

**In the Court of the Additional District & Sessions Judge,
Srivilliputtur.**

**Present : Tmt. Gajara R. Jiji, M.A., LL.M.,
Additional District Judge,
Srivilliputtur.**

Saturday, the 6th day of January 2024

I.A.No.5/2023

in

O.S. 12/2017

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1) Thondaiman, Semman, Servai
Panar, Communities of People through
their representatives,
S. Muthukumar, T. Manoharan
K. Guruvaraj

2) Arulmigu Sri Kambakamatchiamman
Kathavarayan Thirukovilai
Kulatheivamaka Valipadubavarkal
Society through its Secretary

.. Petitioners / Plaintiffs

/vs/

1) Paramanantham (died)

.. 1st defendant

2) Peyandi

... Respondent / 2nd Defendant

3) Thenammal @ Thenmozhi

.. Proposed 3rd Respondent /
Proposed defendant

4) N.S. Balamurugan,

President, Panarkula Thaiyalkarargal Sangam,
Thirunagar, Madurai – 6.

.. 4th respondent

This petition came before me for final hearing on 06.12.2023 in the

presence of Thiru.J. Sureshkumar, Advocate for the petitioners, and of Thiru.S. Rajaguru, Advocate for the respondents, and upon hearing arguments on both side and perusing the case records, this Court passed the following

ORDER

This is a petition under Order 22 Rule 4 of CPC to implead the 3rd proposed respondent as the legal heir of the deceased 1st respondent and as 3rd defendant in the suit.

1. Averments in the petition in brief are as follows:

The petitioners are the plaintiffs in the suit. The petitioners filed the suit for declaration of right and consequential injunction. The 1st respondent died on 02.02.2020 pending suit leaving behind him his sole daughter the 3rd respondent to succeed his estate. The proposed 3rd respondent is legal representative of the deceased 1st respondent and hence the 3rd respondent has to be substituted in the place of the 1st respondent in the suit as his legal heir. The petitioners cannot effectively canvas their suit claim until the 3rd respondent is impleaded in the suit. Hence prays to allow the petition.

2. Averments in the counter statement filed by the 4th respondent and adopted by 2nd respondent / 2nd defendant in brief are as follows :-

The deceased 1st respondent / 1st defendant while alive filed his written statement stating that he is conducting the case in his capacity of the President of Panarkula Thaiyalkarargal Sangam. The 1st defendant categorically stated

in his written statement that the suit property belongs to the Sangam. After the death of Paramanantham the Sangam is functioning with a new President. The proposed party is no way connected with the suit property and is not the legal heir of the deceased Paramanantham. In the petition the father's name of the proposed party is shown as S. Paramanantham and the age of the proposed party is shown as 62 years. When Paramanantham died his age was 73 years which itself would show that the petition is filed to implead a wrong person and hence is liable to be dismissed.

3. No witnesses were examined on either side. Ex.P1 and P2 marked on the side of petitioner. Ex.R1 and R2 marked on the side of 4th respondent. Heard both side. This Court considered the submissions of both side and perused the materials on record.

4. Point for Consideration

- 1) Whether the 3rd proposed respondent is necessary or proper party to the suit?
- 2) Whether the petition is to be allowed or not?

5. Points and answer :-

The petitioners are the plaintiffs in the suit. The 1st defendant admittedly died on 02.02.2020. The suit has been filed for declaration and permanent injunction. It is the case of the petitioner that the defendants had interfered in the administration of the temple by the plaintiff communities.

The plaintiff themselves have stated in the plaint that the 1st defendant contested in O.S. No. 229/2012 filed by the 1st plaintiff before the District Munsif Court, Sivakasi as the President of Panarkula Thaiyalkarargal Sangam, Madurai. In the present suit also the 1st defendant has stated in his written statement that he is not contesting the matter in his individual capacity but as the President of Panarkula Thaiyalkarargal Sangam. Further the President of the Panarkula Thaiyalkarargal Sangam has already been impleaded in the suit as a defendant. It is not the case of the plaintiff that the 1st defendant as well as his family members interfered in the conduct of the poojas in the temple. It was also not the claim of the deceased 1st defendant that he is personally having any hereditary right over the suit temple or properties. When the 1st defendant had not conducted the case in his personal capacity and since there is no cause of action against the family members of the 1st defendant, this court does not find it necessary to implead the legal heirs of the 1st defendant. On the other hand, the legal representative of the Sangam which the 1st defendant claimed to have represented has been impleaded in the suit.

6. In the light of the above discussions, this court finds that it is not necessary to implead the proposed party in the suit and as such the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 6th day of January 2024.

Additional District and Sessions Judge,
Srivilliputtur.

List of witness examined on the side of the petitioner:-

- Nil -

List of documents marked on the side of the petitioner :-

Ex.P1	-	Xerox copy of Pan Card in the name of Thenammal
Ex.P2	-	Xerox copy of Marriage Invitation in the name of Thenmozhi.

List of witness examined on the side of the 4th respondent:-

- Nil -

List of documents marked on the side of the 4th respondent:-

Ex.R1	-	Death Certificate of Guruvammal – Xerox copy
Ex.R2	-	Voter list in the year of 2019 – Xerox copy

Additional District and Sessions Judge,
Srivilliputtur.

*Additional District & Sessions Court,
Srivilliputtur,
I.A. 5/2023 in O.S. No. 12/2017
ORDER (Web copy)
Date: 06.01.2024*