

**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 Wednesday, the 5th day of March 2025

I.A.No. 11 of 2024 in O.S.No. 112 of 2013

TNKI13-000045-2013

Santhi

...Petitioner / Plaintiff

/versus/

1. Manickam (Died)
2. Velu
3. Thirumal
4. Vasantha
5. Chandiramathi

...Respondents / Defendants

6. Subramani

...Respondent / Power-Agent of 4th Defendant

This interlocutory application came up before this Court on 10.02.2025 for final hearing in the presence of advocate Thiru. K. Murugan, the learned counsel for the petitioner and advocate Thiru. S. Moorthi, the learned counsel for the 4th respondent and advocate Thiru. M. Sakthivel, the learned counsel for the 5th respondent and the 2nd & 3rd respondents set *ex parte* for non-appearance 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 VI Rule 17 of the Code of Civil Procedure, 1908 seeking leave to amend the plaint.

The averments of the petitioner in brief:

1. The petitioner herein is the plaintiff in the suit instituted for partition and injunction and avers that the power-agent of the 4th defendant namely Subramani had



filed I.A.No. 10 of 2024 claiming that the deceased Manickam executed a sale deed in favour of the 3rd defendant during the pendency of the suit and also filed a certified copy of the same and the application was also allowed. The petitioner avers that the petitioner came to know about the fact that the 1st defendant executed a sale deed in favour of the 3rd defendant only when the document was filed. The petitioner avers that the 1st defendant had been suffering severely from cancer and the 3rd defendant was completely bedridden due to paralysis and the sale deed has been fraudulently created on the pretext of obtaining loan and the same is liable to be set aside the petitioner avers that the petitioner is a unlettered person and the petitioner was unaware of the fact that a sale deed was created by the 1st and 3rd defendants and hence, it is necessary to amend the plaint to include declaratory relief and prays for allowing this application.

The averments of the 4th respondent in brief:

2. The respondent denies the averments of the petitioner in toto as false and aver that I.A.No. 10 of 2024 filed by this respondent was allowed, however, the respondent denies that the petitioner came to know about the sale deed only now. Further, the respondent denies the averments that the sale deed was created fraudulently by the 1st and 3rd defendants and also that the petitioner is an unlettered person and was unaware of the sale deed. The respondent avers that this respondent had filed proof affidavit on 06.12.2023 and also filed additional proof affidavit on 25.06.2024 after the power-agent was allowed to proceed the suit in her stead. The respondent avers that the petitioner has filed this application only to prolong the proceedings and prevent the respondents from obtaining any relief in the suit.

No counter by the 5th respondent:

3. The learned counsel for the 5th respondent represented no counter and endorsed the same.



Non-filing of counter by the 2nd and 3rd respondents:

4. Sufficient opportunities were given to the 2nd and 3rd respondents to file counter on 29.08.2024, 05.09.2024, 12.09.2024, 24.09.2024, 30.09.2024, 17.10.2024, 28.10.2024, 07.11.2024 and they fail to file counter and were set *ex parte* on 12.11.2024.

Point for consideration:

5. Whether this application is liable to be allowed?

Evidence:

6. Neither of the parties to this application has adduced any oral or documentary evidence.

Discussion:

7. 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 partition and separate possession of 1/4 share in the suit properties, and for injunction restraining the respondents from encumbering the suit property, and for declaration of the sale deed dated 09.03.2005 registered as Doc.No. 537/2005 as null and void. The suit stood posted for cross of DW1 when this application has been filed by the plaintiff seeking leave to amend the plaint. The reason stated by the petitioner is that the petitioner came to know about the sale deed executed by the 1st defendant in favour of the 3rd defendant only when the document was filed by the power-agent of the 4th defendant in I.A.No. 10 of 2024. A perusal of the case records would show that I.A.No. 10 of 2024 has been filed by the power-agent of the 4th defendant seeking to leave of this Court to receive additional documents namely sale deed dated 05.05.2020 registered as Doc.No. 1779/2020, sale deed dated 16.06.1989 registered as Doc.No. 709/1989



and encumbrance certificate dated 25.03.2024 and the application was allowed by order dated 18.06.2024. The respondents have resisted this application that DW1 has been examined on 06.12.2023 and filed additional affidavit on 15.07.2024 and the petitioner has filed this application only to prolong the suit. A perusal of the case records would show that the registration copy of the sale deed dated 05.05.2020 has been first filed before this Court only along with the application in I.A.No. 10 of 2024 and the same has been marked as Exhibit B1 on the side of the defendants. A perusal of Exhibit B1 would show that it has been executed by the 1st defendant in favour of the 3rd defendant selling the suit properties in S.No. 19/5, 14/7, 21/14B, 21/2B, 18/3A. It is clear that the sale deed has been made during the pendency of this suit filed by the plaintiff for partition and separate possession of 1/4 share in the suit property and also seeking declaration of the sale deed dated 09.02.2005 registered as Doc.No. 537/2005. Though, this application has been filed after the trial has commenced and after the plaintiff side evidence was closed and when the suit stood posted for evidence of the 4th defendant, this Court takes note to the fact that the sale deed dated 05.05.2020, as averred by the petitioner, was filed on 28.03.2024 along with the application in I.A.No. 10 of 2024. On the other hand, the objections of the respondent are only perfunctory in nature. Hence, this Court is of considered view that the plaintiff has to be afforded every opportunity to claim all the reliefs that could be claimed by the plaintiff in respect of the suit properties. Consequently, this Court is inclined to allow this application without any cost. Since, the suit is of more than 10 years old, this Court deems fit to direct the petitioner / plaintiffs to file the amended copy of the plaint and to carry out the amendments on or before 12.03.2024 and failure shall result in dismissal of the application in accordance to Order VI Rule 18 of the Code of Civil Procedure, 1908.



Result:

8. As a result, this application is allowed without cost and the petitioner is directed to file the amended copy of the plaint and carryout the amendment on or before 12.03.2024. Failure to comply shall result in dismissal of the application in accordance to Order VI Rule 18 of the Code of Civil Procedure, 1908.

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 5th day of March 2025.

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: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil

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

District Munsif
Uthangarai