

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

**Present :Tmt. A. Malarvizhi, M.L.,
II Additional District & Sessions Judge,
Thanjavur.**

Monday the 13th day of December 2021
(Thiruvalluvar Aandu 2052- Karthigai Matham 27th day)

IA No.1/2020 in O. S. No.63/2017

M. Thiyagarajan

.....**Petitioner/Plaintiff**

/Vs/

- (1) M. Gunasekaran
- (2) Kanagavalli
- (3) Ramya
- (4) Minor. Swedha (aged14 years)
- (5) Minor. Suruthi (aged 10 years)
- (6) Minor. Shanmugapriyan (aged 9 years)
the minor defendants 4 to 6 are represented by their mother
guardian 3rd defendant.
- (7) Kalarani
- (8) Karthik
- (9) Karthika
- (10) M.Kumar
- (11) Radha alias Vasantha
- (12) M.Venkatachalam
- (13) Vijayalakshmi
- (14) Sachin Kumar

.....**Respondents/Defendants.**

- (15) V.Amuthavalli
- (16) Vasanthakokilam@ Vasantha
- (17) Sridharan
- (18) Sharmila
- (19) Jayabalan
- (20) N.R.Karunakaran
- (21) K.Narmatha
- (22) Lazer
- (23) J. Murugan
- (24) G.Madhumitha
- (25) V.Govindaraj
- (26) V.K.Rengaraj

.....**Respondents/Proposed parties**

This petition having come up for final hearing before me on 6.12.2021 in the presence of Thiru. **P. Lenin**, Advocate for the Petitioner/Plaintiff and of Thiru. **S. Jeyachandran**, Advocate for the 1st to 6th Respondents and R7 to R26 were called absent and set exparte and upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

ORDER

(1) This petition filed by the petitioner u/o. 1 R.10 of CPC. to pass an order to implead the persons mentioned in this petition as the defendants 24 to 35 in the original suit.

(2) **The Gist of the affidavit filed by the petitioner along with the petition can be stated as follows:**

The Petitioner is the plaintiff in the original suit. The petitioner/plaintiff file the suit for partition of his 1/5th shares in the suit properties as against the respondents/defendants. The petitioner came to know that the 10th respondent/10th defendant has dealt with their joint family properties in the name of respondents 15 to 26. They are the necessary parties to the present suit. The 15th respondent is the sister of the petitioner. Some of their family properties were purchased in the name of 15th respondent's husband Vadivelu as Benami who subsequently died leaving behind his wife the 15th respondent. The 16th respondent is the 2nd wife of 10th respondent/10th

defendant. The 17th respondent is son-in-law of the 10th respondent/10th defendant. The 18th respondent is the daughter of the 10th respondent/10th defendant born through the 16th respondent. Out of their joint family money and effort they have purchased several properties from the respective owners, however they did not obtain the regular registered sale deed. But they used to obtain the registered General Power deeds from the respective owners however they subsequently created the sale deed as per their wish by utilizing the above said General power deeds. In the above said manner the 10th respondent/10th defendant has obtained General power deed in the name of his brother -in-law for their joint family purchase of the properties. Subsequently, the 10th respondent/10th defendant has created several documents relating to the joint family properties by utilizing the General power deed in the name of his brother-in-law in favour of the respondents 16 to 18. In the same manner the 10th respondent/10th defendant has sold petitioner's joint family valuable properties by utilizing the above said general power deed in favour of the respondents 19 to 24. Out of their joint family money, they had run a Finance Company in the name of Puppy Finance at Thanjavur. The 25th respondent is the manager of the above said Finance company and he is the benami of the 10th respondent/10th defendant and their finance. They have obtained several mortgage deeds in the name of the 25th respondent. The 26th respondent is one of our debtor of our finance. He has borrowed money from our joint family finance and he has executed mortgage

deed for his borrowal in the name of 25th respondent. Respondents 15 to 26/ proposed parties are necessary parties to the present suit. They have to be impleaded as the defendants in the suit. In the circumstances it becomes very necessary to implead the persons as detailed in the enclosed petition as the defendants 24 to 35. Otherwise, the petitioner will be put to irreparable loss and hardship. No prejudice will be caused to the other side. Hence, the petitioner filed this petition to implead the proposed parties as the defendants 24 to 35 in the original suit.

The Gist of the Counter filed by the 1st Respondent/1st defendant and adopted by the Respondents 2 to 6/Defendants 2 to 6.

