

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

Wednesday, this the 25<sup>th</sup> Day of January – 2023

**I.A.No. 02 of 2022  
In  
O.S.No. 45 of 2018  
(CNR.No.TNVL230000862018)**

M.Sadhasivam

.....Petitioner/Plaintiff

**-Vs-**

1. M.Neelamegam

.....Respondent/Defendant

2. Kothandaraman

.....Proposed Party

This petition has come up today before this Court for orders, and upon hearing the arguments of Miss. S.Gowthami, the Counsel for the petitioner/plaintiff and the 1<sup>st</sup> Respondent who appeared as party in person, and the 2<sup>nd</sup> Respondent was called absent & set exparte, and upon perusing the 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(2) and Section 151 of Civil Procedure Code to implead the proposed party in the above suit and rank him as 2<sup>nd</sup> defendant.

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

The petitioner is the plaintiff in the above suit. He filed the above suit for declaration and consequential injunction as against the respondent/defendant and the same has been stands posted for further examination of PW1. While pending of the above suit,

the petitioner reliably came to know that the respondent herein sold the suit schedule property in favour of third party by way of registered sale deed dated 13.04.2022 vide Doc.No.3643/2022, but previously the said property in S.No.222/2A to an extent of 0.04 cents were allotted to the petitioner by way of Koor Chit Dated 01.01.1994, out of which 0.02 cents sold to the 3<sup>rd</sup> party by the 1<sup>st</sup> respondent pending trial. The aforesaid transaction in between the respondent and proposed party as against law. Since, the purchaser in respect of proposed party is very essential and important in the above case as one of the defendant to avoid multiplicity of proceedings. Hence, this petition has been filed to implead the proposed party as 2<sup>nd</sup> defendant in the above case.

2. **Brief averments of the counter filed by the 1<sup>st</sup> respondent is as follows:-**

Originally, the suit schedule property and other properties are belongs to his father and he enjoyed the same. Since, the respondent does not having any permanent job and in order to safeguard his future, the suit property and other properties were settled in favour of him by his father through settlement deed, and the respondent has been in possession & enjoyment and he obtained patta from the Government. Further, the 1<sup>st</sup> respondent states that the petitioner/plaintiff working as Junior Electrical Engineer in Chittoor District, Andhra Pradesh. Furthermore, the 1<sup>st</sup> respondent states that his father sold his shares from the ancestral property and given in cash and he used it for the betterment of the family. Moreover, the 1<sup>st</sup> respondent states that his parents purchased the property from their own earnings and settled the same by way of settlement deed in his favour on their own volition. Therefore, the petitioner/plaintiff is not having any rights over such properties. The petitioner/plaintiff has filed this suit is vexatious, false and baseless. Hence, this petition is liable to be dismissed.

3. Neither the petitioner nor the respondent has placed any oral or documentary evidence before this court.

4. **Points for Consideration:-**

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

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

a) Both side heard. Order 1 Rule 10(2) of Code of Civil Procedure states that,

“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.

b) The plaintiff has stated in the plaint that under the Koor Chit Dated 01.01.1994, the joint family ancestral properties were divided into 'A', 'B', 'C' & 'D' schedule of properties. In which, 'A' Schedule was allotted to the plaintiff's father, 'B' Schedule was allotted to plaintiff (i.e) 1<sup>st</sup> item, 'C' Schedule was allotted to plaintiff another brother Krishnan and 'D' Schedule was allotted to defendant. And 'A' Schedule is only life estate of plaintiff's father, after his death, it ought to be divided

equally among the plaintiff, defendant and another brother Krishnan. On 04/12/1998, plaintiff's father died and after the 'A' schedule property was equally divided by plaintiff (i.e) 2<sup>nd</sup> item and defendant and Krishnan as per said Koor Chit and they are in possession and enjoyment.

c) On 11.10.2017, the defendant/respondent herein caused hindrance by claiming the suit properties as it was settled by his parents under Settlement Deed to him. Hence, the plaintiff has filed this suit for declaring the plaintiff's title over the schedule properties and consequential permanent injunction and for costs.

d) The petitioner states in the affidavit that during pendency of the said suit, the 1<sup>st</sup> respondent sold one of the suit schedule property in favour of proposed party. But previously the said property S.No.222/2A to an extent of 0.04 cents were allotted to the petitioner by way of Koor Chit dated 01.01.1994. Hence, the purchaser/proposed party had to be impleaded in the suit for proper and complete adjudication of the suit and produced the photocopy of registered sale deed dated 13.04.2022 for perusal. It shows that S.No.222/2A, extent of 0.04 cents was sold to the proposed party by the 1<sup>st</sup> respondent for valid consideration. The said S.No.222/2 is shown in the schedule of properties in the plaint as item No.1.

e) On the other hand, the 1<sup>st</sup> respondent claimed in his counter that he is the owner of the suit properties under settlement deed and the plaintiff has no right over the same. But, the 1<sup>st</sup> respondent has not denied the said sale transaction done by him during pendency of the suit.

f) 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.

6. On careful analysis of the present case, the suit is pending at trial stage and the suit properties are sub-judiced. Whiles, one of the suit schedule mentioned property was sold by the respondent to the proposed party and he becomes the absolute owner as he purchased the said property for valuable consideration. The result of the suit would have impact on the said suit property. No prejudice will be caused if the proposed party is added as 2<sup>nd</sup> defendant. Hence, this court is of the view that the proposed party is necessary and proper party in order to enable the Court effectually and completely to adjudicate for the suit and also in order to prevent the multiplicity of proceedings and inclined to allow the petition and the petitioner is directed to take immediate steps to amend the suit. Thus, the point is answered accordingly.

7. **Result:-**

From the above discussions, in the interest of justice, this petition is allowed. No costs.

-//Dictated by me to the steno-typist, computerized by her directly to my dictation, corrected and pronounced by me in the open court, this the 25<sup>th</sup> Day of January – 2023.//-

DISTRICT MUNSIF  
KATPADI

Both side documents and witnesses: **Nil**

DISTRICT MUNSIF  
KATPADI