

## IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Presence: Thiru. R. Radhakrishnan, B.A., B.L.,  
District Munsif, Sankari.

26<sup>th</sup> day of September, 2023, Tuesday

திருவள்ளூர்வராண்டு 2054, சோபகிருது வருடம், புரட்டாசி திங்கள் 09 ம் நாள் செவ்வாயக்கிழமை

I.A. 1/2022 in O.S.189/2012

1. Pachiammal
2. Thangammal
3. Rathinammal
4. Balu
5. Natesan
6. Senthil

... Petitioners / Plaintiffs

//Versus//

1. Alagappan
2. Chinnaponnu
3. A.A. Balu
4. Vadivel

... Respondents / Defendants

5. P. Govindasamy

... Respondent / Proposed party

This petition taken to file on 05.12.2022 and coming on this day for hearing on 14.09.2023 before me in the presence of Tr. S. Christopher and S. Mannarsamy Advocates for Petitioners, and of Tr. N. Rajagopalan Advocate for R4 and of Tmt. A. Kalaichelvi Advocate for R5 and R1 to R3 were called absent and set exparte and after perusing the Petition, Counter and on hearing both sides and this Court passed the following,

**ORDER**

The petitioners/Plaintiffs have filed this petition under Order 1 Rule 10(2) and Section 151 of C.P.C to implead the proposed party as 5<sup>th</sup> defendant in O.S.No.189/2012.

**2) The gists of the Petition :-**

The petitioner has averred that, he is the 4<sup>th</sup> plaintiff in the suit.

The petitioner filing this affidavit for himself and on behalf of other petitioners who are his family members. The petitioners filed the suit for the relief of partition and permanent injunction. In the above suit, this petitioner's brother 6<sup>th</sup> plaintiff examined as PW1 and two other witnesses were examined on petitioners side. Now the suit is posted further evidence on petitioners side. The petitioners came to know that the 1<sup>st</sup> defendant and his family members created a fraudulent sale deed in favour of proposed party under sale deed dated 05.10.2021 vide Doc.No.5557/2021 on the file of SRO, Magudanchavadi in respect of S.No.100/1B measuring 0.41 1/2 cents of land of Pudur Village. Suppressing the pendency of the above suit, the 1<sup>st</sup> defendant fraudulently created the sale deed in favour of proposed party which is lispence and the same will not valid one and binding upon the petitioners. The recitals in the sale deed are not true and correct. The suit is filed for the relief of partition, the proposed party is proper and necessary party for the suit for complete and final adjudication of the dispute involve in the above suit. Unless, the proposed party is added, the petitioners will be put to irreparable loss and hardships. Therefore, prays for allowing the petition.

**3) The gists of the Counter filed by the 4<sup>th</sup> Respondent :-**

The respondent averred that, the 4<sup>th</sup> respondent it is averred and contended that, the petitioners have filed this implead petition after complete the plaintiffs side evidence. On the score itself this petition is not maintainable. This petition is highly belated one. To prolong the proceedings, the petitioners have filed this petition to harass the respondent. The affidavit reasons are not sufficient to allow this petition. The petitioners have suppressed the real facts and filed this petition. The petitioners did not approach the court with clean hands. Therefore, prays for allowing the petition.

**4) The gists of the Counter filed by the 5<sup>th</sup> Respondent :-**

i)The respondent averred that, the petition filed by the petitioners are frivolous, vexatious and unsustainable in law and facts as well. This respondent puts the petitioners to strict proof of the allegations made in the

affidavit except those that are specifically admitted. It is false to say that the 1<sup>st</sup> defendant and his family members created a fraudulent sale deed in favour of proposed party under sale deed dated 05.10.2021 vide Doc.No.5557/2021 on the file of SRO, Magudanchavadi in respect of S.No.100/1B measuring 0.41 1/2 cents of land of Pudur Village. It is false to say that by Suppressing the pendency of the above suit, the 1<sup>st</sup> defendant fraudulently created the sale deed in favour of proposed party which is lispence and the same will not valid one and binding upon the petitioners. It is false to say that the recitals in the sale deed are not true and correct. It is false to say that the proposed party is proper and necessary party for the suit for complete and final adjudication of the dispute involve in the above suit. The petitioners has been harassing the respondents by filing this vexatious petition and suit.

ii)The respondent further averred that, the petitioners have not come forward with clean hands. The petitioner's reason for adding of this respondent is neither sound nor reasonable. The suit properties are purchased by 1<sup>st</sup> respondent's father Komaragounder. The said Komaragounder sold the properties to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent again sold the same to this respondent. This respondent is the absolute owner of the land purchased by him. The petitioners have not entitled to any share and this petition filed to harass this respondent. There is no merit in the petition. Therefore, prays for dismissal of the petition.

5) There is no oral and documentary evidence on both sides.

6) **Point for consideration:-**

Whether the petitioner is entitled for the relief as prayed for?

7) Both side heard. Records has been perused. This petition has been filed U/Order I Rule 10 of C.P.C to implead the petitioners/proposed parties as 5 to 7 defendants in O.S.No.294/2012.