(3) The petition is not maintainable either in law and on facts. The allegation that out of the joint family money they had run a Finance company in the name of Puppy Finance at Thanjavur is not true. It was the independent business of the 10th respondent. All the earnings on his own. He had purchased several properties out of his earnings. The petitioner cannot claim any right over the properties. Out of the joint family funds, they have purchased several properties from the respective owners and did not obtain the register sale deed. But used to obtain the general power deeds. In the above said manner the 10th respondent has obtained general power deed in the name of his brother-in-law. Subsequently, the 10th respondent has created several documents by utilizing the general power deed in name

of his brother-in-law in favour of the respondents 16 to 18 is not true. In the same manner he sold the joint family valuable properties by utilizing the above said general power deed in favour of the respondents 19 to 24 is also false. Similarly, they used to obtain the documents like mortgage deed from the business of the finance company for security in the name of 25th respondent who was the manager of the finance company is not true. In fact, due to the efforts and toil of the 10th respondent, the entire family including the petitioner right, gain and shine in a single generation. However, an oral petition was made among the family members and properties were separated to each of the allottees and they received and engaged the same. As demanded by the petitioner it was reduced into writing. The proposed persons are not sharers. They have now any interest over the properties. The petitioner used to file a series of vexatious application to drag on the proceedings. Hence, this petition has to be dismissed with costs.

(4) Points for consideration

Whether this petition has to be allowed?

(5) Points

Both side arguments heard. Records perused. The petitioner/plaintiff filed this petition u/o. 1 R.10 of CPC. to implead R15 to R26 as defendants 24 to 35. The petitioner's counsel argued that The petitioner came to know that the 10th respondent/10th defendant has dealt with their joint family properties in favour of respondents 15 to 26. They are the necessary parties

to the present suit. Out of their joint family money and effort they have purchased several properties from the respective owners, however they did not obtain the regular registered sale deed. But they used to obtain the registered General Power deeds from the respective owners however they subsequently created the sale deed as per their wish by utilizing the above said General power deeds. In the above said manner the 10th respondent/10th defendant has obtained General power deed in the name of his brother -in-law for their joint family purchase of the properties. Subsequently, the 10th respondent/10th defendant has created several documents relating to the joint family properties by utilizing the General power deed in the name of his brother-in-law in favour of the respondents 16 to 18. In the same manner the 10th respondent/10th defendant has sold petitioner's joint family valuable properties by utilizing the above said general power deed in favour of the respondents 19 to 24. Out of the petitioner's joint family money, they had run a Finance Company in the name of Puppy Finance at Thanjavur. The 25th respondent is the manager of the above said Finance company and he is the benami of the 10th respondent/10th defendant and their finance. They have obtained several mortgage deeds in the name of the 25th respondent. The 26th respondent is one of our debtor of our finance. He has borrowed money from our joint family finance and he has executed mortgage deed for his borrowal in the name of 25th respondent. Respondents 15 to 26/ proposed parties are necessary parties to the present

suit. They have to be impleaded as the defendants 24 to 35 in the suit.

(6) All the proposed parties were set exparte since they failed to appear even after service of notice in this petition.

(7) The counsel for the respondents 1 to 6 argued that it is not proved that out of joint family money, the petitioner's family had run a finance company in the name of Puppy Finance at Thanjavur. It was independent finance of 10th respondent. All the earnings are his own. He had purchased several properties out of his earnings. The petitioner cannot claim any right over the parties. All the averments in the affidavit are false. An oral partition was made among the family members and properties were separated to each and they received and engaged as demanded by the petitioner it was reduced into writing also. The proposed parties are not sharers they have no interest over the properties. The petitioner used to file a series of vexatious applications to drag on the proceedings. So, the petition may be dismissed.

(8) Considering both side documents and records, it is found that as per Section 3 and 4 of the Benami Transaction Act Benami Transactions are prohibited and the person who claims himself as real owner cannot file any suit or proceedings to re-transfer or recover the property against the benamidhar. The contentions of the petitioner that the execution of power deed instead of regular registered sale deed in favour of the brother-in-law of

the 10th respondent by property owners are benami transaction for the benefit of the petitioner's joint family is not acceptable by court of law. So, the alleged sale in favour of the respondents 16 to 18 by the brother-in-law of 10th respondent and sale by 10th respondent by using the power deed in favour of the respondents 19 to 24 are cannot be questioned by this petitioner. The petitioner contended that the 25th respondent is a manager of their finance company and he is the benami of the 10th respondent and their finance company, the 26th respondent is one of the debtor of the finance company, he has borrowed money from the finance and he executed a mortgage deed in the name of the 25th respondent. Since the benami transaction are prohibited, the petitioner cannot claim any right in respect of the property or transaction made in the name of Benami. Therefore, this court finds there is no valid reason to implead the R15 to 26 as D24 to D35 and this petition is liable to be dismissed. The point is answered accordingly.

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

Dictated to the steno-typist, transcribed by her in computer, corrected and pronounced by me in open court, this the 13th **day of December 2021.**

(Sd) A. Malarvizhi

**II Additional District & Sessions Judge,
Thanjavur.**

Petitioner and Respondents side

Exhibits and Witnesses : Nil

(Sd) A. Malarvizhi

**II Additional District & Sessions Judge,
Thanjavur.**

Order

I.A.No. 1/2020 in

O.S.NO. 63/2017

Dated: 13.12.2021