

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
KANCHEEPURAM DISTRICT AT CHENGALPATTU**

Present: Tmt.K.Kayathri, M.A.B.L.

Additional District Judge,
Chengalpattu.

Thursday, the 30th day of March 2023

I.A.No.6/2022 in

O.S.No.232/2004

1.M.Pabitha
2.P.Sathiyaraj
3.P.Saranraj

...Petitioners/Proposed 18th, 19th and 20th defendants

-Vs.-

1.Santhakumari
2.Uma Sankari
3.Barathi
4.Minor Y.Balamurugan (Died)
5.Minor Nagarajan
6.Minor Y.Balaji
Respondents 4 to 6 Represented by their mother
and Natural Guardian 3rd Respondent Barathi

7.Yamuna Bai
8.G.Prema
9.Ms.Rukmani (Died)
10.Karunakaran (Died)
11.Sivakumar
12.Thangavel
13.Ganapathyrajan
14.Kumaresan
15.Ms.Bhama @ Seethalakshmi
16.Chokalingam
17.Minor C.Karpagam
18.Minor.C.Dilibabu Rep by his father the natural guardian Tr.Chokalingam
19.Panchamurthi
20.Baskaran

....Respondents 1 to 8/Plaintiffs 1 to 8

21.Pasupathy

22.P.Prema

23.Smt.Krishnaveni

24.Minor.Swathi represented by court guardian

25.Karthick

(Amended as per order

dated 22.03.2022 in IA.No.1 of 2022)

... Respondents 9 to 25/defendants
1 to 17

This Petition coming before this court on 15.3.2023 for final hearing in the presence of Thiru.K.T.Raghavan, V.Kavitha, Thiru.K.S.Abishek, Counsel for the Petitioners/proposed defendants 18, 19 and 20 and Thiru.B.Seetharaman, counsel for Respondents 1 and 7 and Thiru.T.Thanigaivel, counsel for the Respondents 2, 3 and 17 and counter not filed by the other respondents and upon hearing the arguments of both sides and perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

This Petition filed by the Petitioners/proposed 18 to 20th defendants under Order 1 Rule 10(2) of CPC to implead the petitioners as 18th to 20th defendants in the main suit.

2. The petition averments in brief as follows:-

The petitioner is the 3rd petitioner in this petition and proposed defendant in the suit and other petitioners are his brother and sister. The Respondents 1 to 8 are the plaintiffs in the above suit for partition filed against the respondent 9 to 25. The respondent 21 and 22 are his parents and the petitioner under stand that they have already filed the written statement and additional written statement. The defendants 1 to 12 were set exparte and they have not taken steps to set aside the exparte order passed against them.

The petitioners grandfather late Sambandha Mudaliar died intestate on 1.7.1971 leaving behind his sons and three daughters. The properties of their grandfather have been partitioned by means of enforceable family agreement of partition dated 21.3.1979. As per the agreement of partition and conditions laid down therein the petitioner's father the 21st respondent/13th defendant was allotted item number I and III of the plaint schedule properties. The petitioner's father Pasupathi was in possession and enjoyment of both the properties with all the rights.

The petitioner's father had executed settlement deed on 20.10.2003 regarding Item No.III of the plaint schedule in favour of the petitioner and the petitioner's siblings through a registered settlement deed and from the date of settlement deed the petitioners are in possession and enjoyment of the property in Item No.III of the plaint schedule. The plaintiffs filed the suit for partition claiming item No.III of the plaint schedule property also without impleading the petitioners who are the joint owners in possession and enjoyment of property.

The settlement deed in favour of the petitioners was executed even before filing of this suit by the plaintiffs. Hence the petitioners are the necessary parties and a proper party to the suit. Without their presence the question involved in the suit cannot be decided. The petitioners are direct and substantive interest in the suit Item No.III of the plaint schedule property is owned by the petitioners through a valid settlement deed executed in the year 2003. Hence prayed to implead the petitioners as 18 to 20th defendants in the suit.

3. The averments in the counter filed by the 7th Respondent/Plaintiff and adopted by the 1 to 3 and 17th Respondents in brief:-

The petition is unsustainable in law and on facts. The plaintiffs as dominant litus has added defendants in the above suit only who are proper and necessary

for a partition suit filed on December 2003. In any event defendants 12 and 13 who are parties to suit right from day one of the suit, are still alive and their children are wholly unnecessary for the suit. The alleged settlement deed dated 20.10.2003 is not only void ab-initio for the reason that it is illegally executed by a mere sharer, exceeding his share quantum, but also purely collusive to do Land grabbing. In any event the children of living Children are totally unnecessary for the suit as per section 8 of the Hindu Succession Act, as they are not class I heirs of the deceased Male Hindu. Moreover the defendants 1 to 12 were not set exparte in the suit, especially defendants 1 to 6, 8 to 10 and 12 had already submitted to decree by specifically through their written statement and paid court fee also, hence it is wrong to say they were set exparte. Even the parents of the present petitioners had not take a plea of Non-Joinder of necessary party in their written statement and additional written statement. There was no such family arrangement or settlement between the Children of Sambanda Mudhaliar, if so why the same was not filed by the defendants 13 and 14 so far all these years from 2003. The petitioners cannot compel the plaintiff to add the petitioners as additional defendants , especially when their parents are contesting the suit. There are no merits in the petition and the petition is liable to be dismissed.

