

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,
DISTRICT MUNSIF, KATPADI.**

Monday, this the 25th Day of March – 2024

**I.A.No. 121 of 2021
In
O.S.No. 39 of 2020
(CNR.No.TNVL23-000068-2020)**

P.Saritha

.....Petitioner/Proposed 3rd party

-Vs-

1. Ramila

.....1st Respondent/Plaintiff

2. The District Collector
Vellore District

3. The Revenue Divisional Officer
Vellore District

4. The Tahsildar
Katpadi Taluk

5. The Village Administrative Officer
Ponnai

.....2 to 5-Respondents/Defendants-1 to 4

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. V.Ashok Kumar, the Counsel for the Petitioner/Proposed 3rd party, and Thiru. S.Gunasekaran and G.Vijayabaskar, the Counsels for the 1st Respondent/Plaintiff, and the 2 to 5-Respondents/Defendants-1 to 4 were set ex-parte in the main Suit itself, and upon perusing the petition, counter and the available case

records, and having stood over for consideration till this day, this Court delivers the following:-

ORDER

This petition has been filed under Order 1 Rule 10 and Section 151 of Code of Civil Procedure to implead the petitioner as 5th defendant in the Suit.

1. **Brief averments of the affidavit filed by the petitioner is as follows:-**

The petitioner is the 3rd party/proposed defendant in the Suit, and she states that the 1st Respondent filed the above Suit as against the Respondents-2 to 5 herein seeking a Mandatory Injunction to issue Patta in her favour in respect of the Suit property, and she is the absolute owner of 83 Cents of Land comprised in Ponnai Village Dry S.No.544/5 by virtue of her purchaser of the same under a Registered Sale Deed dated 24.05.2012 from its rightful owners, and she is in possession and enjoyment of the same from the date of her purchase, and the Patta for the land is in her name, and a Week ago, she was informed by her well wishers that the 1st respondent is trying to manipulate documents and get Patta in her favour and also filed a Suit for getting a Patta, and therefore she probed the matter, and she is given to understand that the 1st respondent had filed the above Suit against the respondents-2 to 5 for the aforesaid relief, and the 1st respondent is fully aware that Patta in respect of the Suit property stands in her name and therefore, she will be interested in any proceedings to alter or make any change the Patta, and with an malafide reasons, the 1st respondent had filed this Suit without

impleading her as party to the Suit, and she is the absolute owner of the Suit property, and she is the Pattadar in respect of the same, and therefore, she is necessary and proper party to the Suit which seeks for a virtually Cancellation of Patta standing in her favour, and for grant of same in favour of the 1st respondent, and in fact, the petitioner had filed a Suit against the 1st respondent for declaration of her title to the Suit property, and for other incidental reliefs as against the 1st respondent and it is pending on the file of the Hon'ble Additional Sub-Judge Court at Vellore. Hence, it is just and necessary to implead the petitioner as a party to the Suit, and prayed to allow this petition.

2. **Brief averments of the counter filed by the 1st Respondent is as follows:-**

The petition filed by the petitioner is devoid of merits, lacks in bonafide, and the same is liable to be dismissed in-limini, and the 1st respondent denies all the averments contained in the affidavit and put the petitioner to strict proof of the same, and states that she purchased the Suit property from one Ramanjulu Naidu, S/o. Munusamy Naidu on 04.08.2006 for valid and binding consideration for the entire extent of 0.83 Acres in the S.No.544/5, but the said S.No. was wrongly mentioned in the Sale Deed as S.No.544/4 and when she found out the mentioning of Wrong S.No. in her Sale Deed, and in mean time, the Vendor of the 1st respondent namely Ramanjulu Naidu was already dead due to Kidney failure about one year after the purchase by her, and from the date of purchase, she is in possession and enjoyment of the land of 0.83 Acres of Correct S.No.544/5 when she requested the legal heirs of her deceased Vendor namely Ramanjulu Naidu, to

execute a rectification deed regarding the correct S.No., the legal heirs of the said Ramanjulu Naidu refused to execute rectification deed.

