

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, LALGUDI.

Present : Selvi. M.Abinaya, B.A.B.L.,
Additional District Munsif,
Lalgudi.

Thursday, the 09th day of March 2023.
IA.No.464/2017 in OS.No.289/2011

Nagaraju

....Petitioner/3rd Party

/Vs/

1. Marimuthu
2. Pichaiammal
3. Dhanalakshmi
4. Akilambal
5. Uma Maheswari
6. Minor. Dheenadayalan aged 3 years,
Rep. by Mother Guardian Uma Maheswari

...Respondents/Plaintiffs

7. Saraswathi
8. Sivakumar
9. Janaki

...Respondents/Defendants

This petition filed by the petitioner against the respondent coming on 07.02.2023 this day before me for final hearing in the presence of Thiru.J.Ilayaraja Advocate for the Petitioner/Plaintiff and of Thiru.P.Ramamoorthy Advocate for the R1 to R6 and of Thiru.M.Shanmugasundaram Advocate for the R7 to R9 and having been stood over for consideration, till this day passes the following...

ORDER

1. The petitioner has filed this petition under order 1 Rule 10(2) and Section 151 of C.P.C., to implead the petitioner as a party/defendant in the suit for proper adjudication.

2. The point to be decided is whether the petition filed by the petitioner under Order 1 Rule 10(2) and Section 151 of C.P.C., is to be allowed or not?

3. Heard both sides. The petitioner counsel stated that the petitioner is the 3rd party in the above suit and the plaintiff's have filed the above suit for partition and other reliefs. The petitioner counsel stated that the plaintiffs and the defendants collusively conduct the suit to deceit the petitioner's share over the suit property. Further the petitioner counsel stated that originally one sivagami Ammal and her husband Palaniandi had three daughters named Akilandam, Ananthayee and Kulandai Ammal. The elder daughter Akilandam was married one Maripandaram. The petitioner counsel stated that they had a son named Muthusamy and the plaintiffs are his legal heirs.

4. The petitioner counsel stated that the second daughter Ananthayee was married one Palanivel Pandaram and he left his wife and died and hence the said Ananthayee permanently lived with her mother Sivagami in the suit house. Further the petitioner counsel stated that the third daughter of Sivagami Ammal, the said Kulandai Ammal was the petitioner's mother. The petitioner counsel stated that after marriage, the petitioner's mother settled with the petitioner's father at the native village of the petitioner's father, Kottukaranpatti. Further the petitioner counsel stated that the petitioner's elder brother Sambasivam and the petitioner lived with the petitioner's parents. The petitioner counsel stated that the petitioner's brother Sambasivam married one Meenambal and they got three daughters named Anubmani, Krishnaveni and Mahalakshmi. Further the petitioner counsel stated that the said Krishnaveni died before marriage and the wife of Sambasivam ie., Meenambal also died.

5. The petitioner counsel stated that while so in the year 1978, the sister of the petitioner's mother Ananthayee Ammal was seriously affected by paralysis and she was in her death bed and hence the petitioner's brother left to Lalgudi, the native village of the said Ananthayee and settled there. Further the petitioner counsel stated that subsequently the petitioner's brother Sambasivam married one Saraswathi. The

petitioner counsel stated that the petitioner's grandmother Sivagami Ammal had executed a settlement deed in favour of her daughter and the said Ananthayee through which she settled her thatched house to her daughter. Further the petitioner counsel stated that the said Ananthayee died in or about 1979 intestate and taking advantage, it appears that the petitioner's brother Sambasivam had created a will in his favour and attempted to grab the property of Ananthayee Ammal.

6. The petitioner counsel stated that the Ananthayee Ammal never executed any will and the alleged will in favour of Sambasivam is a rank forgery. Further the petitioner counsel stated that the execution and attestation of the above will is strictly denied. The petitioner counsel stated that in the last week of August '2017, when the first plaintiff have visited the petitioner's village and enquired about the legal heirs of the petitioner's brother Sambasivam through his first wife and on enquiry the petitioner came to know about the pendency of the above suit and preferred this petition.

