

IN THE COURT OF THE DISTRICT JUDGE, KARUR
PRESENT:- THIRU R. SHANMUGASUNDARAM, B.Com., L.L.B.,
PRINCIPAL DISTRICT JUDGE.

Wednesday, the 11th day of December 2024

I.A.No.08/2024 in O.S.No.317/2023

Joint family Manager
R. Chandrasekaran

...Petitioner/3rd party

vs.

1. R. Sampath
2. Ajaykumar
3. Minor. S. Sivaprasad
represented by his father and natural guardian/next friend/
1st respondent/1st plaintiff R. Sampath
4. R. Palanisamy
5. Varshini
6. Minor. Lakshana represented by
natural guardian father R. Palanisamy
7. P. Periyasamy
8. P. Chandrasekaran
9. P. Kalaiselvi
10. M. Kuppusamy
11. M. Marappan
12. Manoj

...Respondents/ Plaintiffs/Defendants

This petition coming before me for final hearing on 22.11.2024 in the presence of Thiru M. Ramasamy, advocate for the petitioner and Thiru. P. Premkumar, advocate for the respondents no.1 to 3, Thiru. C. Nedunchzhian, advocate for the respondents no.8 to 10, Thiru.V. Sivakumar, advocate for the 11th respondent, Thiru. M. Murali, advocate for the 12th respondent and the respondents 4, 5 and 7 were called absent and were set ex parte and upon hearing the arguments on the both sides and having stood over for consideration till this day, this Court passed the following

ORDER:-

This petition has been filed by the petitioner/ 3rd party seeking to implead himself as 10th defendant in the suit.

Brief averments of the affidavit filed by the petitioner/ 3rd party is as follows:-

2) This petitioner is the 3rd party to the above suit. The respondents are the plaintiffs and defendants. The plaintiff have filed the suit for partition, declaration and for permanent injunction with respect of the suit property and the same is pending before this Court. Further, he contends that the property in Survey No.101/10, 101/2, 112/2, 117/5, 99/4 and 96 are belongs to the plaintiff's family and the same have been possession and enjoyment of the plaintiff. Further, he submits that the plaintiff has filed the suit on behalf of himself as a Kartha of Hindu undivided family in O.S. No.198/2016 on the file of Additional District Munsif Court, Karur in respect of fraudulent sale executed by same persons in respect of Survey no.96 and the same is pending. Further, he submits that pending in the above suit the petitioner has filed Order 6 Rule 17. Further, he submits that the petitioner has filed amendment application Order 6 Rule 17 of CPC in I.A. No.1/2024 for amendment of cancellation of sale deed and the said petition is pending when such a position, the respondents/plaintiffs have suppressed the pendency of the suit in O.S. No.198/2016 have filed the suit for partition, declaration of cancellation of the sale deed and permanent injunction by stating false averments. Further, the petitioner has submits that recently the plaintiffs came to know about the pendency of the suit. Further, he submits that the plaintiffs in the suit have not implead the parties in O.S. NO.198/2016 in the present suit. Further, he submits that the 1st plaintiff and their family members have colluded together in order to get a fraudulent judgment and filed the present suit. Further, he submits that the properties belongs to the petitioner family in Patta No.331 and the properties belongs to the respondents/plaintiffs in Patta No.330. Further, he submits that the plaintiff herein along with the 1st defendant have colluded together and filed this suit in respect of property in Patta No.331 with

intention to get unlawful enrichment. Further, he submits that the plaintiff has filed false proof undertaking affidavit and hence the plaintiff reserves his right to file Order 7 Rule 11 of CPC to reject the suit. Further, he submits that the plaintiff produced the document at the time of trial. Further, he submits that he has to be impleaded as Kartha of his joint family as 10th defendant in the suit.

Brief averments of the counter filed by the 1st respondent/1st plaintiff and the same was adopted by the respondents no.2 & 3 is as follows:-

3) The 1st respondent/plaintiff has filed a counter denying all the allegations and averments made in the affidavit filed by the petitioner. Further, he submits that he has filed the suit for partition in respect of the property belongs to his family. Further, he submits that the petitioner has no right, title over the suit property and hence he has not necessary party to the proceedings suit. If the petitioner is impleaded as party to the suit, the nature of the suit would certainly be changed and hence he prays to dismiss the petition.

Brief averments of the counter filed by the 8th respondent/ 5th defendant and the same was adopted by the respondents no.9, 10 & 11 is as follows:-

4) The 8th respondent/5th defendant has filed a counter denying all the allegations and averments made in the affidavit filed by the petitioner. Further, he submits that the petitioner has no connection with the suit schedule property and the petitioner is the utter change to the suit property. Further, he submits that the suit in O.S. No.198/2016 on the file of Additional District Munsif Court, Karur in respect of Survey No.96 of Puthampur village the property described in the suit schedule and the survey no.96 of the Puthampur village have no connection at that. Further, he submits that the petitioner has no connection with the suit property and hence he prays to dismiss the petition.

5) In this petition, no oral and documentary evidences were adduced on the side of the petitioner. On the side of the respondents, no oral evidence were adduced.

6) This Court considered the rival submissions on both sides.

7) The point for consideration is the whether this petition has to be allowed or not?

ANSWER TO THE POINT:-

8) The petitioner is the 3rd party to the suit. The petitioner has come forward with this present petition to implead himself as the 10th defendant in the suit. This Court has perused the records. At the outset, the respondents no.1 to 3 have filed the suit for partition, declaration of cancellation of the sale deed and permanent injunction in respect of the property in Survey No.101/10, 101/2, 112/2, 117/5, 99/4 and 96 of Puthampur village. It can be seen from the averments made in the affidavit that the petitioner claims title over the suit property in Patta No.331. According to the petitioner, the property in Patta No.331 belongs to his family members. Neither plaintiffs nor the defendants have got right, title interest over the above said property. It is well settled law that the suit for partition can lie only if the parties are having joint right or possession over the property. The present petitioner is tracing his right independently. Therefore, the petitioner ought to have file the separate suit for declaration or suit for injunction or recovery of portion. The parties cannot assert, title against stranger even by impleading them as proforma defendant.

9) Further, the Honourable Supreme Court in *2023 Live Law (SC)488-M/s.Trinity Infraventures Ltd and others vz.M.S.Murthy and others in SLP (C) No.2373 – 2377 of 2020 dated 15.06.2023* has held that

“ The strangers who are impleaded in a partition suit, may have nothing to say about the claim to partition. But they may have a claim to title to the property

and such a claim cannot be decided in a partition suit.”

10) Therefore, the petitioner may have claim to title to the property but the same cannot be decided in the present suit. Therefore, this Court finds that the petitioner is neither necessary party or proper party to the lis.

11) Therefore, in view of the above stated facts and circumstances, this petition is liable to be dismissed.

In the result, this petition is dismissed. No costs.

Dictated to the steno-typist, transcribed by her corrected and pronounced by me in open Court on this the 11th day of December 2024.

Sd./ R.Shanmugasundaram
PRINCIPAL DISTRICT JUDGE,
KARUR.

PETITIONER’S SIDE WITNESS AND EXHIBITS:- NIL

RESPONDENTS SIDE WITNESS AND EXHIBITS :- NIL

Sd./ R.Shanmugasundaram
PRINCIPAL DISTRICT JUDGE,
KARUR.