When the legal heirs of the deceased Ramanjulu Naidu failed to execute Rectification Deed, the defendant filed a Suit in O.S.No.1120/2009 on the file of this Court as against the wife of the Vendor namely Rajeshwari, and the said Rajeshwari is the 5th defendant in the said Suit, and 4 others namely Balakrishnan, Chinnappa Naidu, Vimala, and Raju viz., the defendants-1 to 4 in the said Suit in O.S.No.1120/2009 for the relief of declaration and the same was decreed in favour of 1st respondent on 12.10.2011 itself, and the present petitioner's counsel has appeared for the 3rd defendant in the said Suit in O.S.No.1120/2009 namely Vimala who is the Vendor of the petitioner in the present petition.

Hence, the 1st respondent's title has been declared by this Court, on 12.10.2011 itself and she has become the Owner of the property of correct S.No.544/5 comprising of 83 Cents. Except, the 1st respondent nobody has any right or title over the Suit property, and the said 3rd defendant namely Vimala in the said Suit in O.S.No.1120/2009 is the Vendor of the petitioner, and the said purchase of the Suit property by the petitioner on 24.05.2012 is 'Void Document', as the 1st respondent is the owner of the Suit property as per Decree passed by this Court in O.S.No.1120/2009 and from 12.10.2011 only, the 1st respondent is the owner of the Suit property and on the date of executing Sale Deed by the said Vimala to the petitioner, and the said Vimala is not the Owner of the Suit

property, and the said Vimala has no right or title to execute Sale Deed in favour of the petitioner herein with regard to the Suit property.

The 1st respondent has filed E.P.No.39/2013 in O.S.No.1120/2009 on the file of this Court for execution of the Decree passed in the said O.S.No.1120/2009 as against one Rajeshwari W/o. (late) Ramanjulu, Balakrishnan S/o. Sanjeevi Naidu, Chinnappa Naidu, Vimala W/o.Yogan, Raghu S/o. Sri Ramulu Naidu, and the present petitioner's Counsel has appeared for the 3rd Judgment Debtor namely Vimala, who is the vendor of the petitioner and this Court, has executed the Rectification Deed with Regard to Correct S.No.544/5 on 17.06.2016, and after knowing about the Execution of Rectification Deed by the District Munsif Court, Katpadi and proceedings of the Execution Petition was also terminated on 14.09.2016.

The vendor of the petitioner namely Vimala was the 3rd defendant in the said O.S.No.1120/2009 on the file of this Court and she entered appearance through the present petitioner's Counsel and she has not filed her Written Statement and was set ex-parte and a decree was passed against her by this Court, and the petitioner's vendor Vimala was very well aware of the Judgment and Decree passed against her, and the said Vimala and the defendants in O.S.No.1120/2009 are relatives with each other namely Rajeshwari, W/o. (late) Ramanjulu Naidu against whom the E.P.No.39/2013 was filed has colluded with the above said Vimala and has created a sham and nominal Sale Deed in favour of the petitioner who is nothing but a name lender to both Vimala and

Rajeshwari, and the petitioner is acting as a tool in the hands of said Vimala, and Rajeshwari.

The said Vimala has got no right or title over the Suit property, and she cannot execute any Sale Deed in favour of anybody else including the petitioner, and the said Vimala who very well knew that she has got no case in O.S.No.1120/2009 has colluded with the said Rajeshwari and her sons and has created a sham and nominal Sale Deed in favour of the petitioner in which the said Rajeshwari and her son are witnesses to the above mentioned Void Sale Deed and they have done the same to knock away the Suit property from the 1st respondent and has set up the petitioner to file this false and vexatious petition.

The petitioner herein by engaging her present Counsel have already filed a Suit for the relief of Permanent Injunction as against the 1st respondent for the same Suit property on the file of this Court in O.S.No.186/2013 and the 1st respondent has filed her detailed Written Statement and the petitioner herein has left the Suit to be dismissed for default on 08.10.2015 for reasons best known to her, and the petitioner herein knows the entire facts regarding O.S.No.186/2013 on the file of this Court. By burking the above said true facts, the petitioner with an ill-intention, she filed O.S.No.444/2016 on the file of the Hon'ble Additional Sub-Court, Vellore, and the same was also dismissed on 03.10.2019, and after coming to know that the 1st respondent is taking steps to change

the Revenue Records in her name for the Correct S.No.544/5 after the Order passed in E.P.No.39/2013 on the file of this Court.

