

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF AT
KANCHEEPURAM.**

PRESENT: Tmt.R. Rajeswari,B.Com.,L.L.M.,
Principal District Munsif, Kancheepuram.
On Friday, this the 18th day of October 2024

IA.No. 09/2024

in

O.S.No.103/ 2023

1. Subash @ Balaji
2. Mohankumar

... Petitioners/Plaintiffs

/Versus/

1.Ponmozhi
2. Yuvaraj
3. The Sub Registrar, Joint-1, Kancheepuram
4. The District Registrar,
Registration of Documents Kancheepuram District

.... Respondents/Defendants

5. Thiru. Elango

..... Respondent/ Proposed 5th defendant

This petition has come up on 01.10.2024 before me for final hearing in the presence of M/s. Dillibabu, advocate for the petitioners and 3rd and 4th respondents remains exparte in the main suit and M/s.Balu advocate for the 1st, 2nd and 5th respondents and upon hearing the arguments and upon perusing the connected material records and having stood over till this day for consideration, this Court delivers the following:-

ORDER

1. The petition is filed Under order 1 Rule 10(2) of CPC to implead the 5th respondent as 5th defendant in the above suit and pass suitable other orders with the circumstance of this case and thus render justice

2. The Brief facts in the petition are as follows:-

The petitioner submit that in the above suit filed by the petitioners for declaration and permanent injunction against the Existing Defendants 1 and 2, the suit summons was duly served to the defendants and they are also appeared through their pleaders in this court and 3rd and 4th defendants set exparte in main suit, now the case was posted for trail not in the list. Since, at the time of presentation of plaint we had filed two interim applications for restrain the defendants, their men agents representatives and any other persons claiming through the defendants from alienate the suit schedule property and not to disturb the peaceful possession of the petitioners, since the above applications dismissed by this court on 06.12.2023.

3. The petitioner submit that subsequent to the dismissal order of Interim Application, the 1st defendant alienated the suit property on 12.12.2023 to her counsel on record Mr.Elango by way of releasing the pending document No. 87/2023 and executed sale deed under document No. 4075 of 2023 on the file of Sub registrar Joint-1, Kancheepuram. Since the act of 1st defendant hit by the provision of lis pendance under section 52 of Transfer of property act, and also it will be had a grate hardship to this petitioners/plaintiffs hence, the 5th respondent/proposed 5th defendant as to be treat necessary party to the suit.
4. The petitioner submit that the suit was pending, before this court for final adjudication to determine the rights of the parties regarding the suit property, during the pending trial the act of alienation by the 1st defendant to 5th

respondent/proposed 5th defendant was highly illegal and must to be restrain. Hence, the petitioners have filed this present application for implead the 5th respondent as defendant in these suits. If this petition was allowed there is no prejudice to the respondents otherwise it will put hardship to this petitions/plaintiffs. Hence this petition.

5. **Counter filed by the 5th respondent adopted by 1st and 2nd respondents and the gist of the same is as follows:-**

This 5th respondent submits that the suit schedule mentioned property and its adjacent extent measuring East to West 19 1/2 North to South 22 feet with house construction comprised in Town Survey number 883 having door No. 51A/B situate at Kamatchi Amman Sannathi Street, Big Kancheepuram, 4th Division, Kancheepuram Town originally belonged to one Thiru.T.Murugesu Naicker as his absolute property. This respondent submit that the above said T.Murugesu Naicker has bequeathed the above said extent of property infavour of his wife Amaravathiammal as per registered will dated 13.02.1998 under document No. 18/1998 on the file of Joint No.1 Sub Registrar office, Kancheepuram.

6. The 5th respondent submits that the above said T.Murugesu Naicker died on 22.09.2002 and after the demise of him, the above said will has come into force and then the above said Amaravathiammal has got the said property and she has been possessing and enjoying the above said property by way of exercising all rights of ownership over the above said property. Then, she has bequeathed the part of the said property measuring East to West 19 1/2 feet and North to South 8

feet comprised in the above said Town Survey number 883 infavour of her grandsons 1st petitioner and 2nd petitioners who are the sons of Balasubramanian son of T.Murugesu Naicker as per registered will dated 27.09.2006 under document No. 51/2006.

7. The 5th respondent submits that the above said Amaravathiammal was not taken any care by the above said persons and then the above said Amaravathiammal was under care and custody of her grand daughters 1st defendant and Aruna and they have been providing all food, cloths and medical treatment to the above said Amaravathiammal and they have been looking after the above said Amaravathiammal in the properer manner. Then, the above said Amaravathiammal has bequeathed the above said property with specified boundaries in favour of the above said 1st defendant and Aruna as per registered will dated 16.04.2009 under document No. 43 of 2009 on the file of the Joint No.4 Sub Registrar office, Kancheepuram. The 5th respondent submits that the above said Amaravathiammal has come into the above said Sub Registrar office, Kancheepuram and she has signed the above said will before the attesting witness of the above said will document and further she has signed in the ledger book maintained in the office of the Sub Registrar, Kancheepuram and all those process have been done in the proper manner.
8. The 5th respondent submits that the above said Amaravathiammal has sold way the above said extent of suit property infavour of one Varathan who is the husband of the 1st respondent as per registered sale deed dated 25.05.2011 under documents

