

IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS,
PERIYAKULAM.

Present: Tmt. S.Sameena, B.A. L.L.B.,
Additional District and Sessions Judge,
Periyakulam.

Friday, the 25th day of October 2024.

CNR.No.TNTH09 000324 2023

IA.No.01/2023

- in -

AS.No.25/2023

- in -

OS.No.163/2021

-

Sivanandi S/o. Pandi
aged about 34 years and residing at
Door No.218/2, Arignar Anna Street,
M.G.R.Nagar, Theni District.

... **Petitioner/
appellant/
plaintiff**

// **Vs.** //

1. Yoga Murugan S/o. Perumal,
aged about 23 years and residing at
TNEB Office opposite,
State Bank Colony, Keezha Vadagarai,
Periyakulam Taluk, Theni District.

... **1st respondent/
1st respondent/
defendant**

2. Perumal S/o. Ramasamy Thevar,
aged about 50 years and residing at
TNEB Office opposite,
State Bank Colony, Keezha Vadagarai,
Periyakulam Taluk, Theni District.

... **2nd respondent/
3rd party**

This petition came up for hearing before me on 24.09.2024 in the presence of Mr.V.Manokaran, Learned Counsel for the petitioner and Mr.S.Sundararajan, Learned Counsel for the 1st respondent and Mr.D.Balakrishnan, Learned Counsel for the 2nd respondent and upon perusing the petition and counters and upon hearing both sides and having stood over for consideration till this day, this Court delivered the following...

ORDER

This petition is filed by the petitioner/appellant/plaintiff Order 1, Rule 10 CPC r/w Section 151 CPC to implead the proposed party/2nd respondent as additional defendant.

2. The petitioner/appellant /plaintiff's case is that, the Appeal in AS.No.25/2023 has been preferred against the Judgment and Decree dated 09.03.2023 of Subordinate Court, Periyakulam in OS.No.163/2022. This petition is filed by the petitioner/appellant for impleading the proposed party, the father of the respondent/defendant who executed the Mortgage Deed dated 20.02.2012 in favour of the plaintiff for the benefit of respondent/defendant. The grandfather of the respondent/defendant executed Settlement Deed dated 13.03.2008 infavour of respondent/defendant appointing the proposed party as guardian when the respondent/defendant was a minor. Ex.A.1 Mortgage Deed dated 20.02.2012 is executed by father the proposed party infavour of the petitioner/plaintiff for the benefit of respondent/defendant while he was minor. The suit has been dismissed on the ground of non-joinder of necessary parties. Hence, this petition to implead the father of the defendant who executed Ex.A.1 Mortgage Deed infavour of the plaintiff.

3. The 1st respondent/defendant filed counter contending that the suit has been dismissed by the Trial Court on the ground of non compliance of Section 8 of the Hindu Minority and Guardianship Act 1956 and this petition is filed only to drag on the proceedings and if proposed party is impleaded at this stage the suit will be barred by limitation.

4. The proposed party/2nd respondent filed counter contending that, this petition is filed by the plaintiff to fill up the lacuna in his case and it would cause serious prejudice by giving unfair advantage to the petitioner and further contended that since the suit is for recovery of money, and if the proposed party is impleaded the suit will be barred by limitation and prayed to dismiss the petition with cost.

Heard both sides.

5. **Point for consideration:**

1. Whether the petition can be allowed ?

Point No.1.

6. Suit for recovery of money based on Mortgage of Property. The undisputed facts are narrated in this paragraph. Originally the Plaint Schedule Property belonged to one Ramasamy Thevar, the grand father of the defendant. The grandfather executed Ex.B.1 registered Settlement Deed dated 13.03.2008 in favour of the defendant, who was a Minor aged about 8 years appointing his father Perumal as Guardian. The suit has been filed by the plaintiff after the defendant has become Major.

