

IN THE COURT OF II ADDITIONAL DISTRICT JUDGE, SALEM

**Present : Tmt. L. KALAIVANI, B.A.,B.L.,
II Additional District Judge, Salem**

Monday, the 23rd day of September, 2024

IA.No.02/2021

in

OS No:273/2021

G.Rajkumar

... Petitioner/Third Party

-VS-

1. R.Jayashree

2. Thilakavathi

... Respondents/Plaintiffs

3.K.Yesudas

... Respondent/Defendant

This petition is coming on 10.09.2024 before me for final hearing in the presence of Thiru. R.Senthilkumar learned counsel for the petitioner/ 3rd party and Thiru.P.Kannan learned counsel for the Respondents/plaintiffs, upon hearing the both and having stood over for consideration till date, this court delivered the following:-

ORDER

This petition has been filed Under Order 1 Rule 10 of CPC to implead the petitioner as the defendant in the suit.

1. Brief case of the petitioner is as follows:-

The petitioner herein is the 3rd party to the suit and the suit has been filed by the 1st and 2nd respondents seeking the relief of Partition and other consequential reliefs. The suit property originally belonged to one Ramasamy Boyan by virtue of sale deed dated 13.03.1970 and he got three daughters

namely Amudha Rani, Revathi and Maheshwarai and one son namely Rajan. During the lifetime of the above said Ramasamy Boyan, he had executed a Will in favour of his son and daughter on 07.01.2001 and subsequently, he was died on 19.05.2001. Therefore, the Will had came into force and the son Rajan and daughter Maheshwari have succeeded the suit property by virtue of Will dated 07.01.2001. While so, the daughters of the Ramasamy Boyan namely Amutha Rani and Revathi have filed a suit against the son Rajan and daughter Maheshwari in O.S.No.35/2005 on the file of Principal District Munisif Court, Salem and the same was dismissed on 30.07.2007. Against which, an appeal in A.S.No.169/2007 has been filed and the same also dismissed on 31.01.2008. Again, a second appeal has been filed before the Hon'ble High Court in S.A.No.623/2008 and the same also dismissed on 11.06.2009. Being the absolute owner of the suit property, the said Rajan has sold the property to the 3rd respondent on 18.08.2004 and the 3rd respondent has sold the suit property to the petitioner on 24.02.2021. Ever since, from the above said sale deed the petitioner is in possession and enjoyment over the suit property. While so, the petitioner came to know that the 1st and 2nd respondents have filed suit in respect to the property purchased by the petitioner. Hence, the petitioner is the necessary party to the suit proceedings and he has to be impleaded in the suit as the defendant for proper adjudication over the suit property.

2. Nutshell of the counter filed by the 1st respondent and adopted by the 2nd respondent is as follows:-

Refuting all the averments found in the petition except those are specifically admitted by the respondents. The sale deed dated 18.08.2004 is not valid and the sale deed dated 24.02.2021 is also not valid. The respondents are not to parties to the sale deed dated 18.08.2004 and the said sale deed is sham and nominal one. Even though, the sale deed in the name

of Ramasamy Boyan, the sale price was given from the income and savings of common funds of joint family consist of Ramasamy Boyan, Rajan and other family members. Will dated 07.01.2001 and factum of the death of the Ramasamy Boyan dated 19.05.2001 are not disputed. It is false to state that, the father Rajan has got the suit property through the Will dated 07.01.2001 and it is the separate property of the Rajan. It is false to state that the petitioner has purchased the suit property for valid consideration and he is in possession over the suit property. The 1st respondent and deceased Rajan are having equally right in the suit property and the suit property is not a self acquired property of the Rajan. The petitioner knows that the respondents and the Rajan are the joint owners of the suit property and the sale deed dated 18.08.2004 is not valid one. The present petitioner is the benami of K.Yesudoss who is the 3rd defendant in the suit. There are no merits in this petition. Hence, it is prayed for dismissal.

3. Now the point for consideration is:-

Whether this petition is liable to be allowed or not?

4. Answer to the Point:

This petition has been filed by the petitioner who is the 3rd party to the suit under Order 1 Rule 10 (2) of CPC to implead him as defendant in the suit. It is the contention of the petitioner that the suit property originally belonged to Ramasay Boyan by virtue of sale deed dated 13.03.1970 and he executed a Will in favour of the son Rajan and daughter namely Maheshwari. Subsequently, the Ramasamy Boyan was died on 19.05.2001 and thus, the Will had came into force. The petitioner further submits that the son of the Ramasamy Boyan namely Rajan has executed a sale deed in favour of the 3rd respondent on 18.08.2004 in respect to the suit property and from the 3rd respondent the petitioner has purchased the suit property on 24.02.2021 and

he is in possession over the suit property. While so, he came to know that the 1st and 2nd respondents have filed suit for partition in respect to the property purchased by him. Hence, it is necessary to implead him in the suit as defendant for proper adjudication.

5. Per contra, the 1st and 2nd respondents would contend that the Ramasamy Boyan has purchased the suit property under the sale deed dated 13.03.1970 through the common funds of joint family consist of deceased Ramasamy Boyan, deceased Rajan and other family members. Therefore, the suit property is not the self acquired property of Rajan and thus, the sale deed executed in favour of the 3rd respondent on 18.08.2004 and sale deed dated 24.02.2021 in favour of the present petitioner are not valid.

6. Considering the rival submissions, Order 1 deals with the subject of parties to suits and inter alia with the joinder, misjoinder and non-joinder of parties. It is to be borne in mind that there is a distinction between necessary party and proper party. A necessary party is one whose presence is indispensable to the continuation of the suit and without whose presence no effective order can be passed. His presence enables the court to adjudicate more effectually and completely. Therefore, there is no dispute with regard to the position of law that if a person is likely to be affected by a decree or order, he can't be arrayed as a party.

7. In the instant case, it is noted that the petitioner is claiming that his vendor's vendor namely Ramasamy Boyan has purchased the suit property under the sale deed dated 13.03.1970 and it is the self-acquired property. However, the 1st and 2nd respondents would contend that the suit properties was purchased from the common funds of joint family consisted of deceased Ramasamy Boyan and deceased Rajan and other family members. Therefore, it is not the separate property of Ramasamy Boyan. The present Original suit

has been filed for partition which includes the property purchased by the present petitioner under the sale deed dated 24.02.2021 and the petitioner has produced the copy of the sale deed dated 24.02.2024. Though the respondents contents that the petitioner has got no right to get share, the said question cannot be decided in this application for implement of party and the said question will be decided in the suit. It is well established principle of law that the merit of the claim cannot be decided in an interlocutory application. Therefore, since the petitioner seems to be a necessary party to the proceedings, this court is inclined to allow the application.

In the result, the petition is allowed. No Cost.

Dictated to the typist, typed by her directly, corrected and pronounced by me in the open court, this the 23rd day of September 2024.

(Sd/-L.Kalaivani)

II Additional District Judge,
Salem.