Memo filed by the R2,R3, R17 and R19 regarding they are adopting the counter filed by 7th respondent/ Plaintiff and the same was recorded by the court.

4.The point for consideration :-

1.Whether the petition is to be allowed or not?

5.POINT :-

The petitioner contended that after the death of their grandfather Late Sambandha Mudhaliar on 1.7.1971 his sons and three daughters have partitioned

the properties of grand father by means of enforceable family agreement of partition dated 21.3.1979 and as per agreement of partition, the petitioner father i.e., 21st respondent/13th defendant was allotted Item No. I and III of suit schedule property. The petitioner further submitted that their father had executed settlement deed on 20.10.2003 regarding Item No.III of suit schedule property in favour of 3rd petitioner and their siblings under a registered settlement deed and from the date of settlement, the petitioner are in possession and enjoyment of the suit schedule Item No.III of the property and thus the petitioner's are joint owners in possession and enjoyment of the property and therefore they are necessary parties to the suit. It is further argued that the plaintiffs also claimed partition of Item No.III of the suit property and thus the petitioners are proper parties to the suit to adjudicate the case in right path way and thus prays to allow the petition. To support his argument he referred the following decisions which are enumerated as hereunder:-

1. SC in Civil appeal Nos.5755-5756 of 2011
2. 2009 AIR AP 124
- 3.AIR 1999 SC 976

"Order 1 Rule 10 CPC enables the court to add any person as a party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said Provision in the Code."

- 4.SC Appeal (civil) 149 of 2004 dated 12.5.2006
- 5.SC Civil Appeal No.4900 of 2010 dated 6.7.2010
- 6.SC Civil Appeal No.1518 of 2013 dated 21.2.2013

"The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the

plaintiff in the suit and subject to any direction which the Court may eventually pass therein. (3) Sine the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit. "

The learned counsel for the Respondents/Plaintiffs contended that the petitioners parents already party to the suit and thus their children are wholly unnecessary for the suit. Further alleged settlement deed in favour of the petitioners are void ab-initio and the same was illegally executed by a mere sharer, exceeding his quantum and further even the parents of the petitioners had not taken a plea on non-joinder of necessary party in their written statement and additional written statement. Further there was no family arrangement or settlement between the children of Sambandha Mudaliar and thus this petition is filed only drag the suit and thus prays to dismiss the petition.

Upon hearing the submissions of learned counsels for petitioners and respondents and perusal of decisions, this court finds that according to petitioners during the family arrangement between the children of Sambandha Mudaliar, their father was allotted with suit schedule Item I and III of the property and the 1st petitioner father executed a settlement deed pertaining to Item III of the suit schedule property in favour of the petitioners under a registered settlement deed dated 20.10.2003 and the petitioners are in possession and enjoyment of the said settled property. The respondents denied the family arrangement alleged by the petitioners and further alleged settlement deed in favour of the petitioners are void abinitio and they are not Class I heirs of the deceased Male Hindu and petition filed with malafide intention to drag the proceedings.

This court finds that whether the alleged family arrangement and settlement deed are void or not would be decided at the time conclusion of the

case. As per settlement deed dated 20.10.2003 Item No.III of the suit schedule property was settled in favour of the petitioners and the said Item No.III also included for partition. Therefore, impleading the petitioners as 18,19 and 20th defendants in the suit will not prejudice the respondents/plaintiffs and thus considering the nature of the suit, this court is inclined to implead the petitioners as defendants in the suit so as to arrive a right adjudication of the case pertaining to the suit schedule properties and also in the interest of justice, this petition is allowed.

Finally, this petition is allowed. No cost.

Dictated to the Shorthand writer and directly typed by her and corrected and pronounced by me in open Court, this the **30th day of March 2023**

Sd/-.K.Kayathri,

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Both sides Exhibits and witnesses: Nil

Sd/-.K.Kayathri,

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

/TRUE COPY/

Draft/Fair Order
I. A.No.6/2022in
O.S.No.232/2004
Dated:30.3.2023
ADJ/CPT
