

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

**PRESENT: Tmt. V. Vannamalar, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.**

Monday, the 13th day of March 2023

I.A.No.4/2021

in

O.S.No.115/2013

1. Umesh Kumar
2. D. Lall Keshavar
3. D. Nirmala
4. S. Roopavathy

...Petitioners/plaintiffs

-Vs -

1. Vasu @ Vasudevan
2. Venugopal Reddy (Deceased)
3. Hemachandra Reddy
4. Lakshmi
5. Srinivasa Reddy
6. Nirmala

...Respondents/defendants

7. The Thasildar,
Ponneri Taluk,
8. The Block Development Officer,
Sholavaram Panchayat Union,

...Respondents/proposed defendants

This petition came up for hearing on 13.03.2023, in the presence of Mr. R. Kamaraj, learned counsel for the petitioners/plaintiffs and Mr. C. Nagendra Babu, learned counsel for the 1 to 6th respondents/defendants. The respondents 7 and 8 were set exparte as they have failed to file their counter even after providing them with sufficient opportunities and time. Upon hearing the arguments of both sides and on perusal of the material case records and having stood over for consideration before this court till this day, this court delivers the following

ORDER

This petition has been filed under Order I Rule 10(2) of CPC to implead the 7th and 8th respondents as defendants in the suit in O.S.115/2013.

2. The averments of the affidavit filed by the petitioners are as follows:

2.1. The petitioners who are the plaintiffs in the suit submit that they have filed the above suit as against the respondents 1 to 3 for a relief of permanent injunction to restrain the defendants from putting up fence and erecting a gate in the B schedule property and for a mandatory injunction and other reliefs. During the pendency of the suit the 2nd defendant died and the defendants 4 to 6 were impleaded as his legal heirs.

2.2. The petitioners further submit that the 3rd street at Srinivasa Nagar was formed at the time of laying out the plots in the said Nagar and the said street is a public street vested with Vichur Panchayat. As the respondents 1 to 3 were attempting to put up a construction on the said street and hence the suit was filed. The respondents 1 to 3 in their written statement have stated that the Government Officials are necessary parties to the suit for claiming the right of access or pathway. Therefore, in order to avoid any technical objection this petition has been filed. Since the said street is vested with Vichur Panchayat, the official of the panchayat and the Tahsildar are just and necessary parties to the suit are to be impleaded in the suit as defendants for effective adjudication of the dispute in the suit.

3. The averments of the counter filed by the 5th respondent and adopted by 1st, 3rd, 4th and 6th respondents are as follows:

3.1. The respondents who are the defendants in the suit submit that the 2nd and 3rd defendants in the suit are the original owners of total area measuring 11.07 acres in S.No.320/1, 320/2, 321/1, 321/2, 321/3 situated at Vichur Village Ponneri Taluk. Out of

the particular extent of land the said defendants have sold 5.17 acres of land to one Rakkammal and Chandrabai under 5 different sale deeds. The balance area measuring to an extent of 5.90 acres in the said survey numbers were retained by the 2nd and 3rd defendants. Also, a land area measuring 42 cents in S.No.304/2A is also owned by the 2nd and 3rd defendants. The said Rakkammal and Chandrabai have formed a layout with no approval thereof in the name and style of “ Srinivasa Nagar” in the land area purchased by them and sold to various persons including the plaintiffs in the suit as housing plots. Also, the survey Nos.320/1, 320/2, 321/1, 321/2 and 321/3 were sub divided after detailed enquiry made by the revenue officials. The RDO, Ponneri has granted patta in favour of the 2nd and 3rd defendants for the said sub divided survey numbers after cancelling the joint patta No.614 and 615 erroneously showing the name of the said Rakkammal and Chandrabai. The plaintiffs along with the other purchasers of the plots in the said layout have formed a society in the name of “ Srinivasa Nagar Makkal Nala Sangam”. The said Sangam represented by its President filed a suit bearing O.S.No.256/2005 before this court praying for a relief of permanent injunction as against the 2nd and 3rd defendants. Similarly the said 2nd and 3rd defendants also filed a suit bearing O.S.No.103/2006 before this court as against the said Sangam praying for a relief of permanent injunction. Both the said suits were disposed off as settled in Lok Adalat. After disposal of the two suits the vice president of the said Srinivasa Nagar Makkal Nala Sangam preferred a writ petition in No.27061/2013 before the Hon’ble High Court of Judicature at Madras praying to direct the Tahsildar Ponneri to conduct enquiry on the representation made by the said Sangam. As the per the direction of the Hon’ble High Court the Tahsildar Ponneri had conducted a detailed enquiry on the representation dated 11.09.2012 and passed an order dated 10.02.2013 bearing Na.Ka.No.26291/2012/A2 holding that the members of the said Sangam have no title to the property in respect of which the patta is granted to the Srinivasa Nagar Makkal Nala Sangam including the plaintiffs. Hence, the alleged sale deeds through which the

plaintiffs claim title to the suit properties are null and void. The plaintiffs having purchased the suit properties from improper persons cannot have title over the suit properties.

