

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

Tuesday, this the 27th Day of June – 2023

**I.A.No. 366 of 2017
 In
O.S.No. 45 of 2016
(CNR.No.TNVL230001852016)**

Valli

.....Petitioner/Plaintiff

-Vs-

1. N.Babu
2. G.Sathiyandan

.....Respondents/Defendants

3. G.Amudhavalli
4. Minor G.Sri Nirutheeswaran
Rep. By his father/natural guardian S.Govindaraj

.....Proposed Parties

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. N.Ramanathan, the Counsel for the petitioner/plaintiff, and Advocate Thiru. M.Dhananchezian, the Court Guardian, and the Respondents-1 to 3 were called absent and set ex-parte on 09.04.2018, 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 Civil Procedure Code to implead the proposed parties in the above suit and rank them as 3rd & 4th defendants.

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

The petitioner is the plaintiff in the above suit against the respondents/defendants filed for the relief of declaration of her title to the suit property and for injunction. The petitioner submits that she

has no right to alienate the suit property for the period of 10 years from the date of grant of patta to her, since she was in need of money, the 1st defendant agreed to oblige her by lending, but insisted that the petitioner should execute an agreement of sale, and thus an agreement of sale was executed in favour of the 1st defendant on 21.08.2022, and it was also abandoned as it was not intended to be acted upon and thereafter, since the 1st defendant tried to trespass upon the suit property along with the 2nd defendant, she filed the suit.

The defendants have alleged that one G.Amudhavalli as Power of Attorney Agent of the Plaintiff seems to have executed the sale deed dated 23.03.2016 for a sum of Rs.1,30,000/- in favour of her Minor son G.Sri Nirutheeswaran by putting her mother M.Sulochana as guardian of the Minor G.Sri Nirutheeswaran with the aid and assistance of the 2nd defendant G.Sathiyandan who is none other than the brother of Amudhavalli. Further, the petitioner states that the said Amudhavalli, her husband S.Govindaraj, her brother G.Sathiyandan and Minor Children mother M.Sulochana have all colluded together and created the Sale Deed for a sum of Rs.1,30,000/- over the suit properties dated 28.03.2016 in favour of Minor G.Sri Nirutheeswaran.

The Sale Deed was created after filing of the suit with the full knowledge of the pendency of the suit, and thereafter the defendants have filed an application to reject the plaint with false and untenable allegation and also referred therein the aforesaid Sale Deed and the Power of Attorney Document. Thereafter, the petitioner obtained the copies of the Sale Deed and the Power of Attorney Deed referred in the Sale Deed and found as if She has executed along with her son a Power of Attorney Deed on 20.02.2007 in favour of Amudhavalli, W/o. S.Govindaraj of Police Department over the suit property, and she was shocked to find the same.

The petitioner has never executed the Power of Attorney Deed and she is not aware of any such deed and it was fabricated at the instance of G.Sathiyandan by misleading the her and her son M.Ramesh were cheated. G.Sathiyandan who was the pivot of entire matter played fraud in creating

the said documents on account of the defendants unsuccessful and unenforceable agreement of Sale over the suit property dated 21.08.2002 and the fraud committed by the defendants in fabricating the Power of Attorney Deed and also creating a sham and nominal Deed dated 28.03.2016 with the full knowledge of the filing of this suit will be found true if the documents are analysed according to the law.

The alleged Power of Attorney Agent G.Amudhavalli and her vendee Minor G.Sri Nirutheeswaran are proper and necessary parties to the suit for the proper adjudication and for they have created fraudulent sham and nominal documents by conspiring together, over the suit properties and the suit property is continued to be in petitioner's possession and she is also ignorant of any such transaction. Hence, this petition has been filed to implead the proposed parties as 3rd & 4th defendants in the above suit.