7. The case of the petitioner/appellant is that, the father of the defendant Perumal executed Ex.A.1 registered Mortgage Deed dated 20.02.2012 in respect of the Plaint Schedule Property by borrowing Rs.2,50,000/- from the plaintiff agreeing to pay interest @ Rs.2 for every Rs.100/-. The suit is filed for recovery of the said mortgage amount with interest from the defendant and the plaintiff has prayed for passing a preliminary decree over the Plaint Schedule Property for realization of the debt amount.

8. Admittedly Ex.A.1 Mortgage Deed has been executed by the father of the defendant when the defendant was a Minor. In Ex.B.2 Transfer Certificate, the date of birth of the defendant is mentioned as 01.02.2000. The suit has been dismissed by the trial court primarily of the ground that the permission of the court was not obtained by the father of the defendant as mandated U/s 8(2) of Hindu Minority and Guardianship Act 1956.

9. The plaintiff has filed this petition seeking to implead the father of the defendant viz., Perumal in the suit on the ground that the trial court has stated in the Judgment that the father of the defendant was not added as a party and hence this petition is filed to establish that the father obtained loan from the plaintiff for the benefit of the Minor.

10. Judgment passed by the Trial Court perused. In Para No.9 of the Judgment the trial court has recorded a finding as follows:

“மேலும், தாவா சொத்தின் நிலை குறித்துப் பார்க்கும்போது இந்து கூட்டுக் குடும்ப சொத்தாக இல்லை. இந்து கூட்டுக் குடும்ப சொத்தை நிர்வாகம் செய்து வரும் கர்த்தா இந்து கூட்டுக் குடும்பத்தின் நலனுக்காக அதனை உரிமை மாற்றம் செய்யக்கூடிய அனைத்து உரிமைகளையும் பெற்றுள்ளார். ஆனால், இவ்வழக்கை பொறுத்தவரை பிரதிவாதியின் தந்தையான பெருமாள் கர்த்தாவாக செயல்படவில்லை. இளவர் ஒருவருக்கு காப்பாளராக மட்டுமே செயல்பட்டுள்ளார் என்பது தெளிவாக தெரிய வருகிறது. ஒருவேளை பிரதிவாதியின் தந்தையான பெருமாள் கர்த்தா என்கிற நிலையில் தாவா ஈடு கடன் பெற்றிருந்தால் பிரதிவாதியின் தந்தையான பெருமானை இவ்வழக்கில் வாதி கட்சியாக சேர்த்திருக்க வேண்டும்.”

Further, in Para No.12 the trial court has recorded a finding as follows:

“தாவா சொத்திற்கு காப்பாளராக மட்டுமே செயல்பட உரிமை வழங்கப்பட்ட பிரதிவாதியின் தந்தையான பெருமானுக்கு தாவா சொத்தின் மீது 20.02.2012 ஆம் தேதியிட்ட வா.சா.ஆ.1 ஈடு கடன் ஆவணம் எழுதிக் கொடுக்க சட்ட படி எவ்வித உரிமையும் இல்லை.”

Though the trial court has made an observation to the effect that the father of the defendant viz., Perumal was not added as a party the entire reading of the Judgment would reveal that he was not a proper and necessary party to arrive at a just decision in this case.

11. As rightly recorded by the trial court, father Perumal was not a Kartha of the family, and he was just a guardian to the defendant. Therefore, this court is of the considered view that the proposed party, the father of the defendant viz., Perumal was not a proper and necessary party to arrive at a just decision in this case. Hence, this court is not inclined to allow this petition.

12. In the result the petition is dismissed. No cost.

Dictated by me, directly by Steno-Typist into computer, corrected and pronounced by me in the open Court, this the 25th day of October 2024.

(Sd./- S.Sameena)
Additional District and Sessions Judge,
Periyakulam.

Petitioner/appellant side Witness and Nil.
Documents:

Respondent/respondent side Witness and Nil.
Documents:

(Sd./- S.Sameena)
Additional District and Sessions Judge,
Periyakulam.