

IN THE COURT OF DISTRICT MUNSIF, BODINAYAKANUR.

PRESENT: Thiru.A.Mohamed Hashim, B.A., B.L.,
District Munsif,
Bodinayakanur.

Thursday, the 14th day of August 2025

IA.No.2/2025
in
OS No.95/2023

1.A.Sankarappan

2. A.Murugan

.... Petitioners / Plaintiffs

Vs

1. Suruliraj

2. Rajagopal

3. Rukmani

4. Guruvammal

5. Ayyammal

6. Pappa @ Ayyammal

7. Ayyanan

8. Selvi

.... 1 to 8 Respondents / 1 to 8 Defendants

9. Krishnakumar

.... 9th Respondent / 9th Proposed Defendant

This petition came up on 06.08.2025 in the presence of
Mr.A.Easuthiruselvan, Learned Advocate for the Petitioners, and presence of

Mr.P.Rajamohan, Learned Advocate for the 1st and 9th Respondents, presence of Mr.M.Rajkumar, Learned Advocate for the 2nd Respondent, and 3rd to 8th Respondents were set exparte, upon perusing the case records and having stood over for consideration till this day, this court hereby delivered the following...

ORDER

1. The plaintiffs in the main suit has filed this petition has been filed Under Order 1 Rule 10(2) CPC to implead the 9th respondent herein as a defendant to the suit.

2. The petitioners are the plaintiffs in the main suit. The parties are addressed as per their litigative status in the main suit.

3. The main suit is by the plaintiffs on 27-03-2023 for partition and permanent injunction restraining the defendant from creating any further encumbrances in the suit property. The main suit is now posted for trial. Now the plaintiffs have filed this petition stating that as per partition deed dated 29-04-2024 executed between the family members of 1st defendant, a portion of the 2nd item of the suit property is allotted to the 9th respondent. Hence the 9th respondent is a necessary party to the suit.

4. The 2nd defendant has endorsed “No Counter” to this petition. The 1st defendant has filed controverting all the averments in the petition and the same is adopted by the 9th respondent. It is their contention that plaintiffs are well

aware of the partition deed dated 29-04-2024 at the time its execution itself and the plaintiffs have filed this petition to drag on the suit as the suit is now posted for trial.

5. Heard either side. Perused materials available on record. Now the point for determination is whether the 9th respondent is necessary party to the suit or not?.

6.To determine whether a party is a necessary party to the suit, two essential tests must be satisfied. That are there must be a right to some relief against such party in respect of the controversies involved in the proceedings, and no effective decree can be passed in the absence of such party.

7. Admittedly, a portion of the 2nd item of the suit property is allotted to the 9th respondent and therefore the 9th respondent is a pendent lite transferee. The Hon'ble Apex Court in **H.Anjappa & Others Vs A.Prabhakar & Other [2025 Livelaw (SC) 123]** has set out the following guidelines with respect to impleading the transferee pendent lite:-

“58. From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:

i. First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10

CPC or under Order XXII Rule 10 CPC, as a general principle;

ii. Secondly, a transferee pendente lite is not entitled to come on record as a matter of right;

iii. Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party;

iv. Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;

v. Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;

vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;

vii. Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,

viii. Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.”

8. Upon consideration of the present facts of the case in light of the aforementioned judgment, this Court is of the view that the plaintiffs, being the dominus litis of the suit, have the right to choose the parties against whom they wish to contest. Moreover, the 9th respondent, being the successor-in-interest of 1st defendant in a portion of 2nd item of property, would have his rights affected if this Court were to pass orders against 1st defendant and it might result in multiplicity of litigation. The 9th respondent is therefore a necessary party to the suit. Hence, this Court is inclined to hold that the 9th respondent is a necessary party to the suit and ought to be impleaded as a defendant therein.

In the result, this petition is allowed.

Dictated to the typist, transcribed by her corrected, and pronounced by me in open Court, on the 14th day of August 2025.

District Munsif,
Bodinayakanur.