

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

Monday, this the 01st Day of April – 2024

**I.A.No. 692 of 2018
In
O.S.No. 77 of 2016
(CNR.No.TNVL23-000198-2016)**

M.Srinivasan

.....Petitioner/Plaintiff

-Vs-

1. P.Jayalakshmiyammal
2. P.Raghu
3. P.Indra
4. P.Kumar
5. P.Chinna
6. P.Gandhi Raj
7. P.Ponnaiyan
8. N.Babu
9. N.Nirmala

.....Respondents/Defendants-1 to 9

1. P.Sugandhan
2. N.Dhandayudhapani

.....Proposed Parties-1 & 2

This petition has come up today before this Court for orders, and upon hearing the arguments of Thiru. V.Balu, the Counsel for the petitioner, and Thiru. S.Gunasekaran & Thiru. G.Vijayabaskar, the Counsels for the 9th Respondent & 1st Proposed Party, and Thiru. V.Jothiram, the Counsel for the 2nd Proposed Party has made 'No Counter' endorsement, and the Respondents-1 to 8 were already set exparte in the main Suit itself, and upon perusing the petition, counters, 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, seeking to implead the Proposed Parties as the Defendants-10 & 11 in the above Suit.

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

1.1 The petitioner is the plaintiff in the Suit, and after reproducing the entire averments of the plaint in the affidavit, the petitioners states that on 23.06.2014, he gave a complaint before the Viruthampet Police Station against the defendants-8 & 9, and the Police authority instructed them not to do any further construction, but of no use, on 01.07.2014, he had issued a Legal Notice to them, and again in the Month of March and April 2015, the 9th defendant tried to continue raising the Superstructure, and thus, again on 09.03.2015, he gave a complaint before Police Station & the Collector respectively. After that also, the 9th defendant tried to raise the Superstructure, and the same was prevented by him, and he was assaulted by the defendants-8 & 9, and he was admitted in Adukkambarai Government Hospital as in-patient on 11.03.2015, and discharged on 17.03.2015.

1.2 With an intention to defeat the petitioner's claim, the 9th defendant transferred her property by executing a Settlement Deed on 27.11.2015 in favour of her Son P.Sugandhan who is the 1st proposed party. Without having the knowledge that the property of the 9th defendant has been transferred, the petitioner filed the Suit

only with the 9th defendant. Though, the said 1st proposed party live with the 9th defendant, all kinds of mischief of raising Superstructure raised by 9th defendant creating irreparable loss.

1.3 When, the petitioner filed the Suit, this Court grant ad-interim injunction against the 9th defendant not to raise Superstructure in the Schedule mention property which was beside the property of the 9th defendant which was recently transferred in the name of 1st proposed party. Against the order and disobeyed the Court, the 9th defendant continued raising the Superstructure. On the basis of disobedience of Court order, the petitioner have filed an I.A., but this Court dismissed it on the ground that the actual owner is the 1st proposed party P.Sugandhan.

1.4 For proving the case, the petitioner had to add the 1st proposed party as as 10th defendant, and the 2nd proposed party – N.Dhandayudhapani who was also the person who raised the Superstructure along the 8th defendant, as 11th defendant to controvert the false of defendants averments in their Written Statement. On knowing that the Settlement Deed was executed by the 9th defendant in favour of the 1st proposed party on 02.11.2015, he is the necessary party to be added as 10th defendant in the Suit.

1.5 Even though, the 8th defendant is the intervener in the petitioner's Schedule of property along with the 2nd proposed party who is brother of the 8th defendant, they had purchased the Schedule of property jointly under S.No.449/3 dated 28.04.1994, and thus, the 2nd proposed party is also the necessary party to be added as 11th defendant in the Suit, and prays to allow the petition.