The 1st respondent is a Widow and also a Senior Citizen and as she belongs to the Poor Dobi Community, and the defendants in the Suit in O.S.No.1120/2009 and the present petitioner belongs to the Naidu Community in the village where the Suit property is situated is trying all measures to harass the 1st respondent thereby compelling her to come to terms and since the 1st respondent is a Law abiding Citizen, with the help of the Law of the Land has succeeded in her case, and still the petitioner colluding with the defendants in O.S.No.1120/2009 is filing litigations after litigations to deprive her right to enjoy the property purchased by her hard earned money. By burking the above facts, the petitioner has filed this Case vexatious petition.

The above Suit is one for the relief of Mandatory Injunction of grant Patta against the Government Officials, and in a Suit for the relief of Mandatory Injunction, no 3rd party can be impleaded as the relief sought by the 1st respondent in the Suit in a specific one as the Cause of action for filing the said Suit is only as against the defendants to the Suit alone and in such a Suit for Mandatory Injunction the cause of action does not survives or continues to any other 3rd party and thus no party can be newly impleaded in a Suit for Mandatory Injunction and hence neither the petitioner nor any person can be added as a defendant in the said Suit.

The petitioner is not at all a necessary party to this Suit as the Judgment and Decree passed by this Court in O.S.No.1120/2009, and the Rectification Deed executed by this Court in favour of the 1st respondent, and the orders passed by this Court in E.P.No.39/2013 was not at all challenged in any appellate Court nor it was questioned by way of filing a new Suit and the Suits in O.S.No.186/2013 filed by the petitioner on the file of this Court and the Suit in O.S.No.444/2016 filed by the petitioner on the file of the Hon'ble Additional Sub-Court, Vellore was also dismissed and the petitioner has got no locus standing to file this petition, and there is no bonafide and merits and prays to dismiss the petition with costs.

3. Neither the petitioner nor the respondents have placed any oral or documentary evidence before this Court.

4. **Points for Consideration:-**

a) Whether the petitioner is entitled for the relief as prayed for?

5. **Answering for the Point:-**

Both sides has been heard. Records Perused. On careful analysis of the present case, the Suit is filed by the 1st respondent/plaintiff before this Court on 04.08.2020 only as against 2 to 5-respondents/defendants-1 to 4 for the relief of seeking Mandatory Injunction to direct them to issue Patta with regard to the Suit property in favour of the plaintiff, and for costs.

6. In plaint, the plaintiff states that she purchased the Suit property from one Ramanjulu Naidu, S/o. Munusamy under Registered Sale Deed dated 04.08.2006 with regard to the entire extent of 0.83 Acres in Survey No.544/5 of Ponnai Village, and from the date of her purchase, she alone is in possession and enjoyment of the Suit property till date as absolute owner without any let or hindrance from any one, and her vendor namely Ramanjulu Naidu died due to kidney failure one year after the said Sale Deed and there was an error with regard to the particulars of Schedule of property in the said Sale Deed, and the land consisting of 0.83 Acres correct Survey No.544/5, and when she requested the legal heirs of deceased Ramanjulu to execute a Rectification Deed regarding the Correct S.No., and they refused to do so, and then, she filed a Suit in O.S.No.1120/2009 before this Court as against the Rajeshwari W/o. Ramanjulu and 4 others namely Balakrishnan, Chinnappa Naidu, Vimala and Raju, for the relief of Declaration and the same was decreed in favour of her on 12.10.2011 itself, and she has become the absolute owner of the property of Correct S.No.544/5 to an extent of 83 Cents, and she filed E.P.No.39/2013 before this Court for execution of the Rectification Deed as per Decree passed in the said Suit in O.S.No.1120/2009 and this Court was pleased to execute the Rectification Deed with regard to Correct S.No.544/5 on 17.06.2016, and proceedings of the Execution Petition was also terminated on 14.09.2016, and thereafter, she has applied for getting Patta with regard to the Schedule property by giving petition dated 23.12.2016 to the Zonal Deputy Tahsildar, Katpadi

Taluk, and the officials of Katpadi Taluk Office, has not taken any steps to issue Patta in her name for the Suit property, and she gave two petitions to the District Collector of Vellore dated 03.04.2017 & 04.04.2017, and no action was taken, and again on 16.09.2019, she gave a petition to the District Collector and other defendants, and there was no action taken, and thus, she filed this Suit for Mandatory Injunction and for costs.

