IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI

PRESENT: Thiru. A. DHARANIDHARAN, B.Sc., M.L., M.A., LL.M.
District Munsif, Devakottai
Wednesday, the 24th day of November, 2021

I.A. No. 02/2019
in
O.S. No. 52/2016

1)	K. Meenakshi Sundaram	Petitioner/Plaintiff

Vs

1.	S. Ramasamy	
2.	S. Chellaiah	
3.	S. Senthilnathan	Defendants/ Respondents
4.	S. Mariappan	
5.	R. Ramanathan	
6.	S. Abdul Razak	
7.	M. Mohammed Harris	
8.	N. Sabiya Beevi	
9.	S. Abdul Hakim	
10.	M. Mumtaj Begum	
11.	S. Nafizad Tahira	
12.	Saimanadhul Bhadaviya	
13.	Abdul Hakim	
14.	Mohammed Subair	
15.	Halisa Beevi	4 to 15 Respondents/ Proposed Defendants

This petitions having been finally heard on 24.11.2021 in the presence of Mr. Meenakshi Sundaram, the learned counsel for the Petitioners/Plaintiffs and in the absence of the learned counsel for Respondents/Defendants upon hearing the

arguments of both sides and after perusal of the entire records and having stood over for my consideration till this day, this court delivers the following:

ORDER

The Petitioners / Plaintiffs has filed this petition against the Respondents under Order 1 Rule 10(2) and Sec. 151 CPC. to implead 4 to 15 as proposed defendants in the above suit.

2. The averments set out in the petition/affidavit filed by the petitioner/plaintiff as follows:

2.1 The Petitioners/Plaintiffs states that a suit has been instituted for the relief of injunction in the suit scheduled properties. The Petitioner's states that the suit scheduled property was located in Melachemponmari Village, Devakottai Taluk. The petitioner further states that the suit property originally belongs to one Egarai Karupaiah which is 3 Acre and 97 cents and it was purchased by way of a registered sale deed on 11/03/1993 and the patta no. is 122. The petitioner further states that the 1st defendant who is the ambalakar alleges that the 1st defendant's father was one of the joint pattadhars during the settlement period. It is further stated in the present petition that, a JCB machine was used by the Respondents/defendants in the suit property bearing Survey No. 219/2 to destroy the trees and fruits on 05/04/2016. It is further contended that interim injunction was granted by this Court in I.A. 425/2016. It is also alleged that the defendants had created encumbrances by executing sale deeds with respect to the petition-mentioned property.

2.2 The petitioners further states that it is just and necessary to add 4 to 15 proposed defendants as parties and no prejudice will be caused to the respondents.

3. This petition was originally filed on 04/06/2019. The notice of hearing and counter was ordered by this Court on 14/16/2019. After COVID19 Surge and after resuming full fledged physical hearing of the Subordinate Courts in Tamil Nadu, this Court has provided sufficient opportunities to the Respondents 1 to 3 to file their counter, but in spite of it, the Respondents/Defendants was not prepared to filed the Counters. Hence, this Court inclined to pass appropriate orders.

4. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

5**.** No oral or documentary evidence was adduced on the side of the Petitioners.

6. No oral or documentary evidence was adduced on the side of the Respondents.

7. The Petitioner was heard.

Discussion:

Impleadment

The Court may strike out or add parties:-....either upon or without the application of either party.

Order 1 Rule 10 (2) of the Code has given a wide power to the Court to Join any party to a proceeding either upon or without an application to enable to the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit.

In Re Krishnan, S Vs Rathinavel Naicker reported in 2007 (2) CTC 73 at page 76, wherein it is held thus:

Para 15: *"A party can also be impleaded when the relief prayed for in the proceedings is sought to be made binding on him or when it is felt that he would be adversely affected by the ultimate outcome of the proceedings. But in this case no relief is sought against the proposed respondents and the relief prayed for is also not intended to be made binding on them. It is not even the case of the 1st respondent that the outcome of the proceedings would adversely affect the interests of the proposed respondents."*

Page 17: In a nutshell, the tests to be applied for determining the right of a party to implead another, in a pending suit or other proceeding, may be crystallized into the following categories:

(a) If without his presence no effective and complete adjudication could be made;

(b) If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;

(c) If there is a cause of action against him;

(d) If the relief sought in the Suit or other proceedings is likely to be made binding on him;

(e) If the ultimate outcome of the proceedings is likely affect him adversely.

(f) If his role is really that of a necessary witness but is sought to be camouflaged as a Necessary Party."

Furthermore...

Para 27: *"It is to be borne in mind that where complete and effective relief can be obtained by a litigant, then it is not necessary to join any other party, in the considered opinion of this Court. It is needless to say that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence, an effective order can be made, but whose presence is necessary for complete and final decision of the question involved in the proceeding."*

Order I Rule 10 of the code describes that (i) there must be a right to some relief against such party in respect of the matter involved in the proceeding in question and (ii) it should not be possible to pass an effective decree in the absence of such party. The eventual interest of a party in the fruits of litigation cannot be held to be the true test of impleading a party.

In such circumstance this court inclines to allow this petition in the interest of Justice.

There shall be no orders as to the costs.

This Order was directly typed by me in my official laptop, corrected by me and pronounced by me in the open Court on this the 24th day of November 2021.

Sd./- A. DHARANIDHARAN,
District Munsif,
Devakottai

Annexures:

List of witnesses on the side of the Petitioner
Nil

List of documents on the side of the Petitioner
Nil

List of witnesses on the side of the Respondent
NIL

List of documents on the side of the Respondent
NIL

Sd./- A. DHARANIDHARAN,
District Munsif,
Devakottai

/True copy/