3.2. The respondents further submit that after more than 7 years from the date of the suit the plaintiffs have filed this petition only to drag on the suit proceedings. Hence, the petition is liable to be dismissed.

4. Neither the petitioners nor the respondents have placed any oral or documentary evidence before this court. Now, it is the paramount duty of the court to decide whether this petition is to be allowed or not.

5. Heard both sides arguments. Records Perused.

6. On careful analysis, it is noted that the petitioners, who are the plaintiffs in the suit have filed the suit against the respondents/defendants for a relief of permanent injunction to restrain the defendants from fencing or erecting a gate thereon in the B schedule property and for a mandatory injunction to direct the respondents / defendants to remove the iron pillars erected in the suit B schedule property. During the pendency of the suit the 2nd defendant died and the defendants 4 to 6 were impleaded as his legal heirs.

7. The petitioners contend that the 3rd street at Srinivasa Nagar was formed at the time of laying out the plots in the said Nagar and the said street is a public street vested with Vichur Panchayat. As the respondents 1 to 3 were attempting to put up construction in the said street the suit was filed. As the respondents 1 to 3 in their written statement have stated that the Government Officials are necessary parties to the suit for claiming right of access or pathway, in order to avoid any technical objection this petition has

been filed. Since the said street is vested with Vichur Panchayat, the official of the panchayat and the Tahsildar as just and necessary parties to the suit are to be impleaded in the suit as defendants for effective adjudication of the dispute in the suit.

8. On the other hand, the respondents who are the defendants in the suit submit that the 2nd and 3rd defendants in the suit are the original owners of total area measuring 11.07 acres in S.No.320/1, 320/2, 321/1, 321/2, 321/3 situated at Vichur Village Ponneri Taluk. Out of the said extent the said defendants have sold 5.17 acres of land to one Rakkammal and Chandrabai under 5 different sale deeds. The balance area measuring an extent of 5.90 acres in the said survey numbers were retained by the 2nd and 3rd defendants. Also, a land area measuring 42 cents in S.No.304/2A is also owned by the 2nd and 3rd defendants. The said Rakkammal and Chandrabai have formed a layout in the name and style of “ Srinivasa Nagar” with no proper approval in the land area purchased by them and have sold those housing plots to various persons including the plaintiffs in the suit. Also, the respondents contend that the survey Nos.320/1, 320/2, 321/1, 321/2 and 321/3 were sub divided by the revenue officials and that the patta in favour of the 2nd and 3rd defendants for the said sub divided survey numbers was also granted. The respondents further contend that the petitioners having purchased the suit properties from improper persons cannot claim now title over the suit properties and that the petitioners have filed this petition after more than 7 years from the date of the suit only to drag on the suit proceedings and prays for dismissal of the petition.

9. On careful analysis of the above, this court views that the issue involved in the suit is to determine whether the suit B schedule property is a common pathway as per the government records and that whether the respondents / defendants have obstructed the pathway by erecting iron pillars in the said road and thereby attempted to fence and erect a gate in the said property. To determine the above issues the respondents 7 and 8 /

proposed defendants need not be impleaded as parties in the suit. A party can be impleaded in case where there exist a cause of action against him. If there is no cause of action alleged in the plaint against the proposed respondents they cannot be allowed to be impleaded as an additional party defendant to the suit. In this case no relief is claimed against the proposed respondents. They are neither proper nor a necessary party to the suit and hence it is considered that they need not be added as defendants. Their presence is not necessary for proper and effective adjudication of the dispute involved in the suit. The petitioners / plaintiffs have to prove their case by submitting appropriate documents. If necessary these proposed defendants can be examined as and when necessary as witnesses on the side of the petitioners to prove their case. In the above circumstances, this court is not inclined to allow this petition.

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

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 13th day of March 2023.

S.d./-V.VANNAMALAR
DISTRICT MUNSIF
PONNERI

Petitioners' side witnesses:-

NIL

Respondents' side witnesses:-

NIL

Petitioners' side exhibits:-

NIL

Respondents' side exhibits:-

NIL

S.d./-V.VANNAMALAR
DISTRICT MUNSIF
PONNERI

Fair/ Draft Order
I.A.No.4/2021
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Date:13.03.2023
DMC,PNI.