

IN THE COURT OF I ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
VELLORE, VELLORE DISTRICT.

**PRESENT: Tmt.G.SANTHI, B A., M L.,**  
I Additional District and Sessions Judge (FAC), Vellore.

**Monday, the 6th day of November, 2023**

I.A. No. 2/2023  
IN O.S. No.50/2020

1. Chandiran  
2. Amsa  
3. Anjali ...Petitioners/ Plaintiffs

Vs.

1. Mahalingam  
2. Suryakala  
3. Gopalakrishnan ...Respondents/  
Defendants 1 to 3

4. Bharathi ...Respondent /  
Proposed Party

This Interlocutory Application is coming on today before this Court for final hearing in the presence of Thiruvallargal S. Gunasekaran and G. Vijayabaskar, Advocates for the Petitioners / Plaintiffs and Thiru R. Nepolean, Advocate for the Respondents / Defendants 1 and 2 and Thiru M. Kulothungan, Advocate for the Respondent/3rd Defendant and the 4th Respondent/Proposed Party was called, absent, set exparte, considering that counters of Respondents 1 to 3 were not filed and the 4th Respondent was called, absent, set exparte, upon hearing the arguments of both sides, upon perusing the entire case records and having stood over for consideration till this day, this Court delivered the following

## **ORDER**

This application is filed by the Petitioners /Plaintiffs under Order I Rule 10(2) and Section 151 of C.P.C., to implead the 4th Respondent Bharathi as 4th defendant in the suit.

### **2. Brief averments of affidavit are read as follows:-**

The 1st petitioner has filed this petition for himself and on behalf of other petitioners. The petitioners/plaintiffs have filed the main suit for the relief of partition against the defendants 1 to 3 and they have entered appearance through their counsel and the above case is posted for the petitioner's cross examination. While discussing the case with his counsel, the petitioner came to know that the 4th respondent whose particulars are given in the petition is a sharer in respect of the item No.2 of the suit property (elder paternal uncle's son to the petitioner) was not added as a party due to oversight as the petitioner was under the belief and impression that as the suit is between his family members who are having share in the suit property. Hence, the petitioner has filed this petition to implead the 4th respondent as 4th defendant in the suit as he is a necessary party to this suit for proper adjudication. No prejudice will be caused to the other side if this petition is allowed. If the petition is not allowed, the petitioner will be put to irreparable loss and hardship.

3. The respondents/defendants have not filed counter on their side.

4. The point for consideration is whether the 4th respondent/proposed party can be impleaded in the main suit as 4th defendant?

### **POINT:**

5. The petitioners/plaintiffs have filed this petition under Order I Rule 10(2) of CPC., to implead the 4th Respondent/proposed party in the main suit as 4th defendant. The petitioners have stated that the 4th respondent Bharathi is the son of elder paternal uncle of the 1st petitioner and that the petitioners were under the belief and impression that as the suit is between their family members who are having share in the suit property, they have filed the suit against the respondents 1 to 3/defendants 1 to 3 and that they have failed to implead the 4th respondent/proposed

party due to oversight and that the 4th respondent is a sharer in respect of the item No.2 of the suit property and so, he must be impleaded as party in this suit for proper adjudication.

6. The counsels for the respondents 1 to 3 have taken notice of this petition and prayed time for filing their counters. Sufficient opportunity given to the respondents. But, they have not filed counters on their side. The 4th respondent/proposed party remained absent and set exparte.

7. This suit is filed for the relief of partition of suit properties into 4 equal shares and allotment of 3 such shares to the petitioners/plaintiffs for their separate possession. The petitioners themselves have stated that the 4th respondent/proposed party is having share in the Item No.2 of the suit properties and further they have stated that they have not impleaded the 4th respondent as a party at the time of filing the suit due to oversight.

**IV. Order 1 Rule 10(2) CPC reads as follow:**

**" Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."**

8. Before enter into the discussion the relevant ruling is referred for convinient is reproduced as follows;

[Banwari Lal \(Dead\) By Legal Representatives And Another vs. Balbir Singh](#) . Supreme Court Of India

***“56. With respect to the argument on behalf of Petitioner that the application dated 26th March, 2021 at Exhibit 22 is not under the provisions of Order 22 but the same is filed under the provisions of Order 1 Rule 10 of the CPC and therefore not maintainable, it is submitted on behalf of the Respondents that on a plain reading***

*of the said application, it is specifically pleaded that the deceased Plaintiff No.1 died on 29th December, 2017 leaving behind the proposed Plaintiffs as the only heirs. It is also submitted that after making out a case of sufficient cause explaining the delay in paragraph 2, it was prayed that the proposed Plaintiffs be added as party to the suit. It is submitted that therefore the said application is an application under Order 22 and not under Order 1 Rule 10 as sought to be contended. It is further submitted that it is settled position of law that even if an application under Order 1 Rule 10 is filed, it will be unjust to non-suit the legal representatives on the ground of technicalities and in such circumstances, an application under Order 1 Rule 10 has to be treated as an application under 52 of 59 SRS 53 Judgment-w.p-7179-2021 Order 22 Rule 3 and be allowed. In support of his submission learned Counsel for the Respondents relies upon the decision of the Supreme Court in the case of Banwari Lal (Dead) By Legal Representatives and Another V/s. Balbir Singh [2016 (1) SCC 607]. 57. The Honble Supreme Court in the decision of Banwari Lal (supra) has observed that it would be unjust to non suit the Appellants on the ground of technicalities. In the said case, no steps were taken to bring on record the legal representatives of late Banwari Lal either in the First Appeal or in the Second Appeal. The Appellants viz., the legal representatives of Banwari Lal filed a Civil Miscellaneous Application under Order 1 Rule 10 of the CPC with Section 151 of the CPC to implead the legal representatives. It was submitted that Order 22 of the CPC stipulates the manner in which, legal representatives of the Plaintiffs or defendants ought to be brought on record and the prescribed procedure cannot be circumvented by filing an application under Order 1 Rule 10 read with Section 151 of the CPC. The Honble Supreme Court in paragraph 9 observed that provisions of Order 22 CPC are not penal in nature and that it is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing”*

9. This suit is filed for partition. The parties who are entitled to the suit properties are necessary and proper parties. Accordingly, since the suit for partition includes the ancestral property, the presence of the proposed 4th defendant before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

10. As a result, this petition is allowed without prejudice to the parties' rights.

Dictated by me to the Stenotypist, typed by her in computer directly to my dictation, corrected and pronounced by me in the open Court, this, the 6th day of November, 2023.

I Additional District and Sessions Judge (FAC),  
Vellore.