7. In the present case, even after receipt of summons, the 1 to 3-defendants failed to appear and they were set ex-parte on 07.09.2020, and the 4th defendant had entered his appearance through the Learned Government Pleader, and after giving sufficient opportunities, he failed to file Written Statement and then, he was ex-parte on 05.02.2021 for non filing of Written Statement, and the case was stand posted for recording ex-parte evidence. At that juncture, the present petition has been filed by the Petitioner/3rd party who wants to get impleaded in the suit as 5th defendant.

8. The petitioner states in the affidavit that she is the absolute owner of 83 Cents of Land comprised in Ponnai Village Dry S.No.544/5 by virtue of her purchaser of the same under a Registered Sale Deed dated 24.05.2012 from its rightful owners, and she is in possession and enjoyment of the same from the date of her purchase, and the Patta for the land is in her name, and she was informed & given to understand that the 1st respondent had filed the above Suit against the respondents-2 to 5 for mandatory injunction relief, and the 1st respondent is fully aware that Patta in respect of the Suit property stands in her name and therefore, she will be interested in any proceedings to

alter or make any change the Patta, and she is the absolute owner of the Suit property, and she is the Pattadar in respect of the same, and therefore, she is necessary and proper party to the Suit which seeks for a virtually Cancellation of Patta standing in her favour, and for grant of same in favour of the 1st respondent, and in fact, she had filed a Suit against the 1st respondent for declaration of her title to the Suit property, and for other incidental reliefs as against the 1st respondent and it is pending on the file of the Hon'ble Additional Sub-Judge Court at Vellore, and thus, it is just and necessary to implead her as a party to the Suit.

9. On the other hand, from the documents adduced by the 1st respondent/plaintiff during the Course of enquiry and the arguments of the 1st respondent/plaintiff's counsel, it reveals that the petitioner's vendor namely the Vimala was the 3rd defendant in the Suit in O.S.No.1120/2009 on the file of this Court, and the said Suit was filed by the 1st respondent for declaration of her title in respect of Suit property in S.No.544/5, and for mandatory injunction to direct one Rajeshwari, W/o.Ramanjulu to execute Rectification Deed for the Sale Deed dated 24.08.2006 executed by her husband, and for delivery of possession, and it was decreed in the 1st respondent/plaintiff's favour on 12.10.2011 itself, and therefore, the 1st respondent/plaintiff claims that the execution of Sale Deed dated 24.05.2012 by the said Vimala in favour of the petitioner is a Void Document.

9.1 Further, in pursuance of Decree, the 1st respondent/plaintiff has filed E.P.No.39/2013 before this Court and the same was allowed, and the Rectification Deed was executed by the Court on 17.06.2016 in her favour, and she has approached the Revenue Officials for Patta, but they failed to issue Patta, and thus, she filed the present Suit, and further, the 1st respondent/plaintiff alleged that the said Rajeshwari has colluded with the said Vimala, and has created a Sham and nominal Sale Deed in favour of the petitioner, and the present petitioner is acting as a tool in the hands of the said Vimala & Rajeshwari, and the said Vimala has got no right or title over the Suit property, and she cannot execute Sale Deed in favour of anybody else including the petitioner, and in the said Sale Deed, the said Rajeshwari & her son are signed as witnesses.

9.2 Already, the petitioner herein has filed O.S.No.186/2013 before this Court for Permanent Injunction as against the 1st respondent/plaintiff herein in respect of the same Suit property, and left the Suit to be dismissed for default on 08.10.2015, and burking the same, the petitioner herein filed another Suit in O.S.No.444/2016 before the Hon'ble Additional Sub-Court at Vellore and the same was dismissed on 03.10.2019 itself, and after coming to know that the 1st respondent/plaintiff is taking steps to change the Revenue records in her name for the Correct S.No.544/5 as per order passed in E.P.No.39/2013, the petitioner herein has filed this petition to implead herself in the Suit as 5th defendant.