8) On the side of the petitioners averred and contended that, he

petitioners have filed the suit for the relief of partition and permanent injunction. In the above suit, this petitioner's brother 6<sup>th</sup> plaintiff examined as PW1 and two other witnesses were examined on petitioners side. Now the suit is posted further evidence on petitioners side. The petitioners came to know that the 1<sup>st</sup> defendant and his family members created a fraudulent sale deed in favour of proposed party under sale deed dated 05.10.2021 vide Doc.No.5557/2021 on the file of SRO, Magudanchavadi in respect of S.No.100/1B measuring 0.41 1/2 cents of land of Pudur Village. Suppressing the pendency of the above suit, the 1<sup>st</sup> defendant fraudulently created the sale deed in favour of proposed party which is lispence and the same will not valid one and binding upon the petitioners. The recitals in the sale deed are not true and correct. The suit is filed for the relief of partition, the proposed party is proper and necessary party for the suit for complete and final adjudication of the dispute involve in the above suit. Unless, the proposed party is added, the petitioners will be put to irreparable loss and hardships. Therefore, prays for allowing the petition.

9) On the side of the 4<sup>th</sup> respondent it is averred and contended that, the petitioners have filed this implead petition after complete the plaintiffs side evidence. On the score itself this petition is not maintainable. This petition is highly belated one. To prolong the proceedings, the petitioners have filed this petition to harass the respondent. The affidavit reasons are not sufficient to allow this petition. The petitioners have suppressed the real facts and filed this petition. The petitioners did not approach the court with clean hands. Therefore, prays for allowing the petition.

10) On the side of the 5<sup>th</sup> respondent it is averred and contended that, this respondent is denying the fact that the 1<sup>st</sup> defendant and his family members created a fraudulent sale deed in favour of proposed party under sale deed dated 05.10.2021 vide Doc.No.5557/2021 on the file of SRO, Magudanchavadi in respect of S.No.100/1B measuring 0.41 1/2 cents of land of Pudur Village by Suppressing the pendency of the above suit. Further it is denied that the 1<sup>st</sup>

defendant fraudulently created the sale deed in favour of proposed party which is lispendence and the same will not valid one and binding upon the petitioners. The petitioner is denying the fact that, the recitals in the sale deed are not true and correct and the proposed party is proper and necessary party for the suit for complete and final adjudication of the dispute involve in the above suit. The petitioners has been harassing the respondents by filing this vexatious petition and suit. The petitioners have not come forward with clean hands. The petitioner's reason for adding of this respondent is neither sound nor reasonable. The suit properties are purchased by 1<sup>st</sup> respondent's father Komaragounder. The said Komaragounder sold the properties to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent again sold the same to this respondent. This respondent is the absolute owner of the land purchased by him. The petitioners have not entitled to any share and this petition filed to harass this respondent. There is no merit in the petition. Therefore, prays for dismissal of the petition.

11) Order 1 rule 10 of the Code of Civil Procedure which deals with parties to suit. It deals with necessity of bringing parties to the suit for proper and effectual adjudication of the matter in dispute. Order 1 Rule 10 of Code of Civil Procedure enables the court to add any person as party at any stage of the proceedings, if the person whose presence before the court is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. It is well settled principle of law that basically, it is for the plaintiff in a suit to identify the parties against whom has any grievance and to implead as defendants in the suit filed for necessary relief. The plaintiff cannot be compelled to face litigation with the persons against whom has no grievance. Where, however, any third party is likely to suffer any grievance, on account of the outcome of the suit, who shall be entitled to get impleaded. The question as to whether an individual is a proper or necessary party to a suit, would depend upon the nature of relief claimed in the suit and the right or interest projected by the persons, who propose to get themselves impleaded.

12) In Mahadeva Rice & Oil Mills Vs. Chennimalai Gounder reported in AIR 1968 Mad. 287, the Hon'ble Madras High Court, explained the basic object of the provision Order 1 Rule 10 C.P.C., and laid down the following principles:-

(i) If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.

(ii) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself;

(iii) The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;

(iv) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and

(v) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit.

13) From the above guidelines, it could be understood that if the person whose presence before the court is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the suit for avoidance of multiplicity of proceedings than only the person can be added as a party to the suit.

14) It is admitted fact that, the suit properties are purchased by 1<sup>st</sup> respondent's father Komaragounder. The said Komaragounder sold the properties to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent again sold the same to 5<sup>th</sup> respondent. Further, it is from the suit records, it could be seen that the suit has been filed for the relief of partition and permanent injunction by the petitioners herein. Therefore, this court is of the view that, the 5<sup>th</sup> respondent/proposed parties presence before the court is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the suit. Therefore, in the interest of justice this petition is allowed.

15) In the result, this petition is allowed. No costs.

This order directly dictated to the Steno-typist, typed by him and corrected by me, and Pronounced in the Open Court in the 26<sup>th</sup> day of September 2023.

Sd/- R. Radhakrishnan,  
District Munsif,  
Sankari.

**Encl.:**

**Petitioners side evidence :-** -Nil-

**Petitioners side documents:-** Nil

**Respondents side evidence :-** -Nil-

**Respondents side documents:-** -Nil-

Sd/- R. Radhakrishnan,  
District Munsif,  
Sankari.