

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

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

Friday, the 19th day of January 2024

I.A.No. 6/2023

in

O.S. No. 106/2014

.....

- | | |
|---|--|
| 1. Krishnammal (Died) | |
| 2. Renuga | Petitioners / 1, 3 defendants |
| | /vs/ |
| 1) K.R. Kannan | .. 1 st Respondent / plaintiff |
| 2) Santhi | |
| 3) K. Krishnamoorthi | |
| 4) V.G. Ganesan | |
| 5) M/s. Vinayaga Fire Works Factory,
through its Partner, R. Bramman | .. 2 to 5 Respondents / 2, 4, 5, 6 defendants |
| 6) S.V.S.P. Manickaraja | .. 6 th Respondent / Proposed 7 th defendant |

This petition came before me for final hearing on 10.01.2024 in the presence of Thiru.T. Muthukumar, Advocate for the petitioner, and of Thiru.S. Parthasarathy, Advocate for the 1st respondent, and of Thiru.G. Narayanasamy, Advocate for the proposed respondent, and upon hearing arguments on both side and perusing the case records, this Court passed the following

ORDER

This is a petition under Order 1 Rule 10(2) and Section 151 of CPC to implead the proposed respondent as 7th defendant in the suit.

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

(i) The suit has been filed for partition of 5/12 share of the 1st respondent/plaintiff. The 1st respondent claims that the suit schedule 24 and 25 items

of properties were settled in favour of the 1st respondent vide settlement deed executed by the father of the petitioners. The petitioners had filed IA. 383/2015 before this court to include the properties in schedule No. 24 and 25 and only then did the 1st respondent/plaintiff included those properties in the suit as per Order of this court in I.A. 8/2019. If the suit schedule item 24 and 25 are ancestral properties, the petitioners will be entitled to 2/4 share in the said property. In order to delay the proceedings in the suit, the plaintiff had filed petition to implead respondents 3 to 5 who had purchased properties from the father of the petitioners long before filing of the suit. Similarly the plaintiff filed petition to implead the 6th respondent which petition was also allowed.

(ii) The 1st respondent in order to further delay the proceedings of the case has sold the suit schedule item No. 24 and 25 properties to the proposed defendant on 11.07.2023. The said sale is void and against law. The 1st respondent and the proposed respondent suppressed the pendency of the suit and also the industries and electric connection and other machineries available in the schedule property and has mentioned as if the said properties are agricultural lands.

(iii) The 1st respondent and his men demolished the building situated in the said properties which was worth more than two crore rupees. The 1st respondent has lodged a complaint with Keelarajakularaman police station regarding the same. The proposed respondent who has purchased properties is trying to divide the property into house plots and sell those plots. Hence the proposed respondent is necessary

party to the suit. Hence prays to implead the proposed respondent as party to the suit.

2) Averments in the counter statement filed by the 1st respondent in brief are as follows :-

(i) The averments in the petition are not true. The petitioners while admits the settlement executed in favour of the 1st respondent contrary to their averment in the third para has stated in the fourth para that the schedule property which was purchased by their father is ancestral property. The claim of the petitioners that they are entitled to 2/4 share in the schedule item No. 24 and 25 properties is not proper. The 1st respondent has included all the properties known to him as suit schedule properties and has also stated in the plaint that he will with the permission of the court add any other properties which comes to his knowledge later. The present petitioner with an intention to harass the 1st respondent had instigated their mother to file petition for maintenance before the Judicial Magistrate, Rajapalayam which was dismissed.

(ii) The petitioner herein has filed this petition with an intention to delay the proceedings of the case. The petitioner has shown only 6 respondents in the short cause title and long cause title in the petition copy served on the 1st respondent whereas there is no indication about the 7th respondent in the petition. Whiles the petitioner has stated as if the property was sold to 7th respondent which causes confusion. The Industry run by the 1st respondent's father could not be continued by the 1st respondent due to the objections of the defendants and hence electricity was

also disconnected. The machineries also became obsolete due to non usage and whenever the 1st respondent tried to maintain the schedule properties received as per settlement deed, the petitioner filed complaint before the police and prevented the 1st respondent from attending to the maintenance work due to which the buildings and machineries became damaged and obsolete. In order to ensure safety, the 1st respondent had removed the buildings and sold the property as vacant land to S.V.S.P. Manickaraja who is the family friend of the 1st respondent's father. The present petitioner is aware of the removal of the buildings and sale to S.V.S.P. Manickaraja.