No. 1432 of 2011 on the file of Joint No.1 Sub Registrar, Kancheepuram. Further, it seems that the above said Varathan died on 22.06.2012 leaving behind him, his mother Krishnaveni and his wife who is the 1st respondent as his legal heirs and they have succeeded to the above said property which is left by the above said Varathan now herein called the suit property. Subsequent, the above said Krishnaveni who is the mother of above said Varathan died and then the 1st respondent alone has become the absolute owner of the above said property and she has been in possession and enjoyment of the said property by way of exercising all rights of ownership over the same. Thus, the present owner who is the 1st respondent herein has been in physical possession and enjoyment of the suit property by way of exercising all rights of ownership over the same.

9. When the fact is such, the present petitioners have filed the above said false suit against this 1st respondent claiming some imaginary right over the said property under the previous will dated 27.09.2006 which is not at all the last will of the above said Amaravathi Ammal. It seems that the above said Amaravathi Ammal has executed another will dated 16.04.2009 infavour of the 1st defendant. Then afterwards also, the above said Amaravathi Ammal has sold away the above said property infavour of one Varathan as per registered sale deed dated 25.05.2011. Then, only the above said Amaravathiammal died on 17.01.2018. So, the above said wills dated 27.09.2006 has not acted upon and so, the above said petitioners are not having any right, title or possession over the suit property and so, the above said suit filed by them.

10. This 5th respondents submit that after the demise of the above said Varathan and his mother Krishnaveni the present 1st respondent who is the wife of the above said Varathan as sole legal heir of him, has succeeded to the above said suit property and now she has been in possession and enjoyment of the suit property as absolute owner and so, her possession over the suit property cannot be disturbed by the present petitioners by way of filing this sort of vexatious suit against her.
11. The 5th respondents submits that the interlocutory petitions in I.A No. 3 of 2023 which is filed not to interfere with peaceful possession of the petition and I.A No. 4 of 2023 which is filed for not making any encumbrance over the suit property are dismissed on 06.12.2023 by this court on merits.
12. The 5th respondent submits that he has purchased the suit property before the filing of the suit as per registered sale deed dated 18.05.2023. So, he is a bonafied purchaser for value and there is no lis pendence is arisen upon him in purchasing the suit property. Hence, the petition is liable to be dismissed.

13. Point for determination:-

Whether the petitioners are entitled to the relief as claimed by them or not?

During enquiry Ex.P1 and Ex.P2 was marked on the petitioners side. No exhibits marked on the respondent side.

14. The point:

The petitioner counsel argued that during the pending trial, the 1st defendant alienated the suit property on 12.12.2023 to her counsel on record Mr.Elango by way of releasing the pending document No.87/2023 and executed sale deed under

document No. 4075 of 2023 on the file of Sub registrar Joint-1, Kancheepuram. Since the act of 1st defendant hit by the provision of lis pendance under section 52 of Transfer of property act, and also it will be had a grate hardship to this petitioners/plaintiffs hence, the 5th respondent/proposed 5th defendant as to be treat necessary party to the suit. Hence, the petitioners have filed this present application for implead the 5th respondent as defendant in these suits. If this petition was allowed there is no prejudice to the respondents otherwise it will put hardship to this petitions/plaintiffs. Hence, the petitioner counsel prayed to allow this petition. During enquiry Ex.P1 and Ex.P2 were marked on the petitioners side. Ex.P1 is the certified copy of the Sale Deed dated: 18.05.2023 infavour of the proposed 5th defendant. Ex.P2 is the online copy of the Encumbrance certificate dated:08.01.2024

15.The respondent counsel argued that the 5th respondent has purchased the suit property before the filing of the suit as per registered sale deed dated 18.05.2023. So, he is a bonafied purchaser for value and there is no lis pendence is arisen upon him in purchasing the suit property. Hence respondent counsel prayed to dismiss this petition.

16.Heard both sides arguments and connected material records perused. It is admitted on both sides that the suit property was purchased by the proposed 5th defendant. Hence he is a proper and necessary party to decide this suit. Hence, in the interest of justice this petition is liable to be allowed.

17. In the result, this petition is allowed. No costs.

Dictated to the steno-typist, who directly typed in computer. Pronounced by me in open court, this the 18th day of October 2024.

(S/d.R.Rajeswari)
**Principal District Munsif,
Kancheepuram.**

Petitioner's side Exhibits:-

Ex.P1	18.05.2023	The Sale Deed infavour of the proposed 5 th defendant	Certified Copy
Ex.P2	08.01.2024	Encumbrance certificate	Online Copy

Respondents' side Exhibits:- Nil.

(S/d.R.Rajeswari)
**Principal District Munsif,
Kancheepuram.**