

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE, KRISHNAGIRI**

Present: Thiru.V. Damodaran, B.L.M., M.L.,  
Additional District Judge, Krishnagiri

**Friday the 3rd day of February 2023**

**I.A.No.03/2022 in OS.No.170/2022**

1. N.Ramachandran
2. N.Sridharan
3. V.Madhesan
4. R.Sekar
5. N.Saminathan
6. K.R.Vinodh Kumar,
7. R.Chandran
8. K.Narayana Kumar

...Petitioners/  
2 to 6, 8, 10 and 11 Defendants

..versus..

1. C.Muralithara
2. P.Gouse Basha
3. S.Subar
4. A.A.Mansoor Basha
5. F.Mohammed Abrar
6. G.Sameena
7. G.Salman
8. Ameen Sheik
9. The Sub-Registrar, Veppanapalli

... 1st Respondent/Plaintiff

...2 to 4 Respondents/  
1,7,9,12 to 16 Defendants

This petition was coming up before me for final hearing on 10.01.2023 in the presence of Tr.K.Baskar, Advocate appearing for the petitioners/Defendants 2 to 6, 8,10 and 11, and Thiru.R.K.Ravishankar, Advocate appearing for the 1st Respondent and Thiru.K.B.Gopalakannan, Advocate appearing for the Respondents 2 to 8 and Government Pleader appearing for 9th Respondent and

upon hearing the arguments of Petitioners and Respondents side and on perusal of available records and having stood over for consideration till this date, this court deliver the following;-

### **ORDERS**

This petition is filed by the petitioners under Order 1 Rule 10(2) and section 151 of CPC to delete the name of the petitioners from the suit.

#### **2.The Brief averments in the petition is as follows:-**

According to the petitioners, the 1st respondent is original owner of the suit properties and he has appointed the 2nd respondent as his Power of Attorney. Based on the Power of Attorney stands in the name of the 2nd respondent and after verifying title deeds, these petitioners has purchased the property. In the said Sale Deeds, the 2nd respondent who duly constituted Power Agent of 1st respondent has executed the Sale Deed in favour of the petitioners herein. Since the petitioners are bonafide purchasers from the duly constituted Power of Attorney, the petitioners name has to be deleted from the suit. Hence the petition.

#### **3. The Brief averments in the counter filed by the 1st Respondent/Plaintiff is as follows:-**

(i) The petition filed by the petitioners is false, frivolous, vexatious and not maintainable either in Law or on facts averred, so liable to be dismissed in limine. The petitioners above are strictly prove their allegations in the

affidavit/petition, with legal proof, except those that are admitted by this 1st respondent/plaintiff herein.

(ii) In fact, the petitioners are admitting the plaint pleadings, that the 1st respondent/plaintiff is the actual owner of the suit property and the 2nd defendant/1st defendant is the General Power Agent of the plaintiff. The General Power Agent cannot be the owner of the property as per Transfer of Property Act. General Power Agent means, he has to sell the suit properties and to submit the account and to pay the sale consideration amount to the plaintiff/owner and to get a receipt of the same.

(iii) In fact, as per General Power Agent, the 2nd respondent/1st defendant has been executed the sale deeds to the 2 to 16 defendants and for payment of sale amounts he has issued a cheques for Rs.1,15,00,000/- in cheque dated 09.01.2021 in cheque No.004636. But when the 1st respondent/plaintiff presented the cheque for collection, as 1st defendant stopped the payment, cheque was returned as dishonour. So this suit for declaration of cancellation of G.P.A. and declaration of sale deed to 2 to 16 defendants are null and void as non payment of sale consideration and for an alternative relief of recovery of cheque amount of sale consideration.

(iv) In that suit the petitioners/2 to 6,8,10 and 11 defendants filed written statement, admitted that the plaintiff is the owner, the 1st defendant is General Power Agent of plaintiff and executed the sale deeds to 2 to 16 defendants. But

failed to say about the sale consideration amount paid to the plaintiff or not. Non payment of sale consideration is violation of execution of sale deed and it cannot be valid transfer of property.

(v) Further the petitioner herein pleaded in their written statement that the relief of null and void of the sale deeds of 2 to 16 defendants u/s.25(d) of TNCF Act is void and Court fees to be paid under section 40 for cancellation of sale deeds. But, the plaintiff pleadings are clearly proves that the non payment of sale consideration, any document is void, in Law, even in General Power Agent also executed the sale deeds but did not paid the sale price, the sale deed is null and void.

(vi) As such after filing of written statement the petitioners/2 to 6,8,10,11 defendants now they have to try the suit on merits only, cannot file the petition to remove them from plaint or to reject the suit against them. They are bound to conduct the case on merits only, cannot claim to remove them from the plaint, is amounts to seeking the relief of reject the plaint against them.

(vii) In filing such a petition by the petitioners itself proves that they are also collusively acting along with GPA, 1st defendant, to defeat the plaintiff and to put his in heavy loss and to grab the plaintiff's property without payment of consideration. So the petitioners/defendants are necessary parties to suit cannot be removed.

(viii) Even now as alternative relief the plaintiff is seeking the recovery of

the sale amount. If they made the payment of sale consideration the case will be come to an end. Once the 1st defendant is the vendor the vendees also necessary parties. Thus the all defendants are trying to grab the property of the plaintiff with paying any amount is their fraudulent act. So issues to be framed and to try the case on merits. So this petition is false and collusive with the 1st defendant. Therefore, the 1st respondent/plaintiff humbly prays that this court may be pleased to dismiss the above petition with costs and render justice.

**4. On the side of petitioners and on the side of respondents no witnesses were examined and no documents were marked.**

**5) Point for consideration:**

1. Whether the petition filed by the petitioners under Order 1 Rule 10 (2) Of CPC has to be allowed or not?

**Point:-**

6. Petition filed under Order 1 Rule 10 of CPC to delete the name of the petitioners from the suit.

7. According to the petitioners, the 1st respondent is original owner of the suit properties and he has appointed the 2nd respondent as his Power of Attorney. Based on the Power of Attorney stands in the name of the 2nd respondent and after verifying title deeds, these petitioners has purchased the property. In the said Sale Deeds, the 2nd respondent who duly constituted Power Agent of 1st respondent has executed the Sale Deed in favour of the petitioners herein.

8. The learned counsel for the petitioners argued that entire sale consideration was paid by the petitioners to the 2nd respondent, if the 2nd respondent did not pay the said Sale consideration to the 1st petitioner then the 1st petitioner has to hold his power agent and these petitioners has already paid the amount to the 2nd respondent, as such they are unnecessarily dragged to the court, as such prayed for allowing the petition.

9. In this case, the plaintiff also sought declaration that the sale deeds which stands in the name of the petitioners has to be declared as null and void. When the interest of petitioners are involved in this case, if the parties are allowed to deleted from the suit, then no effective order can be passed by the court. The petitioners has got interest in outcome of the suit and only as against the petitioners property, declaration was sought by the 1st respondent. In the said circumstances, this court not inclined to accept the case of the petitioners and this is not a case, where deletion of party can be ordered. Accordingly this petition is dismissed.

**10. In the result, this petition is dismissed.**

Dictated to Stenographer, transcribed and typed by her, corrected and pronounced by me in the open court today this the 3rd day of February 2023.

**Annexure: Nil**