

IN THE COURT OF THE DISTRICT MUNSIF JUDGE, PALLADAM

**Present:- Thiru. V. Kalidasan, B.Com., L.L.M.,
District Munsif, Palladam.**

Friday the 20th day of September 2024

I.A. No.1/2023

in

O.S.No.104/2019

1.Muthuraj ...Petitioner/Proposed 3rd defendant
/Vs/

1. Balamani

2.Srinivasan

3.Govindaraj

4.Preetha ...Respondents /Plaintiffs

5.Karthikeyan

6.Arunraj ...Respondents /Defendants 1 and 2

The petitioners filed this petition Under Order 1 Rule 10(2) r/w Section 151 of CPC to implead the proposed party as 3rd defendant in the suit.

This Petition is coming on 04.09.2024 for final hearing before me in the presence of Thiru.R.Balaji B.A.,B.L., Advocate for the Petitioners and Tmt.R.Kritshnaveni B.A.,B.L., Advocate for the Respondents 1 to 4 and Thiru.S.Kalisamy. B.A.,B.L., Advocate for the Respondents 5 and 6 Upon perusing the Petition, affidavit, counter statement and other connected material papers of record and hearing the arguments of both sides and having stood over till this day for consideration, this court made the following...

ORDER

1. The case of the petitioner is that petitioner is the father of the defendants 1 and 2. The property which is situated near the suit property is belong to petitioners by way of register settlement deed in Doc.No.3768/2006 and patta No.355, 905, 995 and 1067. The petitioner settled the property on 12.09.2018 in favour of defendants 1 and 2 by way of register settlement deed in

Doc.No.10141/2018. The plaintiffs filed their suit for the relief of declaration and permanent injunction against the defendants 1 and 2. Settlement deed dated 12.09.2018 which executed in favour of defendants 1 and 2 was not acted upon. Hence, the petitioner and defendants 1 and 2 had canceled the said settlement deed through the registered cancelation deed dated 28.09.2022 in Doc.No.19412/2022. The petitioner is the owner of the property which is adjacent to the suit property. The respondents 1 to 4 had filed their suit by suppressing the real facts. The petitioner is in the possession of the property which is nearer to the suit property. Hence, he is the necessary party to the above suit. Hence, this petition.

2. The case of the respondents 1 to 4 herein is that the respondents 5 and 6 in their written statement and throughout the proceedings in the suit had admitted that the alleged settlement deed dated 12.09.2018 purported to have been in possession and enjoyment over the same. Hence the allegations made contrary in para 3 of the affidavit are all false and incorrect. The petitioner and the respondents 5 and 6 might have canceled the alleged settlement deed dated 12.09.2018 on 28.09.2022. The alleged cancelation deed dated 28.09.2022 is hit by the principles of lis pendens. It is well settled law that once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancelation even with the consent of the parties. The petitioner ought to have filed a suit for cancellation of the alleged settlement deed dated 12.09.2018 by including all the necessary parties. Hence, the alleged cancellation deed 28.09.2022 void ab-initio, non-est, invalid, illegal not acted upon and unenforceable one under law. The respondents 1 to 4 are the dominus litis, that is, master of the case. They are the persons who have carriage and control of an action. The respondents 1 to 4 vested with the prerogative to choose the remedy, and the forum. The petition is highly belated and motivated one. The petitioner has not approached this Court with clean hands. Hence, he is not entitled to any relief in the petition as prayed for. The petitioner has applied for mutation of

revenue records pertaining the properties covered under the alleged cancellation deed dated 28.09.2022. The respondents 1 to 4 have raised objections not to mutate the petitioner's name in the revenue records. The petitioner has filed the petition with aim to get unlawful enrichment at the expenses of the respondents 1 to 4. Hence, this petition is liable to be dismissed.

3. Points for consideration:

Whether this petition will be allowed or not ?

4. Heard on the sides of Petitioner and respondents 1 to 4. The respondents 5 and 6 endorsed no counter. No oral or documentary evidence is let in by both sides.

5. Answer to the point :

Materials on records perused. It is seen from the records that the suit in O.S. No.104/2019 has been filed for permanent injunction. This petition has been filed to implead the petitioner/proposed party as 3rd defendant in the above suit.

6. The learned counsel for the petitioner that the respondents 1 to 4 filed the above suit against the respondents 5 and 6 for granting permanent injunction. The respondents 5 and 6 are sons of the petitioner herein. The respondents 5 and 6 were owner of the property which situated adjacent to the suit property through the settlement deed dated 12.09.2018 which was executed in favour of them by the petitioner. The said settlement deed was not acted upon. Hence, now the petitioner and respondents 5 and 6 were canceled the settlement deed dated 12.09.2018 by way of registered cancellation deed dated 28.09.2022. Since, at present the petitioner is the adjacent property owner of the suit property he is the necessary party to their above proceedings. On the other hand learned counsel for the respondents 1 to 4 submitted that the alleged cancellation deed dated 28.09.2022 is hit by the principles of lis pendens. Once the title of the property is transferred to the transferee, it cannot be re-convey the same even with the consent of the parties. The petitioner ought to have filed

the suit for cancellation of alleged settlement deed by including the all parties. The respondents 1 to 4 are the master of the suit and they have right to choose the persons against whom they wish to litigate. Hence, the present petition is not maintainable.

7. On considering the both side submissions and on perusing the records the main contention of the respondents 1 to 4 is that they are the master of the suit and they have the right of chose the persons whom they wish to litigate and the petitioner ought to have filed the suit for cancellation of the settlement deed dated 12.09.2018. The cancellation deed dated 28.09.2022 is invalid and illegal. The respondents 1 to 4 have stated in the plaint that the respondents 5 and 6 having the lands in east and west sides of the suit property and they claiming larger extent of the property by getting patta for more extent. The respondents 1 to 4 themselves have admitted that the respondents 5 and 6 having lands in adjacent to the suit property. The petitioner herein claiming that the properties which is adjacent to the suit property are belonged to him and himself only executed the registered settlement deed date 12.09.2018 in favour of the respondents 5 and 6. The said settlement deed also canceled by the petitioner and the respondents 5 and 6 through the cancellation deed dated 28.09.2022. As per the version of the petitioner herein, he is the owner of the property which is situated neared to the suit property.

8. The allegations of the respondents 5 and 6 are not owners of the adjacent property of the suit property and the petitioner alone is the owner of the suit property and the cancellation of the settlement deed dated 12.09.2018 is not valid in the eye of law, can not be decided in the present petition. Mere transferring the right of the property alone will not hit by doctrine of lis pendence. Further, it is admitted by the respondents 1 to 4 that the conveyed and re-conveyed property is not the suit property and it is only a adjacent property of the suit property. Allowing this petition will not change the nature and cause of action of the suit and will not cause any prejudice to the respondents 1 to 4.

Hence, in order to avoid multiplicity of proceedings, this Court is inclined to allow this petition.

In the result, this petition is allowed. No costs.

Dictated to Steno - Typist, and typed directly in computer and corrected & pronounced by me in open Court, on this 20th day of September 2024

**District Munsif,
Palladam.**