7. The petitioner's family members visited Lalgudi only at the time of functions of the petitioner's close relatives and in most occasions, the petitioner's mother alone visited Lalgudi to the family functions. Further the petitioner counsel stated that therefore the petitioner have no contact with the plaintiffs subsequent to the death of their parents. The petitioner counsel stated that the petitioner, the legal heir of the said Ananthayee Ammal through the petitioner's mother Kulandai Ammal along with the plaintiffs and defendants, the petitioner is also entitled a share and the petitioner is a necessary party to the proceedings. Further the petitioner counsel stated that unless the petitioner may be impleaded as party, the petitioner will be put to loss. Hence, prays to allow this petition.

8. The respondents counsel raised objections to allow this petition and stated that all the allegations stated by the petitioner are false and the petitioner is put

to strict proof of the same. The respondents counsel stated that during the lifetime of Sivakami Ammal, she settled the suit property by way of a registered settlement deed. Further the above settlement deed is registered and attested as per law and was accepted by Ananthayee Ammal as soon as the settlement was written, it came into force and effect. The respondents counsel stated that after the settlement, Ananthayee Ammal enjoyed the suit property and had executed a will in favor of Sambasivam, the elder son of his only sister, Kulandaivel Ammal, as the Ananthayee Ammal had no heir.

9. The respondents counsel stated that Ananthayee's will came into effect after her death and Sambasivam's sister or brother Nagaraj has no rights. The respondents counsel stated that neither the petitioner Nagaraj nor the plaintiffs had any right to claim that the will executed by Ananthayee Ammal was false. The respondents counsel stated that in fact, if Nagaraj had right, he could have filed a case seeking partition during the lifetime of Sambasivam. The respondents counsel stated that the petitioner Nagaraj did not make any claim during the lifetime of Sambasivam because he had no right. The respondents counsel stated that the petitioner has now filed this petition at the instigation of the plaintiffs in the case.

10. The respondents counsel stated that there is no ground for the petitioner to file this petition and this petition is not sustainable. The respondents counsel stated that it has been about 16 years since Sambasivam died hence the claim of the petitioner seeking partition is barred by limitation. The respondents counsel stated that the cause of action for the petition differs and therefore, this petition is not sustainable. The respondents counsel stated that moreover, in this suit plaintiff side evidence was over, Dw1 was examined in chief and cross and posted for defendant side further evidence, and at this stage, this petition is filed at the instigation of the plaintiffs and therefore, this petition is not sustainable. Hence prays to dismiss the petition.

11. The respondents counsel filed a memo stating that the documents marked in the main suit in the defendants side may be marked in this petition as Ex.R1 to Ex.R10. On considering Ex.R1 to Ex.R10, this court is of the view that it is not necessary to rely upon those documents to decide this petition. If it is done so, it would amount to conducting a mini trial.

12. On considering the facts stated in the affidavit, petition and counter this court is of the view that the right of the petitioner cannot be thrown away at the threshold. Further a opportunity has to be given to the petitioner to establish whether he had right in the suit property. This court is of the view that mini trail need not be conducted in interlocutory application and further the petitioner is entitled to any right or not can be adjudicated in the trial. This court is satisfied with the reasons stated by the petitioner. Further the other side also will not prejudice on allowing this petition. Hence in order to avoid multiplicity of proceedings for proper adjudication in a main suit and in the interest of justice this court finds that this petition is allowed.

In result, this petition is allowed. No costs.

This order dictated by me to the steno typist transcript typed by her, corrected and pronounced by me in the open court this 09th day of March 2023.

Sd/-M.Abinaya,
Additional District Munsif,
Lalgudi.

Petitioners side witness and evidence – Nil

Respondents side witness - Nil

Respondents side and evidence

S.l.No.	Date	Particulars
Ex.R1	20.04.1953	Settlement deed in favour of Ananthayee– Original
Ex.R2	-	Will executed by Ananthayee in favour of Sambasivam Pandaram – Certifed copy
Ex.R3	-	Manaivari Thoraya Patta – Original
Ex.R4	09.08.2000	Will executed by Sambasivam - Original
Ex.R5	-	Death Certificate of Sambasivam – Original
Ex.R6	-	Legal heirs Certificate of Sambasivam - Original
Ex.R7	31.03.2002	Property tax receipt – Original
Ex.R8	06.02.2006	Proceedings of executive officer Lalgudi Perooratchi – Original
Ex.R9	-	Property tax receipts Nos.3 - Original
Ex.R10	-	Property tax receipts Nos.12 – Original

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