

IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE,  
TIRUPPUR.

Present :- Thiru. K.R.Kannan,B.A., B.L.,  
(J.O.Code.TN1220)  
Additional Subordinate Judge,  
Tiruppur.

Tuesday the 12<sup>th</sup> day of November 2024

I.A. No.1 / 2023

in

O.S.No. 396 / 2015

1.K. Manivannan  
2. Usha

.....Petitioners/Plaintiffs

//Vs//

1. R. Maheswaran  
2. P. Shanmugam  
3. R. Muruganandam  
4. P. Nagavijay

.....Respondents/Defendants

5. V.P.Velmurugan

.....Proposed Party/5th Respondent

This Petition came before me on 07.11.2024 for the final hearing in the presence of Thiru.P.R.Rameshbabu,B.A.,B.L., Advocate for the Petitioners/Plaintiffs. Respondents 1 to 3 were set exparte in the suit. Thiru.R.Sriram,B.G.L.,L.L.B., Advocate for 4<sup>th</sup> respondent failed to file counter. Thiru.R.Sathishkumar,B.A.,B.L., Advocate appeared for the Proposed Party/5<sup>th</sup> Respondent and upon hearing both side arguments, and on perusal of available records, this court delivered the following.

**ORDER**

This petitioners, who are the Plaintiffs filed this petition under Order I Rule 10(2) and Sec 151 of CPC to implead the Proposed Party as a necessary party as per the reasons pleaded in the affidavit filed along with this petition with cost.

**2. The averments stated in the affidavit filed by the petitioners are as follows:**

- 2.1) The Petitioners are herein and the Plaintiffs in the above suit.
- 2.2) The petitioners have filed the above suit seeking relief of Declaration to declare that petitioners are the absolute owners of the suit property and consequently restraining the respondents 1 to 4 from in any manner interfering with the peaceful possession and enjoyment of the said property and to declare that the Sale Deed dated 23.07.2002 executed by the 2<sup>nd</sup> defendant in favour of the 3<sup>rd</sup> defendant as invalid, nonest and not binding on the 1<sup>st</sup> plaintiff and to declare the Sale Deed dated 23.07.2002 executed for the 2<sup>nd</sup> item of the property in favour of the 3<sup>rd</sup> respondent/ 3<sup>rd</sup> defendant by the 2<sup>nd</sup> respondent/2<sup>nd</sup> defendant as invalid and nonest and not binding on the 1<sup>st</sup> plaintiff and to declare the Sale Deed dated 28.09.2006 executed in favour of the 4<sup>th</sup> respondent / 4<sup>th</sup> defendant by the 3<sup>rd</sup> respondent / 3<sup>rd</sup> defendant as invalid, nonest and to declare the Sale Deed dated 28.09.2006 executed in favour of the 4<sup>th</sup> defendant/ 4<sup>th</sup> respondent by the 3<sup>rd</sup> respondent/ 3<sup>rd</sup> defendant with regard to the 2<sup>nd</sup> item of the property as invalid, nonest and not binding on us.
- 2.3) The first item of the suit property was purchased by the 1<sup>st</sup> petitioner/ 1<sup>st</sup> plaintiff. The 2<sup>nd</sup> item of the property has been purchased by 2<sup>nd</sup> petitioner/ 2<sup>nd</sup> plaintiff. The both petitioners are enjoying the suit property as absolute owners thereof. The 1<sup>st</sup> respondent herein had chosen to obtain a Power of Attorney Deed dated 24.05.2001, Registered as Document No.246 of 2001 on the file of the Thottipalayam Sub Registrar Office, Tirupur, for the first item of property and the Power of Attorney Deed dated 24.05.2001, Registered as Document No.247 of 2001, on the file of the Sub Registrar, Thottipalayam Sub Registrar Office, Tirupur for the 2<sup>nd</sup> item of property with an assurance of obtaining loan amount for development of the property.

2.5) The 1<sup>st</sup> respondent/ 1<sup>st</sup> defendant in clandestine manner to usurp and abduct has obtained Power of Attorney in the name of the 2<sup>nd</sup> respondent and created Sale Deeds in favour of the 3<sup>rd</sup> respondent.

2.6) The Sale Deeds executed in favour of 3<sup>rd</sup> and 4<sup>th</sup> respondents are being impugned in the above suit. During the pendency of the above suit, the 4<sup>th</sup> respondent/4<sup>th</sup> defendant has fraudulently created a Sale Deed dated 30.06.2017, with regard to the first and second item properties. The said Sale Deed created and brought into existence in favour of the 5<sup>th</sup> respondent/Proposed party as a fraudulent document. The proposed party is a proper and necessary party for effective adjudication of the dispute and asked this Court to allow the petition with cost.

**3. The objections raised by the respondent by way of counter statement is as follows :-**

3.1) The Petition is false, frivolous, vexatious, and unsustainable both in law and on facts. Except for those averments that are expressly admitted herein, the Petitioner is put to the strict proof of the other contrary averments contained in the Affidavit.

3.2) This Respondent is not concerned with the suit filed by the Petitioners against the Respondent 1 to 4. This Respondent submits that the sale deeds dated 23.07.2002 in favour of the 3<sup>rd</sup> Defendant mentioned in the para 2 of the affidavit are true and valid documents.

