

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 17th day of November, 2021

I.A. 02/2021

in

O.S. No. 114/2016

P. Chelladurai (Through Power Agent
B. Bhuvaneshwari

Petitioner/Plaintiff

Vs

S. Chithra

Respondent/Defendant

Kaliammal

Proposed 2nd Respondent

This petition having been finally heard on 26/10/2021 in the presence of Mr. B. Asaithambi, the learned counsel for the Petitioner/Plaintiff and Mr. V. Sundar, the learned counsel for Respondent/Defendant 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 Petitioner has filed this petition against the Respondent under Order 1 Rule 10 and Sec. 151 CPC., to implead the 2nd proposed respondent as party in the above suit.

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

2.1 The Petitioner states that she is the Power agent of the Plaintiff and the Survey Nos. 55/1B and 55/2B were in possession of the Petitioner/Plaintiff. The Petitioner further states that an encroachment was made by the 1st defendant and a mandatory injunction was sought as a relief. The Petitioner further state that the Advocate Commissioner with the assistance of the Taluk Surveyor had inspected the suit property and had filed his report and plan on 26/09/2019. The petitioner states that it is found from the Advocate Commissioner's report that on the East-west direction approximately 2.6 metres and on the South-North direction approximately 22.8 metres were encroached by the 2nd Proposed Respondent and it is necessary to implead her as a party to the suit. The petitioner further states that no prejudice could be caused in allowing this petition and failing which may lead to irreparable loss to the petitioner.

2.2 The petitioner states that she is a necessary party and the suit cannot be adjudicated in her absence and the petitioner's rights will seriously be affected and suffer great loss if she is not added as a party.

3. The averments set out in the Counter/affidavit filed by the Respondent/Defendant is as follows:

The Respondent/Defendant has evasively denied all the averments of the Petitioner. The Respondent states that a thatched roofed asbestos room was created by the respondent to carry out agriculture and to stock materials which was fenced with stone-pillars and iron fences. The respondent further states that in addition to it a borewell was also created and obtained electricity. The respondent further states that the details of the suit property given in the plaint have discrepancies

with that of the sale deed and it is just a figment of imagination. The Respondent prayed to dismiss the present application.

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

5. Oral or documentary evidence was adduced on the side of the Petitioner.

6. No oral or documentary evidence was adduced on the side of the Respondent/Plaintiff.

7. Both the sides heard.

DISCUSSION:

8. **Order 1 Rule 10: Suit in name of wrong plaintiff.** – (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

8.1 Order 1 of the Code of Civil Procedure deals with parties to the suit. It deals with necessity of bringing parties to the suit for proper and effectual adjudication of the matter in dispute.

8.2 Order I Rule 10 of CPC 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..

8.3 Avoidance of multiplicity of proceedings is also one of the objects of the said provision.

8.4 The provisions of Order 1 Rule 10(2) C.P.C., are very wide and the powers of the court are equally extensive.

9. There are two types of persons who may be added as party to the suit:

(1) Person who is a necessary party i.e., in the absence of whom relief claimed in the suit cannot be granted. In other words, it means that for the grant of relief claimed in a suit, a person who ought to have joined must be added,

(2) The second class of persons consists of those who are proper parties i.e., whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit.

10. In *Kasturi Vs Uyyamperumal & Ors (2005) 6 SCC 733*, the Hon'ble Apex Court observed that "it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are – (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party."

11. *Razia Begum v. Anwar Begum [AIR 1958 SC 886]*

“(1) That the question of addition of parties under Order 1 Rule 10 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; ...

12. This Court have perused the Advocate Commissioner’s Report and sketch and observed that there is no mention about the encroachment made by the 2nd proposed defendant/respondent and the direction of the metes and bounds in which the encroachment was allegedly made by the 2nd proposed defendant is incorrect.

In the Result, I do not find any merit in this application and hence dismissed. No order as to 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 17th 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/Plaintiff

NIL

List of documents on the side of the Respondent/Plaintiff

NIL

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

/True copy/