

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.

Monday the 07th day of July 2025

I.A. No. 5 / 2024

in

O.S.No. 254 / 2023

Vijayasamundeeshwari

....Petitioner/Plaintiff

//Vs//

1. Devikarani

2. Ravichandran

3. Chandrasekar

4. Abraham Lincoln

.... 1-4 Respondents/Defendants

//Vs//

5. Samboorna Fathima Mary

.... 5th Respondent / Proposed Party

This Petition came before me on 07.07.2025 for the final hearing in the presence of Thiru.S.Amarjith,B.A.,L.L.B., Advocate for the Petitioner/Plaintiff. Though the respondent's 3 and 4 appeared through counsel they failed to file counter. After, the receiving the notice Respondent no.1, 2 and 5 failed to appear before this Court and so they were set exparte. Upon hearing side petitioner side arguments, and on perusal of available records, this court delivered the following.

//ORDER//

The petitioner, who is the plaintiff filed this petition under Order I Rule 10(2) and section 151 of CPC to implead the 5th respondent as 5th defendant in the suit as prayed for with cost.

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

2.1) The petitioner in the above petition and the plaintiff in the suit and the petitioner know all the facts of the case.

2.2) The above suit was filed for the relief of declaration of the Sale Deed dated 11.06.2010 (Doc. No. 2652/2010) in the name of the 4th defendant as null and void and does not the bind the share of the plaintiff in the suit property and also for the relief of partition of the suit property and to allot 1/4 share to me against the respondents/defendants.

2.3) Only on perusal of the written statement filed by the 4th respondent/defendant, the petitioner aware that the 4th defendant has executed a Gift Deed dated 13.12.2021 (Doc. No. 5309/2021) in favour of his sister named Samboorna Fathima Mary. It is humbly submitted that the said Gift Deed is also invalid in the eye of law as the 4th defendant does not acquire any valid title with regard to the suit property vide the fraudulently executed Sale Deed of Doc.No. 2652/2010 dated 11.06.2010.

2.4) Though the above Gift Deed of Doc. No. 5309/2021 dated 13.12.2021 is executed unlawfully and fraudulently, the said Samboorna Fathima Mary in whose favour the said Gift Deed has been executed has to be added as a party to this suit for full and final adjudication and asked this Court to allow this petition with cost.

3) Though the respondents 3 and 4 appeared through counsel they have to failed to file counter and the other respondents were set exparte.

4) The petitioner has not examined any evidence and no documents were marked on the side of the petition.

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

5.1) The petitioner here in is the plaintiff in the suit. The respondents 1 to 4 here in are the defendants 1 to 4 in the suit. The 5th respondent in this application is the proposed 5th defendant in the suit. The parties are discussed in this order as pleaded in the plaint.

5.2) The plaintiff filed the suit for the relief of partition and further asked a relief to set aside the sale deed dated 11.06.2010 in favour of the fourth defendant as null and void and will not bind the plaintiffs 1/4 share in the suit property. In the suit the defendants 1 and 2 were set exparte. After, receiving the written statement of defendants no.3 and 4 this Court framed the issues on 13.09.2024. The Court posted the suit for trial on 17.12.2024 as last chance and no further adjournments. At this stage, the present application was filed by the plaintiff to implead the proposed 5th respondent as 5th defendant in the suit.

5.3) As, per the averments stated in the affidavit after perusal of the written statement filed by the 4th defendant the plaintiff came to know the 4th defendant executed a gift settlement deed in favour of 5th respondent on 13.12.2021 relating to the suit property. Already in the suit, the petitioner asked a relief to declare the sale deed executed in favour of the 4th respondent as null and void. Based upon the sale deed in the name of the 4th defendant he executed a gift settlement deed relating to the suit property to the 5th defendant. In the written statement also the 4th defendant took a plea of non joinder of necessary parties.

5.4) So, in this circumstances, in the interest of justice though before filing of the suit itself, the title to the suit property was transferred in the name of the proposed party and already there was a cloud arose to the title of the suit property in the suit. Hence, in order to avoid the multiplicity of proceedings, this Court hereby comes to a conclusion the proposed party is a necessary party to the issues involved in the suit.

In the result, this petition is allowed. No 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 07th day of July 2025.

Additional Subordinate Judge,
Tiruppur.

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

Additional Subordinate Judge,
Tiruppur.