3.3) This Respondent admits that the suit property belonged to the Petitioners under sale dated 18.11.1999.

3.4) This Respondent denies averments contained para 4 of the affidavit. This respondent submit that the petitioners have executed the two power of attorney deeds in favour of the 2<sup>nd</sup> respondent only with the intention to

empower him to deal with the property. It is utter false to state that the above documents were obtained from the petitioners with an assurance of obtaining loan amount for development of the property.

3.5) This respondent denies the averments contained in para 5 of the affidavit. The sale deed in favour of the 3<sup>rd</sup> respondent is true and valid documents.

3.6) This Respondent denies the averments contained in para 6 of the affidavit. This respondent submit that no suit was pending on the date of the sale deed dated 30.06.2017.

3.7) This Respondent submit that present suit was dismissed for default on 29.06.2016 and the petitioners have filed the application to restore the suit with an inordinate delay of 1458 days. The said application was filed only 23.11.2020. The Petitioners were fully aware of the sale transactions in favour of the 3<sup>rd</sup> respondent through their power agent. The petitioners were also not in a possession of the properties. The 3<sup>rd</sup> respondent had inturn sold the suit property to the 4<sup>th</sup> respondent. The above sale deeds are true and valid documents.

3.8) This Respondent submit that he is a bonafide purchaser of the suit property form the 4<sup>th</sup> respondent by virtue of the sale deed dated 30.06.2017 for a valid consideration for Rs.21.00 lakh and he has been possession of the properties. The petitioners were also fully aware of the sale deed in favour of this respondent. In any event on the date of the purchase of this suit property by this respondent, no suit was pending and this sale deed cannot be considered to be executed during the pendency of the suit.

3.9) The petitioners have filed the suit in the ulterior motive. The suit is barred by limitation. There is no merit, truth, or substance in the Affidavit. Hence, the petition may be dismissed with costs and thus render justice.

4. Both parties have not examined any evidence and no documents were marked on both side.

**5. Now the Point for consideration is whether this petition has to be allowed or not ?**

5.1) The petitioner's herein are the Plaintiffs in the suit. The respondents 1 to 4 are the Defendants 1 to 4 in the suit. The 5<sup>th</sup> respondent is the proposed party in this application.

5.2) The petitioners filed the suit in the year 2007 and asked a relief to declare they are the absolute owners of the suit property consequently asked a permanent injunction not to disturb the peaceful possession and enjoyment of the suit property. The plaintiff also asked a relief to declare the sale deed dated 23.07.2002 infavour of defendant 3 as null and void.

5.3) On perusal of records, the suit was filed before Hon'ble Principal District Judge Court, on 19.11.2007. After framing of issues when the suit is posted for PW.1 cross on the point of jurisdiction the suit was transferred to this Court and taken on file as O.S.No.396/2015. On 23.09.2016 due to the non appearance of the parties, the suit was left to dismissed for default. Then, as per the orders passed by this Court in IA.No.2/2023 on 20.06.2023, the suit was restored and again taken on file. At this stage, the plaintiff filed the present application to implead the proposed party as a necessary party to the suit because he purchased the suit property from the 4<sup>th</sup> defendant on 30.06.2017.

5.4) In the suit respondents 1 to 3 were set exparte and the 4<sup>th</sup> respondent failed to file the counter in this application. The proposed party by way of counter objected the petition on the ground that the date of purchase of the suit property, the suit was not in progress and the same was left to dismiss for default. The proposed party further submitted the petitioner very well

know the proposed party had purchased the suit property for a valid consideration and the proposed party is in possession of the same. On this grounds, the proposed party strongly opposed this petition and asked this Court to dismiss the petition with cost.

5.5) On perusal of record's this court came to know the suit was left to dismiss for default on 23.09.2016. As, per the averments in the affidavit the proposed party purchased the suit property from the 4<sup>th</sup> respondent as per the sale deed dated 30.06.2017. It is true on the date of purchase of the suit property by the proposed party the suit is not pending. The petitioners filed the application to restore the suit in the year 2023. On merits the said application was allowed by this Court. Then the suit was restored, and again taken on file by this Court on 20.06.2013.

5.6) So, in this circumstances, whether the proposed party is a bonafide purchaser and the proposed party is not a lis pendent purchaser cannot be decided by way of this petition. For those aspects, this Court have to consider the execution of documents and evidence. So, considering the same in the interest of justice and in order to avoid further litigation's and to avoid multiplicity of proceedings this Court hereby comes to a conclusion the proposed party is a necessary and proper party to the suit to answer the issues involved in the suit. Hence, this petition is allowed. The proposed party is permitted to raise all the objections pleaded in the counter by way of written statement and same will be considered at the time of trial.

In the result, this petition is allowed. There is no order for cost. The proposed party is permitted to raise all the objections pleaded in the counter by way of written statement and the same will be considered at the time of trial.

Dictated to the Steno-Typist, typed by him directly into the computer, corrected, printed out and pronounced by me in the Open Court on this the 12<sup>th</sup> day of November 2024.

Additional Subordinate Judge,  
Tiruppur.

**I. Petitioner and Respondent's side Evidences and Documents : Nil**

Additional Subordinate Judge,  
Tiruppur.

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Fair / Draft order in  
I.A.No. 1/2023  
O.S. No. 396/2015  
Date : 12.11.2024  
ASJ Court, Tiruppur  
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