

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

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

Thursday the 3rd day of August 2023
(Thiruvalluvar Aandu 2054- Aadi Matham 18th day)

I.A. No. 5/2023 in O.S. No. 63/2017

Thiyagarajan

.....Petitioner/plaintiff

/Vs/

- (1) M. Gunasekaran
- (2) Kanagavalli
- (3) Ramya
- (4) Minor Swedha (aged 14 years)
- (5) Minor Suruthi (aged 10 years)
- (6) Minor Shaanbmugarpiyan (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 @ Vasantha
- (12) M. Venkatachalam (died)
- (13) Vijayalakshmi
- (14) Sachin Kumar
- (15) R. Ashok kumar
- (16) R.K. Kannan

(17) Vinoth kumar

(18) Mariyappan

(19) Abdul Samathu

(20) M.Abdul Hakim

(21) Abdul Razak

(22) N. Ramesh Kumar

(23) L.Sivaperumal

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

(24) Natesaprabu

(25) Selvaraj

.....**Respondent/proposed parties**

This petition having come up for final hearing before me on **14.7.2023** in the presence of Thiru.**P. Lenin**, Advocate for the Petitioner/Plaintiff and of **Thiru.S. Jeyachandran**, Advocate for the respondents 1 to 11, 13, 14 /defendants 1 to 11, 13, 14 and of Thiru. **R. Shanmugasundaram**, Advocate for respondents 16, 17/defendants 16, 17 and of Thiru. **M.Murali**, Advocate for the respondent 18/defendant 18 and of the 12th respondent died and the respondents 15, 19, 20, 21, 22 remained exparte and the respondent 24 remained exparte and of Thiru. **A. Nalladurai**, Advocate for the respondent 25 upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stoodover for consideration till this date, this court delivered the following

ORDER

(1) The petitioner/plaintiff filed this petition under order 1 rule 10 of C.P.C to implead the proposed parties as defendants 24 and 25 in the suit.

(2) Heard both sides. Records perused. The petitioner counsel argued that, the petitioner filed this suit for partition. The Vasanthakokilam @ Vasantha who is the wife of 10th defendant sold the 52nd item of the suit

property based upon the created records to one Natesa Prabu through a registered sale deed dated 10.9.2022. The above said purchaser is not a bonafide purchaser for due consideration. The above said sale is null and void and not binding on him. However the purchaser is the necessary party for the proper adjudication of this suit and he has to be impleaded in the present suit as the defendant. In the same manner the 52nd item of the suit property is in tenancy occupation of one Selvaraj. Hence he is also a necessary party and he has to be impleaded in the present suit as the defendant. So, the petition may be allowed.

(3) The 1st respondent's counsel argued that the true intention of the petitioner is not to conduct the case but keep pending until his unlawful demands are fulfilled. In order to keep the respondent under tender-hood to attain his objects the court process has been used. It is clear abuse of process of court. One Vasanthakokilam, who has sought to be impleaded as 25th defendant made some transaction with the proposed parties is baseless. When the petitioner's application to implead Vasanthakokilam itself dismissed the said alleged transaction made by Vasanthakokilam and the persons connected with the transactions are not necessary and proper parties. The allegation that the proposed party Selvaraj is the tenant of the property is also not true. The tenant is not a necessary party in the suit for partition. So, this petition is to be dismissed.

(4) The 25th respondent's counsel argued that this petition is not maintainable under law and on facts and has to be dismissed. It is nowhere stated in affidavit the reasons for impleading this proposed party/25th respondent. This respondent/proposed party neither the purchaser of the property nor claiming any right over the property. But it is falsely stated in the I.A that this respondent is in a colourable right of tenancy. Infact this respondent had been and is in possession of the said property from the year 2005 under some arrangement with the 10th respondent/defendant herein. There were no quid-pro-quo between the plaintiff or the 10th defendant regarding tenancy. Further more the 24th respondent/proposed party had purchased the property by means of registered sale deed from the erstwhile owner of the property. The 24th respondent/proposed party is non other than the son-in-law of this respondent. Thereafter the said purchase this respondent was permitted to reside in the property by the lawful owner viz. the 24th respondent/proposed party. Hence this respondent/proposed party neither a necessary party nor a proforma party to the suit. And is not a proper party to the suit. Hence, this petition is to be dismissed.

(5) Both side arguments and records considered. It is held in *Chennai Jananayaga Madhar Sangam v. S.R. Naidu & Anr.*, AIR 2009 (NOC) 2694 (Mad.) that,

A person who purchased a property may be joined as a party to enable him to protect his interest, still Section 52 of T.P.Act puts a legal embargo on his

recognition in entering to the suit when the transaction was without the order or authority of the Court. If the purchaser had not informed the Court and obtained necessary sanction from the court, while lis is pending, the transaction is hit by lis pendens and the party property is neither necessary nor a proper party to the suit.

And it is held in Pannala Renuka v. Kavali (Rajumouni) Venkataiah, AIR 2007 AP 46.that,

Even in a case falling under the scope of Order XXII, Rule 10 of CPC, the test would be whether alienee pendente lite has enforceable legal right. Can it be such a person, who purchased the suit schedule property during pendency of the suit in gross violation of the principle in Section 52 of TP Act has an enforceable legal right? The answer should be in the negative, for the simple reason that a person, who violates the law and acquired the right, can never be treated as a holder of legally enforceable right. That is the reason why the Courts have held that though the purchaser lis pendens is bound by the decree passes against his vendor and he cannot as of right be impleaded in the suit.

From the arguments of both sides it is clear that the proposed party R24 is the purchaser of the item 52 of the suit property during pendency of the suit . So, his purchase is hit under section 52 of TP Act and he is not a necessary party. R25 claims no rights in the suit property eventhough he is occupying that property. So, this court accept the argument of the R25 that he is neither

necessary nor proper party. So this court finds no valid reasons to implead R24 and R25 in the suit as defendant. Hence this petition is liable to be dismissed.

(6) In the result, this petition is dismissed.

Dictated to the Steno-Typist, typed by her directly in computer, corrected and pronounced by me in open court, this the **3rd day of August 2023.**

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

**Petitioner and Respondents side
Exhibits and witnesses: Nil**

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

ORDER

I.A. No 5/2023 in

O.S. No.63/2017

DATED: 3.8.2023