

In the Court of Additional District Munsif, Lalgudi

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

Thursday the 08th day of June 2023

I.A.No.1/2021 in O.S.No.938/1995

K.Sekar

....Petitioner/3rd Party

/Vs/

1. The Idol of Sri Ambaravaneeswarar Temple, Mandurai, -rep.by its
EXECUTIVE OFFICER, having office at Madurai.
2. S.Ramaraj, (Died)
3. Krishna Rao (Died)
4. Narasimhan (Died)
5. Amsavalli
6. Dr.Lakshmanan, (Died)
7. Thangavel Nattar (Died)
8. Ahmed Basha
9. Mohamed Usman also knows Usman Ali (Died)
10. N.Periyasami
11. Rajagopal (Died)
12. Sardar Bhai
13. Rukmani Ammal (Died)
14. Kallammal
15. Nagamani (Died)
16. N.Mani
17. R.Janaki
18. R.Raja
19. Ram Prasad

.....Respondents/Plaintiffs

The petition filed by the petitioner against the respondent coming on 28.04.2023 day before me for final hearing in the presence of Thiru. O.Sahabudeen Advocate for the Petitioner and of Thiru. K.Jayaraman Advocate for the 1, 5, 8, 9, 10, 12, 14, 16, to 19 Respondents and 2 to 4, 6, 7, 9, 11, 13, 15 Respondents died and being stood over till this day for consideration, today this court delivered the following...

ORDER

1. This petition is filed Under Order 22 Rule 10 and Section 151 of C.P.C., to substitute the petitioner/3rd party in the place of 6th and 8th defendant to continue to defend the case by impleading as 19th defendant in the suit.

2. Now the point to be decided is whether the petition filed by the petitioner under Order 22 Rule 10 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 third party in the proceedings. The petitioner counsel stated that it appears that the plaintiff Idol has filed the suit for recovery of possession of the suit properties after removal of the super-structures claiming falsely to be Inamdars belonging to the plaintiff Idol. The plaintiff has claimed possession of 84 cents in S.F.No.68/2, 82 cents in S.F.No.68/3, 82 cents in S.F.No.68/4 and 1.36 cents in S.F.No.68/8 and no boundaries, have been given.

4. The petitioner counsel stated that the plaint does not disclose the nature and character of the properties, further S.F.No.68/3 in boosthithi is a road and nobody is in possession and there is no superstructures at all. The petitioner counsel stated that further S.F.No.68/4 is the temple of the plaintiff's Idol and it is novel to claim possession where the plaintiff Idol situates. Further the petitioner counsel stated that the suit is speculative and dubious one. The petitioner counsel stated that the petitioner had purchased an extent of 5 cents (2,180 S.q.ft.) from the deceased 6th defendant's wife Mrs.Pappa on 14.07.2004 in S.F.No.64/2 which is classified as 'Natham' and similarly, the petitioner had purchased an extent of 6 cents (2616 Sq.ft) from the 8th defendant, deceased Usman Ali's legal heirs on 18.05.2005 abutting each other in the name "Natham" S.F.No.68/2. The vendors did not inform the petitioner of the pendency of suits and the suit does not reflect in the encumbrance in the Sub-Registrar's Office. The petitioner counsel stated that therefore, the petitioner is a bona-fide purchaser for consideration without notice of the suit.

5. The petitioner counsel stated that now, the said 6th and 8th defendants Thangavel Nattar and Mohamed Usman died even before the petitioner purchased the properties in the year 2004 and 2005 and so far no legal heirs have been impleaded and the suit has abated long back. The petitioner counsel stated that the 8th defendant Usman Ali died on 30.11.1989 and suit has been filed in the year 1991 i.e., against dead person. The petitioner counsel stated that the 6th defendant did not own any property and only his wife Mrs.Pappa on 28.12.1979 purchased an extent of East West 45 links and north – south 250 links in Natham S.F.No.68/2.

6. The petitioner counsel stated that recently the petitioner took steps to alienate the properties purchased by the petitioner. Further the petitioner counsel stated that the real estate brokers and the intending purchasers informed the petitioner, of the pendency of the suit. The petitioner counsel stated that immediately the petitioner rushed to the petitioner's lawyer to know about the same and the pendency of the suit was informed to the petitioner. The petitioner counsel stated that it is pertinent to submit, that there is no one in the suit to defend the petitioner's interest in the suit and in the petitioner's absence an unnecessary adverse orders may be passed against the petitioner and the petitioner may not be able to enjoy the properties purchased by the petitioner for valuable consideration. The petitioner counsel stated that under the above circumstances, the petitioners have to be substituted in the place of 6th and 8th defendant, else, the petitioner will be put to serious loss and hardship and hence prays to allow this petition.

7. The petitioner in order to substantiate his case of has marked Ex.P1, the Sale deed infavour of the petitioner dated 14.07.2004 and Ex.P2, the Sale deed infavour of the petitioner dated 18.03.2005. During the course of the enquiry, the petitioner counsel referred to the following judgment:

i) **2013 (2) CTC 104** in the Supreme Court of India, Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P.Ltd.& others.

ii) **2018 (3) MWN (Civil) 707** In the High Court of Madras, Muthupandi Vs. Thangapandian and others.

8. The respondents counsel raised objections to allow this petition, and stated that the averments stated in the petition are false and the petitioner is put to strict proof of the same. The respondents counsel stated that the property of the temple cannot be sold. Further the respondents counsel stated that the defendants are also necessary parties to the I.A. The respondents counsel stated that the 3rd party claims right under the defendants. The respondents counsel stated that when the defendants are not parties, how the I.A is maintainable. The respondents counsel stated that none can claim any right or title in Temple property. Section 109 of TN.HR&CE ACT is very clear. Hence prays to dismiss the petition.

9. On considering the facts stated in the affidavit, petition, counter, and; Ex.P1 and Ex.P2, this court finds that in order to adjudicate the real dispute between the parties fair opportunity has to be given to both parties to conduct their case. As per Order 22 rule 10, in other cases of an assignment creation or devolution of any interest during the pendency of a suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. Hence this court is of the view that the petitioner cannot be substituted in the place of the 6th and 8th defendants but can be impleaded in the suit and be permitted to continue the suit. Further the other side will not prejudice on allowing this petition. Hence in order to avoid multiplicity of proceedings for proper and binding adjudication in the main suit and in the interest of justice, this court finds that this petition is allowed on cost.

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 08th day of June 2023.

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

Petitioner side witness – Nil

Petitioner side evidence :

S.I.No.	Date	Particulars
Ex.P1	14.07.2004	Sale deed infavour of Sekar – Certified copy
Ex.P2	18.03.2005	Sale deed infavour of Sekar – Certified copy

Respondents side witness and evidence - Nil

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