

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT**

**Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif, Uthangarai**

On this Thursday, the 26th day of September 2024

I.A.No. 02 of 2023 in O.S.No. 19 of 2022

TNKI13-000019-2022

Murugesan

...Petitioner / Plaintiff

/versus/

1. Murugan
2. Valarmathi
3. Arumugam

...Respondents / Defendants

4. Thirupathi

...Respondent / Proposed Party

This interlocutory application came up before this Court on 26.09.2024 for final hearing in the presence of advocate Thiru. T. Vijayan, the learned counsel for the petitioner and advocate Thiru. R. Chandrasekaran, the learned counsel for the respondents 1 to 3 and advocates Thiru. R. Rajmohan and Selvi. S. Pavithra, the learned counsels for the 4th respondent and upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

ORDER

The application has been filed under Order I Rule 10 of the Code of Civil Procedure, 1908 for impleading the proposed party as the 4th defendant in the suit.

The averments of the petitioner in brief:

1. The petitioner herein is the plaintiff in the suit instituted against the respondents 1 to 3 for declaration of sale deed with Doc.No. 2018/2020 as null and void and for perpetual injunction restraining the defendants from interfering with the



enjoyment of the cart track in suit 'C' scheduled property. The petitioner avers that 3rd respondent fraudulently sold the property including the pathway in the 'C' scheduled property to one Thirupathi. The petitioner aver that the said Thirupathi has no exclusive right over suit 'C' scheduled property. The petitioner avers that the said Thirupathi is a necessary party and avers that the plaintiff would not get proper relief if he is not added. Hence, the petitioner prays for allowing this application and implead the 4th respondent as the 4th defendant in the suit.

The averments of the respondents 1 to 4 in brief:

2. The respondents 1 to 3 / the defendants 1 to 3 and the 4th respondent / proposed party filed separate counters, however, taking the same stand. Hence, the averments of respondents 1 to 4 read as follows. The respondents aver that the plaintiff has filed this application as if the 3rd respondent has sold property including the cart pathway in the 'C' scheduled property and the same is false and the petitioner is not entitled to claim any relief of declaration of sale deed registered as Doc.No. 8639/2022 executed in favour of the 4th respondent as null and void and the respondents seek for dismissal of the application.

Point for consideration:

3. Whether this application is liable to be allowed?

Evidence:

4. Neither of the parties to this application has adduced any oral evidence but petitioner has marked Exhibit P1.

Discussion:

5. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by



the following discussion. This suit has been instituted for declaration of common right in the cart pathway situated in the 'C' scheduled property to access the 'A' scheduled property and for declaration of sale deed dated 30.05.2020 registered as Doc.No. 2018/2020 executed by the defendants 1 & 2 in favour of the 3rd defendant in respect of the 'C' scheduled property and for perpetual injunction restraining the 3rd defendant, his men & agents from interfering with the enjoyment of the 'C' scheduled property. This application has been filed by the plaintiff for impleading the 4th respondent as the 4th defendant in the suit on the grounds that the 3rd defendant has sold property to the 4th defendant including the 'C' scheduled property. It is the case of the petitioner in the suit that the petitioner has common right in the suit 'C' scheduled property and that it has been alienated against and in hindrance to his right of enjoyment of the 'C' scheduled property to access the 'A' scheduled property. The respondents, on the other hand, denied the averments in the application. The petitioner has marked the registration copy of the settlement deed dated 02.12.2022 executed by the 3rd defendant in favour of the proposed party / 4th respondent. A perusal of the same shows that it is a settlement deed and not a sale deed. A perusal of the schedule of the deed would show that 32 cents in old S.No. 9/1 new S.No. 9/1B with new sub-division as S.No. 9/1B1C have been settled in favour of the 4th respondent by the 3rd respondent. The plaintiff being the *dominus litis* is entitled to add any person as a party to the suit to seek proper remedy, provided that such person shall be a proper or necessary party. In the case at hand, it is the averment of the petitioner that the 3rd respondent has alienated the 'C' scheduled property to the 4th respondent along with the common pathway which the former has no exclusive right to alienate. Exhibit P1 also clearly show the settlement by the 3rd respondent towards the 4th respondent. The respondents have pleaded only bare denial of the averments in the application and have not raised any serious objections. The 4th respondent being the donee of the suit 'C' scheduled property, any decision in this suit would affect his



rights and interests over the 'C' scheduled property. Further, the settlement has been made after the institution of this suit. Hence, this Court is of considered view that the 4th respondent is necessary and proper party to the suit and ought to be heard in the suit making a fair and just decision in the suit. Hence, this Court is inclined to allow this application without any cost.

Result:

6. As a result, this application is allowed and the 4th respondent / proposed party is directed to be impleaded as the 4th defendant in the suit.

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 26th day of September 2024.

Sd/-
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.

District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

Petitioner side Exhibits:

Exhibit	Date	Document	Remarks
P1	02.12.2022	Settlement deed (Doc.No. 8639/2022)	Downloaded copy

Respondent side evidence

Respondent side Witnesses & Exhibits: Nil

Court Documents: Nil

Sd/-
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.

District Munsif
Uthangarai