(iii) The properties sold to S.V.S.P. Manickaraja were purchased by the 1st respondent's father and not out of the income from the ancestral properties and hence the settlement deeds are enforceable and on that basis the suit schedule item No. 24 and 25 properties were sold to S.V.S.P. Manickaraja and hence the sale is valid and enforceable. Even if the suit schedule item No. 24 and 25 properties ought to be partitioned then the same may be allotted to the share of the 1st respondent and the present petitioner has no right to object the same. The sale made by the plaintiff during the pendency of the suit is within the purview of Section 52 of the Transfer of Property Act and hence the petition to implead S.V.S.P. Manickaraja is not maintainable. This petition has been filed only to delay the proceedings of the case. Hence prays to dismiss the petition.

3) No witnesses were examined on the side of petitioner. Ex.P1 was marked on

the side of petitioner. No oral or documentary evidence produced on the side of respondents. Heard both side. Records perused.

4) Points for Consideration

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

5) Point and answer :-

The petitioners are the defendants 1 and 3 in the suit. The 1st respondent/plaintiff filed the suit for partition of 5/12 share in the suit schedule properties. The case of the petitioner is that the suit schedule item No. 24 and 25 were sold by the 1st respondent to the proposed respondent on 11.07.2023 in document No. 2590/2023. The petitioner has produced the certified copy of the sale deed in document No. 2590/2023 along with the petition. The 1st respondent/plaintiff admits in his counter that he sold the suit schedule item No. 24 and 25 properties to the proposed respondent. Hence there is no dispute regarding the fact that the suit schedule item No. 24 and 25 were sold by the 1st respondent/plaintiff to the proposed respondent. The learned counsel for the petitioner would state that in the petition it is mentioned as 7th respondent has to be impleaded whereas there is no mention about the 7th respondent in the short cause title or long cause title. The petitioner has mentioned in the petition that the proposed respondent is one S.V.S.P. Manickaraja. Merely because the rank of the proposed respondent is mentioned wrongly cannot be taken as a reason to throw out the petition. On the other hand, either of the parties did

not have any confusion regarding the proposed party to be added as the 7th defendant is the said S.V.S.P. Manickaraja. The proposed defendant was served with notice in this petition and he appeared through his counsel and has endorsed no counter to this petition. The proposed respondent also admits purchase of the suit schedule property from the 1st respondent/plaintiff. Hence there is no confusion regarding the proposed party.

6) The suit schedule item No. 24 and 25 are stated to be the self acquired properties of the father of the 1st respondent and it is stated that the plaintiff's father had executed a settlement deed in favour of the 1st respondent. The petitioners vehemently oppose the contention of the 1st respondent and have stated that the suit schedule item No. 24 and 25 were purchased out of the income of the ancestral properties. Whether the suit schedule item No. 24 and 25 were purchased out of the income from the joint family properties or not could be decided only after letting in sufficient evidence regarding the same. The short point to be decided in the petition in hand is whether the proposed respondent is a necessary party to the suit. The 1st respondent/plaintiff filed the suit and has also added suit item No.24 and 25 as schedule properties. Whiles the 1st plaintiff himself has sold the schedule properties item No. 24 and 25. The 3rd defendant is the sister of the plaintiff/respondent and if it is found that she is entitled to partition then the schedule properties might have to be divided and shares allotted. Further the proposed respondent who is stated to have purchased the properties should be permitted to put forth his contention since the

right of the proposed party is also at stake since sale deed has been executed. The learned counsel for the 1st respondent/plaintiff would state that any transaction pendente lite is hit by Section 52 of the Transfer of Property Act and hence no prejudice will be caused even if the proposed respondent is not added as a party. It is true that any transfers pending litigation regarding a suit property is hit by the principle of the lis pendens. However the purchaser of the property is bound by the result of the suit and such result may affect the legal lights of the proposed defendant.

The petitioner has contended that the proposed defendant is trying to again alienate the properties. Hence an effective disposal cannot be given to the case without impleading the proposed defendant. Thus the proposed defendant is a necessary party to the suit.

7) On the basis of above discussions, this court finds that the proposed party is necessary party to the suit and hence this petition is liable to be allowed. The points are answered accordingly.

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

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 19th day of January 2024.

Additional District and Sessions Judge,
Srivilliputtur.

Additional District & Sessions
Court,
Srivilliputtur,
I.A. 6/2023 in O.S. No. 106/2014
ORDER (Web copy)
Date: 19.01.2024