9.3 It is mainly contented by the 1st respondent/plaintiff that the above Suit is one filed for the relief of Mandatory Injunction to grant Patta against the Government Officials, and no third party can be impleaded as the relief sought by her in the Suit is a Specific one as the Cause of action for filing the Suit is only as against the defendants-1 to 4 alone, and the cause of action does not survives or continues to any other third party and thus, the petitioner cannot be impleaded as Party in a Suit for Mandatory Injunction.

10. At this juncture, it is useful to refer Order 1 Rule 10 (2) of Code of Civil Procedure which runs as follows;

“1. The Court may at any stage of the proceedings,

a) either upon or

b) without the application of either party,

c) 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.”

Which shows that at any stage of the proceedings if the party is necessary to the suit the court may either by an application or Suo Moto can be add or strike out the parties.

11. It is necessary to settle the original issue of the Suit as long as the Suit property is acquired during the pendency of the Suit. Generally the plaintiff in a suit is the “**Dominus Litis**”. He has full right to choose his opponent. But, this rule is subject to exceptions. The Hon’ble Supreme Court and Other Hon’ble High Courts have laid down certain guidelines as rules to be followed in such petitions seeking joinder of new parties under Order 1 Rule 10 CPC. They are: 1) The Party to be added must be essential to the trial and settlement of the case. 2) There must be circumstances where it is not possible to pass a final judgment in the Original case without the person to be included. 3) The person to be included by the judgment passed must be aggrieved. Therefore, it is necessary to decide this petition on the basis of the above provisions.

12. This Suit has been filed by the 1st respondent/plaintiff for Mandatory Injunction to issue Patta with regard to the Suit Property Survey No.544/5 in favour of her. According to the Petitioner/3rd party, she is having Patta in the same S.No.544/5 in her name, and produced the same during the course of enquiry. The 1st respondent/plaintiff in the present Suit is filed for Mandatory Injunction to get Patta. It is seen from records, in this Suit, as per the execution of Rectification Deed dated 17.06.2016 in connection with E.P.No.39/2013 in O.S.No.1120/2009 on the file of this Court, Whether the defendants-1 to 4 are needs to be directed to issue Patta in favour of the 1st respondent/plaintiff by way of Mandatory Injunction or not? alone is the main

issues, and the plaintiff already has chosen and impleaded the necessary party as defendants as per the cause of action in the Suit.

13. It is pertinent to note that in Counter, the 1st respondent/plaintiff has not disputed the issuance of Patta was stands in the name of the present petitioner in respect of Suit Property Survey No.544/5. The claim of the Petitioner/3rd Party is touching up the title over the Suit property which is not connected the cause of action, but it is touching up on the nature of relief sought in the present Suit.

14. It is seen from the records that the petitioner was already has been granted Patta in her favour in respect of Suit property S.No.544/5. It is aggrieved by the petitioner that if the judgment is passed in favour of the 1st respondent/plaintiff in this Suit, that would leads to cancellation of Patta already granted to her. At this point, this Court of the view that if the Judgment passed in favour of the plaintiff as sought for in the present Suit, the Petitioner/3rd Party will be get aggrieved and her rights will get affected. Further, if the petitioner/3rd party is allowed to be impleaded in the Suit, that will not change the nature of Suit, and therefore, this Court considers that the petitioner/3rd party is a proper and necessary party for proper & complete adjudication and settlement of issues involved in the Suit. From the above discussions, this Court is of the view that the petitioner/3rd party is necessary and proper party in the Suit, and is inclined to allow the petition. Accordingly, the point is answered in favour petitioner.

15. **Result:-**

In fine, in the interest of justice, this petition is allowed. No costs.

-//Dictated by me to the Steno-typist who directly typed the same in computer, corrected and pronounced by me in the Open Court, this the 25th March – 2024//-

(Sd/-.. K.Venkatesan)
DISTRICT MUNSIF
KATPADI

Both side documents and witnesses: **Nil**

(Sd/-.. K.Venkatesan)
DISTRICT MUNSIF
KATPADI