit.

Dictated directly to the typist and directly typed by her and corrections were carried out and pronounced by me in open court on this 23rd day of July 2024.

Sd/-C.P.Mullai Vanan, B.A.,B.L.,(Hons)

District Munsif,
Sankarapuram.

I) PETITIONER SIDE WITNESSES AND EXHIBITS :Nil

II) RESPONDENT SIDE WITNESSES AND EXHIBITS :Nil

Sd/-C.P.Mullai Vanan, B.A.,B.L.,(Hons)

District Munsif,
Sankarapuram.