2. **Brief averments of the counter filed by the 2nd Proposed Party (Court Guardian) is as follows:-**

The application to implead the proposed parties in the above suit is not maintainable under Law and the suit property belongs to the 2nd proposed party and he is the owner of the suit property covered under Sale Deed Dated 23.03.2016. At the time of filing and prior to the suit, the 2nd proposed party is the owner of the suit property which was well aware by the Plaintiff and he wantonly & deliberately left out the minor's interest, title and right over the suit property with intention to grab the same in fact the plaintiff is more interested to defeat and defraud the 2nd proposed party.

The plaint ought to have returned and rejected in limine because the plaintiff pleads about the 2nd proposed party in the plaint in respect of the suit property at the time of filing. In order to get the plaint to be numbered, the plaintiff has filed this suit by suppressed the pleadings mentioned in the affidavit. The 1st & 2nd defendants have filed application to reject the plaint on the ground that they are agreement holders and the plaintiff had executed Power of Attorney Deed in favour of the 1st proposed

party. In pursuance of power of attorney, the 1st proposed party sold the suit property to the 2nd proposed party under registered Sale Deed Dated 28.03.2016. Thus, the plaintiff has suppressed power of attorney and executed the sale agreement in favour of the 1 & 2 defendants in respect of suit property, without cancellation of power of attorney. Therefore, the plaintiff has cheated and defrauded the 1 & 2 defendants and they have extinguished their right to sue as against the plaintiff for specific performance of contract.

There was no fraudulent transfer in respect of the suit property by the 1st proposed party in favour of the 2nd proposed party and the Sale Deed Dated 28.03.2016 is valid, true and binding on the plaintiff, and in order to grab the suit property and blackmail and come for terms, this application has been filed after thought, and in order to drag and stall the proceedings in I.A.No.478/2016 and the plaintiff has no locus standi to file suit and prayed to dismiss the petition.

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 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.

5.1 The plaintiff has stated in the plaint that the schedule mentioned property belonged to her and she got the property as house site free of cost, granted for the Adi Dravidars under the group house scheme assigned by the Adi Dravidar Welfare Department of the Government of Tamil Nadu on 25.06.1999, it is plot No.39 in Govt. S.No.194/1 about 3 Cents of Land with 120 Sq.metres in K.V.Kuppam Village and the group housing place is called Kurunji Nagar. The petitioner is in possession and enjoyment.

5.2 The defendants/respondents-1 & 2 herein caused hindrance under the guise of agreement of sale dated 21.08.2002 which was barred by limitation, and 3 days before filing of the suit, the defendants/respondents-1 & 2 tried to interfere with the plaintiff’s possession and enjoyment. Hence, the plaintiff has filed this suit for declaring his title over the schedule property and consequential permanent injunction and for costs.

5.3 The petitioner states in the affidavit that during pendency of the said suit, the alleged 1st proposed party acted as agent for plaintiff and sold the suit property to the 2nd proposed party who is minor under Sale Deed Dated 28.03.2016. Hence, the proposed parties had to be impleaded in the suit for proper and complete adjudication of the suit.

5.4 On the other hand, the 2nd Proposed Party claimed in his counter that he is the owner of the suit property under Sale Deed, and the plaintiff has no right over the same, and vehemently, the 2nd proposed party has denied the said sale transaction done by him during pendency of the suit.

5.5 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.

5.6 On careful analysis of the present case, the suit is filed before this Court on 15.03.2016 and the Sale Deed executed between the proposed parties on 28.03.2016 that is only after filing of the suit. As on date, the defendants-1 & 2 not filed their written statement, and the trial not commenced yet. The suit property is sub-judiced. Whiles, the suit schedule mentioned property was sold by the 1st proposed party to the 2nd proposed party, and the 2nd proposed party 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 parties are added as 3rd & 4th defendants.

5.7 Hence, this court is of the view that the proposed parties are necessary and proper parties 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 is inclined to allow the petition. The petitioner is directed to take immediate steps to amend the suit. Thus, the point is answered accordingly.

6. **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 27th Day of June – 2023.//-

DISTRICT MUNSIF
KATPADI

Both side documents and witnesses: **Nil**

DISTRICT MUNSIF
KATPADI