2. **Brief averments of the counter filed by the 9th respondent is as follows:-**

2.1 The petition filed by the petitioner is devoid of merits, lacks in bona fide, and the same is liable to be dismissed in-limini, and she does not admit any of the averments stated in the petition and put the petitioner to strict proof of the same, and states that the Suit was numbered on 28.04.2016, and there is no specific reason is pleaded in the petitioner's affidavit for filing this petition, and further states that she has settled her property which is situated beside the Suit property in favour of her son namely Suganthan on 27.11.2015.

2.2 On the date of filing of the Suit by the Plaintiff and prior to it, she is not the owner of the property situate beside the Suit property as alleged by the plaintiff, and she has not encroached any common pathway, and the plaintiff cannot file case against the persons of his choice, and being the plaintiff, he should be vigilant in conducting his case and the cause of action for filing the Suit goes as her, and she is an unnecessary party to this Suit, and no relief can be claimed as against her.

2.3 Moreover, in the plaint, the entire allegations is against the 9th respondent that she has raised the Superstructure by encroaching the Suit property, and now the petitioner cannot implead the proposed parties as there is no cause of action for filing the Suit as well as this petition against the proposed parties, and this petition is also not based on any event subsequent to the filing of the Suit, and the affidavit is bald as to why the proposed parties to be impleaded, and prayed to dismiss the petition with costs.

3. Brief averments of the counter filed by the 1st Proposed Party is as follows:-

3.1 The petition filed by the petitioner is devoid of merits, lacks in bona fide, and the same is liable to be dismissed in-limini, and he does not admit any of the averments stated in the petition and put the petitioner to strict proof of the same, and states that the Suit was numbered on 28.04.2016, and there is no specific reason is pleaded in the petitioner's affidavit for filing this petition, and further states that his mother had settled her property which is situated beside the Suit property in favour of him on 27.11.2015.

3.2 On the date of filing of the Suit by the Plaintiff and prior to it, he alone is the owner of the property situate beside the Suit property, and he has not encroached any common pathway, and the plaintiff cannot file case against the persons of his own choice, and being the plaintiff, he should be vigilant in conducting his case and the cause of action for filing the Suit goes, and he is an unnecessary party to this Suit, and no relief can be claimed as against him.

3.3 Moreover, in the plaint, the entire allegations is against the defendants-1 to 9, and now the petitioner cannot implead the proposed parties as there is no cause of action for filing the Suit as well as this petition against the proposed parties, and this petition is also not based on any event subsequent to the filing of the Suit, and the affidavit is bald as to why the proposed parties to be impleaded, and prayed to dismiss the petition with costs.

4. **Point for Consideration:-**

- a) Whether this petition is entitled to be allowed or not?

5. **Answering to the point:-**

Both sides has been heard. Records perused. Upon careful perusal of petition, counters, arguments of both sides and the case records, it is found that Originally, the petitioner is the plaintiff and the respondents herein are the defendants in the Suit. The present petition has been filed by the plaintiff to implead the proposed parties as defendants-10 & 11 in the Suit, as they are necessary parties.

6. In petition affidavit, the petitioner/plaintiff has stated that before filing of the Suit, he gave complaints before the Police Station against the defendants-8 & 9, and he filed the present Suit only with the 9th defendant, and he has no knowledge that the 9th defendant has been transferred in favour her son P.Sugandhan (the 1st proposed party) by way of Settlement Deed dated 27.11.2015, and the said 1st proposed party is live with the 9th defendant, all kinds of mischief of raising Superstructure raised by 9th defendant creating irreparable loss, and he is necessary party. Likewise, the 8th defendant had purchased the property along with his brother N.Dhandayudhapani (the 2nd proposed party) jointly in plaintiff's Schedule of property, and thus he is also the necessary party, and they are to be added as 10th & 11th defendant in the Suit.

7. On bare reading of counters of 9th respondent & the 1st proposed party, it is found that they are not disputing the relationship and the execution of Settlement Deed dated 27.11.2015 between them, but they are disputing that before filing of the

Suit i.e., 28.04.2016, the 9th defendant had settled her property to her son (the 1st proposed party herein), and thus the Cause of action for filing of the Suit goes, and they are unnecessary parties and no relief can be claimed against them, and they have not encroached any common pathway.

