

IN THE COURT OF THE III ADDITIONAL DISTRICT COURT, SALEM.

Present: Tmt. L.Kalaivani, BA.,B.L.,

III Additional District Judge, Salem.

Friday, the 21st day of February 2025.

I.A.3/2023
in
O.S.122/2022

S. Gangatharan	...	Petitioner/Plaintiff
	/vs/	
P. Geetha	...	Respondent/ Defendant
K.Arumugam, Sub Registrar, Dadagapatty	...	Respondent/Proposed party

This petition is coming on 07.02.2025 before me for final hearing in the presence of Thiru.S.Ravi Arasu, learned counsel for the petitioner/plaintiff, Thiru.K.Rajasekaran, learned counsel for the 1st Respondent/ Defendant and Mr. Madhan Mohan, learned Government pleader for the 2nd Respondent/Proposed party, upon hearing both their arguments and having stood for consideration till date this court delivered the following:-

ORDER

The petitioner filed this application under order 1 rule 10(2) CPC seeking to implead the proposed party as the 2nd defendant in the suit.

1.The averments of the petition is as follows:

The petitioner herein is the plaintiff in the suit and suit has been filed by the petitioner seeking the relief of recovery of cheque amount. On 25.11.2022 the petitioner has given an objection petition (தடங்கடல் மனு) before the

proposed party who is the Sub Registrar, Dadagapatty along with security deed furnished by the 1st respondent in the court. In order to help the 1st respondent the proposed party taking illegal steps to transfer the petition mentioned property which is the subject matter of the security deed. Therefore, the proposed party is the necessary party for the proper adjudication of the suit. Hence, the present petition to implead the proposed party as 2nd defendant in the suit.

2. The counter filed by the 1st respondent/defendant is as follows:

Denied and decried all averments made in the petition and affidavit except those are specifically admitted. It is true that the petitioner has filed a suit for recovery of money based on dishonored cheque. In fact, the 1st respondent did not borrow any amount from the petitioner as alleged in the suit. The 1st respondent has succeeded 1/ 3rd share in the properties of her husband who died on 08.09.2020. The proposed party is not a necessary party to the suit and the respondent came to know that the proposed party namely K.Arumugam has been transferred to some other Sub Registrar office. Offering of security for the suit claim cannot prevent any individual who is having right over the immovable property from the alienate the same. The respondent is suffering from blood pressure and diabetic. Therefore, she is taking treatment regularly at Coimbatore. Therefore, to protect the property, the respondent has executed a gift settlement deed on 31.03.2023 in favour of her daughter and son. The 1st respondent had already offered her 1/ 3rd share as security. If the petitioner succeeded in the suit, he can very well proceed against the said property. Therefore, the proposed party is not the necessary party to the suit. Hence, it is prayed for dismissal.

3. The counter filed by the 2nd respondent/proposed party is as follows:

Denied and decried all averments made in the petition and affidavit except

those are specifically admitted. The dispute between the petitioner the 1st respondent is the private dispute. It is true that the petitioner has filed a petition under order 38 rule 5 of CPC in IA.No.1/2022. On 25.11.2022 the proposed party has received an objection petition from the petitioner stating that the 1st respondent is making steps to alienate the property which has been furnished as a security and prayed not to registrar any documents in respect of the property given as security. But, there is no order of stay or injunction passed by the court. The 1st respondent has executed a release deed and the same was registered on 01.04.2023. The proposed party was acted in the capacity of Sub Registrar while receiving the objection. As per section 35 of registration act it is not a duty of registering officer to enquire into the validity of the document. The petitioner has not added the district collector as party and there are no pleadings for non issuance of notice under section 80 of CPC. The proposed party is not the necessary party to the suit. Hence, it is prayed for dismissal.

4. Now the point for consideration is:

Whether the petition filed by the petitioner is liable to be allowed? or not?

5. Answer to the point:-

This petition has been filed under order 1 rule 10 of CPC to implead the proposed party as the 2nd defendant in the suit. It is the contention of the petitioner that he has filed a suit against the 1st respondent for recovery of money based on the cheque and the 1st respondent has filed security deed in a petition filed by the petitioner under order 38 rule 5 of CPC. While so, the 1st respondent was attempted to encumber the property. Therefor, the petitioner has filed an objection petition before the proposed party who is the Sub Registrar, Dadagapatty on 25.11.2022. However, the proposed party in order to help the 1st respondent acted illegally and thus, he is necessary party to the suit.

6. On the other hand the 1st respondent who is the defendant in the suit has admitted the petition filed by the petitioner under order 38 rule 5 and security deed filed by her. However, she would contend that she succeeded only 1/ 3rd share in the property of her husband and after demise of her husband, she fell in illness. Therefore, to protect the property she executed the gift settlement deed in favour of his son and daughter on 31.03.2023. The 2nd respondent / proposed party would contend that he acted as Sub Registrar, Dadagapatty and there was no order to restrain the 2nd respondent from registering the document in respect to the suit property.

7. Upon considering the rival submissions it is noted that the suit has been filed by the petitioner against the 1st respondent for recovery of money and he has also filed a petition under order 38 rule 5 of CPC in which the 1st respondent has filed security affidavit in respect to the 1/ 3rd share in S.No.96/4. It is seen from the document produced by the petitioner along with the present petition that he has given an objection petition before the Sub Registrar, Dadagapatty on 25.11.2022 and the sub registrar issued summon to the both parties and conducted an enquiry. Finally, he has given finding on 20.03.2023 that the petitioner has not produced document to show his right over the property and he is liberty to approach the civil court for his remedy.

8. It is very clear from the records that the 1st respondent has executed a gift settlement deed in favour of her son and daughter on 31.03.2023 which is after furnishing security affidavit before the court. However, the present application is for impleading the proposed party in the suit proceeding. According to the order 1 rule 10 of CPC a necessary party refers to a person whose presence in the lawsuit is crucial for the court to effectively adjudicate all the questions involved in the suit. Meaning of the same is without of them, a complete and just decision cannot be reached. At this juncture it is appropriate

to mention the following judgment **2007(1) CTC 304. K.VENKATRAMAN.J. (Pitchaimani Vs Selvarani and another)**, wherein it has been observed that,

“Suit for recovery of amount due from the defendant on pronote – defendant filing written statement denying any transaction between defendant and plaintiff but contending that the transaction was between defendant and plaintiff's husband and sought to implead plaintiff's husband – issues involved in such suit would centre around whether the suit pronote was executed by the defendant in favour of the plaintiff, whether the defendant borrowed from the plaintiff- plaintiff's husband neither necessary party nor proper party.”

9. This court has taken note of the above said judgment and the suit has been filed by the petitioner seeking the relief of recovery of money based on the cheque and thus, the proposed party is not a proper and necessary party to the complete adjudication over the subject matter of the suit. Therefore, this court is of the view that it is not necessary to implead the proposed party as the defendant in the suit. Consequently, this court is not inclined to allow this petition. Accordingly, the point is answered.

In fine, the petition is dismissed. No cost.

Dictated by me, to the Steno Typist, transcribed and computerized by her, corrected by me and pronounced in the open court, on this 21st day of February 2025.

(Sd/-L.Kalaivani)

III Additional District Judge,
Salem.

I.A.No.3/2023 in

O.S.No.122/2022

Dt. 21.02.2025

III ADJ.,Salem.