

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.

Thursday the 12th day of December 2024

I.A. No.4 / 2024

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

.....5th Respondent/Proposed Party

This Petition came before me on 10.12.2024 for the final hearing in the presence of Thiru.P.R.Rameshbabu,B.A.,B.L., Advocate appeared for the Petitioners/Plaintiffs. Respondents 1 to 3 were set exparte in the suit. Thiru.R.Sriram,B.G.L.,L.L.B., Advocate appeared for 4th respondent failed to file counter in this petition. Thiru.R.Sathishkumar, B.A.,B.L., Advocate appeared for the 5th Respondent and upon hearing both side arguments, and on perusal of available records, this court delivered the following.

ORDER

The petitioners, who are the Plaintiffs filed this petition under Order VI Rule 17 and Sec 151 of CPC to amend the plaint 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 infavour of defendants 2 to 4 as null and void.

2.3) The first item of the suit property was purchased by the 1st petitioner/ 1st plaintiff. The 2nd item of the property has been purchased by 2nd petitioner/ 2nd plaintiff. The both petitioners are enjoying the suit property as absolute owners thereof. The 1st respondent herein had chosen to obtain a Power of Attorney Deed dated 24.05.2001. The 1st respondent/ 1st defendant in clandestine manner to usurp and abduct has obtained Power of Attorney in the name of the 2nd respondent and created Sale Deeds in favour of the 3rd respondent.

2.4) The Sale Deeds executed in favour of 3rd and 4th respondents are being impugned in the above suit. During the pendency of the above suit, the 4th respondent/4th 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 5th respondent as a fraudulent document. The said sale deed is hit by doctrine of lispendence. Already the petitioner filed IA.No 2/2023 to add the 5th respondent as a necessary party to the suit was allowed by this court. Hence, Inorder to add ther 5th respondent as a defendant in the suit the plaintiffs filed the suit to amend the plaint as stated in the affidavit.

3. The objections raised by the 5th 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 3rd Defendant mentioned in the para 2 of the affidavit are true and valid documents. This Respondent admits that the suit property belonged to the Petitioners under sale dated 18.11.1999.

3.3) 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 2nd 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. This respondent denies the averments contained in para 4,5 and 6 of the affidavit. The sale deed in favour of the 3rd respondent is true and valid documents. This respondent submit that no suit was pending on the date of the sale deed dated 30.06.2017.

3.4) 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 3rd respondent through their power agent. The petitioners were also not in a possession of the properties. The 3rd respondent had inturn sold the suit property to the 4th respondent. The above sale deeds are true and valid documents.

3.5) This Respondent submit that he is a bonafide purchaser of the suit property form the 4th 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. This respondents denies the avernments contained in para 3 of the details of amendments in the petition and would file the detailed written statement. Hence, the petition may be dismissed with costs.

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 5th respondent is the proposed 5th defendant in the suit.

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 an application to implead the proposed party as a necessary party to the suit because he purchased the suit

property from the 4th defendant on 30.06.2017 and the same was allowed on 13.11.2024.

5.4) In the suit, respondents 1 to 3 were set exparte and the 4th respondent failed to file the counter in this application. The 5th respondent opposed this application and he purchased the suit property when the suit was left to dismiss for default and he is a bonafide purchaser of the suit property. 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 4th 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. Then the subsequent purchaser was added as a proper and necessary party to the suit as per the orders passed in I.A.No.1/2024.

5.5) So, as per the discussions made above it reveals, the proposed amendments are only consequential amendments. Already this court has permitted 5th respondent to raise all his objections pleaded in the counter in I.A.No.1/2024 by way of written statement. Hence, in the Interest of Justice, this petition is allowed without cost.

In the result, this petition is allowed. There is no order for cost.

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 **12th day of December 2024.**

Additional Subordinate Judge,
Tiruppur.

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

Additional Subordinate Judge,
Tiruppur.