8. Before parting with Order, 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.

9. 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.

10. The Suit has been filed by the plaintiff for declaration of his title over the Suit 1st Item of property, and deliver the possession of the same from the 8th defendant for the extend of 1 ½ cents trespassed by him, and to declare his title over the Common Path for the extend of 2 ¼ cents along with defendants, and the extend of 12 x 12 feet trespassed by the 9th defendant in the Western side of the empty space where he raised the Superstructure, and also to declare his title over the Common Path for extend of 2 ¼ cents along with defendants, and the extend of 12 x 50 feet trespassed by the 8th defendant in the Western side of the empty space where he raised the Superstructure, and for mandatory injunction to demolish the unwarranted Superstructure raised in the 1st Item, extend of 1 ½ cents from the Southern side of Plaintiff's property, and for mandatory injunction to demolish the unwarranted Superstructure raised in the 2nd Item which is situated in the Western side of within the empty space extend of 12 x 12 feet respectively, and also for mandatory injunction to demolish the unwarranted Superstructure raised in the 3rd Item which is situated the Western side of within the empty space extend of 12 x 50 feet respectively, and for permanent injunction restraining the defendants-1 to 9, their henchmen, agents, gundas, hooligans and kith & kins, not to intervening with

peaceful possession and enjoyment of the Item No. 4 (A) and Item No.4(B), and also for Permanent Injunction against the defendants-1 to 9 not raise any further Superstructure in Item No.1 to 3, 4(A) and 4(B) and for costs.

11. According to the petitioner/plaintiff, he has no knowledge about the Settlement Deed dated 27.11.2015 executed by the 9th defendant in favour of the 1st proposed party. It is evident from the plaint, the plaintiff has seeks for declaration of his title over the Common Path for the extend of 2 ¼ cents along with defendants, and the extend of 12 x 12 feet trespassed by the 9th defendant in the Western side of the empty space where she raised the Superstructure, and for mandatory injunction to demolish the Superstructure raised.

12. In both the Counters, the 9th respondent & the 1st proposed party have not disputed the execution of Settlement Deed dated 27.11.2015, and the settled property is situate besides the Suit property. Hence, this Court is of the view that since, the 9th defendant has been settled her property to the 1st proposed party, he becomes necessary party and he is essential to the Trial & Settlement of the case, and it is not possible to this Court to pass a final judgment without him, and moreover, he must get aggrieved if the judgment is passed in the present Suit.

13. It is seen from the petition affidavit, the petitioner/plaintiff claims that the 8th defendant along with his brother N.Dhandayudhapani (the 2nd proposed party), had purchased the Schedule of property jointly under S.No.449/3 on 28.04.1994, and thus, the 2nd proposed party is also the necessary party to be added in the Suit. It is evident from the plaint, the plaintiff has seeks for declaration of his title over the Suit

1st Item of property against the 8th defendant & for delivery of possession for the extent of 1 ½ cents trespassed by the 8th defendant in the Schedule mentioned property, and for mandatory injunction to demolish the Superstructure raised in the 1st Item.

14. It is pertinent to note that there is no contra material facts placed by either the 8th defendant or the 2nd proposed party, and they were set ex-parte for non their appearance respectively. Since, the 8th defendant had purchased the Schedule mentioned property along with his brother (the 2nd proposed party), the relief sought against the 8th defendant will also bind the 2nd proposed party, and thereby, he becomes necessary party and he is essential to the Trial & Settlement of the case, and it is not possible to this Court to pass a final judgment without him, and moreover, he must get aggrieved if the judgment is passed in the present Suit.

15. Therefore, this Court considers that the proposed parties are necessary parties for proper & complete adjudication and settlement of issues involved in the Suit. From the above discussions, this Court is inclined to allow the petition. Accordingly, the point is answered in favour of the petitioner.

16. **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, corrected and pronounced by me in the Open Court, on this the 01st Day of April – 2024.//-

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

Both side documents and witnesses: Nil

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