

**IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
TIRUCHIRAPPALLI**

Present : **Thiru B.Saravanan, B.Sc., B.L.,
II Additional District Judge, Tiruchirappalli**

Wednesday, the 26th day of June 2024

**Interlocutory Application No.2/2023
in
Original Suit No.163/2010**

1. Sriranga Gounder, S/o.Ramasamy Gounder,
2. Sureshkumar, S/o.Ramasamy Gounder,
3. Suriyakumar, S/o.Ramasamy Gounder,
4. Chandrakumar, S/o.Ramasamy Gounder,
5. Senthilkumar, S/o.Ramasamy Gounder,

All Petitioners are residing at:

No.37, Mela Chinthapalayam Village,
Musiri Taluk,
Trichirappallli District.

... Petitioners/2 to 6 Defendants

Vs

1. Ashok kumar, S/o.Kumarasamy
No.14, Ponni Officers colony,
Odappalli, Erode.

... Respondent/Plaintiff

2. Kumarasamy Gounder, S/o.Ramasamy Gounder,
No.30A, Annai Indhira Nagar,
Thuraiyur.

... 2nd Respondent/8th Defendant

This petition came up before me on 05.06.2024 for final hearing in the presence of Thiru. S.Sivasankar, counsel appearing for the Petitioners /2 to 6 Defendants and of Thiru L.Rengarajan, counsel appearing for the 1st Respondent/

Plaintiff and and of Thiru S.Balasubramaniyan, counsel appearing for the 2nd Respondent /8th Defendant upon perusing the petition, affidavit, counters and documents on record and upon hearing the arguments of both side, having stood over the consideration till this day, this court delivers the following,

ORDER

1) This petition is filed by the Petitioners / defendants 2 to 6, under Order 1 Rule 10(2) and Section 151 of CPC to transpose the 8th defendant as 2nd Plaintiff.

2) The learned counsel appearing for the petitioners/defendants 2 to 6 has submitted that the 1st respondent has filed the suit for partition and for other reliefs and the defendants are contesting the suit, the plaintiff is seeking the relief of partition of the self-earned property of deceased Ramasamy Gounder, he has separate income by road contract work and during his life time he had executed Will, Settlement deed and sale deed to the defendants and the suit was filed falsely claiming that Ramasamy Gounder has purchased the property from the income of the Hindu joint family property.

3) He further submitted that the 2nd Respondent/8th defendant is father of the plaintiff and a memorandum was also filled by the defendants to examine the 8th defendant as witness, but the 8th defendant did not appear before the court, if the 8th defendant is examined truth will come out and the defendants 2 to 6

have to cross-examine 8th defendant 1 to prove their case, if not they will put to much loss and the plaintiff is in collusion with 8th defendant has filed the suit in order to grab the property, hence the petitioners/2-6 defendants filed this petition to transpose the 8th defendant as 2nd plaintiff in the suit and he prayed that this petition may be allowed.

4) Per Contra, the learned counsel appearing for the 1st respondent/plaintiff has submitted that the petition is not maintainable and the petitioners have not stated proper reasons and the 8th defendant in suit cannot be compelled to be transposed as a plaintiff by the defendants 2 to 6 and the 1st respondent/plaintiff is a 'dominous litous' and he can not be compelled to include a person against whom he wants a relief, under these circumstances 8th defendant cannot be transposed as 2nd plaintiff, Hence he prayed that the petition may be dismissed with cost.

5) The learned counsel appearing for the 2nd respondent/8th defendant has submitted that the petition is not maintainable and that a party to the suit cannot be compelled either to give evidence or to become a plaintiff, petitioners can at best take advantage by taking adverse inference for non examination, hence he prayed that the petition may be dismissed.

6) Heard both side and perused the records.

7) The suit is filed by the 1st respondent/plaintiff against 17 persons for the relief of partition etc. Already plaintiff side evidence has been completed and the case was posted for the 8th defendant side evidence. On 03.07.2023 a memo was filed on behalf of 8th defendant by stating that he fractured his leg and taking treatment and he is not in a position to move. It is also stated in the said memo that it is not possible to examine 8th defendant by way of Commission due to his advanced age and poor memory.

8) After that the case was posted for the evidence of 2 to 7 defendants. Subsequently, the defendants 2 to 6 have filed this petition seeking permission to transpose the 8th defendant as 2nd Plaintiff. As rightly contended by the counsel for the 1st respondent / plaintiff, the plaintiff being a 'dominous litous' and he can not be compelled to include a person against whom he wants a relief. At best the petitioners/defendants 2 to 6 can plead to take advantage for taking adverse inference for non examination of 8th defendant in this suit. Hence, the prayer sought for in this petition cannot be granted.

9) **In fine,**

This petition is dismissed. However, it is made clear that the petitioners/defendants 2 to 6 can plead for taking **adverse inference** against the

8th defendant for his non examination in this suit and the same will be decided at the time of final disposal of the suit. No cost.

Dictated to the Stenographer, typed by her directly in the Computer, corrected and pronounced by me in the open court, this the 26th day of June 2024.

**II Additional District Judge,
Tiruchirappalli.**

List of documents and witnesses on both side: Nil.

**II Additional District Judge,
Tiruchirappalli.**