IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE VIRUDHUNAGAR

Present : Thiru. **T.V.Hemanandakumar, B.A.,LL.M.,**
Additional District Judge, Virudhunagar
Monday, the 27th day of January, 2025

IA No.03/2024 in
OS.No.215/2023

1. Peter			
2. Savariraj.	-	Petitioners/Plaintiffs	

(1st and 2nd petitioners through
their power agent Murugesan)

/Vs/

1. Ponmari
2. Muniyarajan
3. Vinoth   -   Respondents 1 to 3 /
                          Defendants 1 to 3.

4. Alagarsamy.   ..   4th respondent/Proposed
                          4th defendant.

This petition came up on 09.01.2025 for final hearing before me in the presence of Thiru.C.Haribalakrishnan, Learned advocate appeared for the petitioners/plaintiffs, Thiru.R.Padmanaban, Learned advocate appeared for the respondents 1 & 3 and 4th respondent remained ex parte and hearing arguments on both sides and having stood over till this day for consideration and this court doth deliver the following

ORDER

This petition is filed by the petitioners/plaintiffs under Order 1 Rule 10(2) CPC to implead 4th respondent Alagarsamy as 4th defendant in this case.

2)   It is alleged in the petition and affidavit that the suit property belongs to plaintiffs. The 4th respondent Alagarsamy, who is not having any right over the property, on 29.03.2004 sold the property to one Muthumuniyandy. Said Mutumuniyandy is the father of respondents 1 to 3. Hence suit is filed for declaration and to declare that the sale deed dated 29.03.2004 as null and void. At the time of

filing the suit, the plaintiffs are of the view that said Alagarsamy and Muthumuniyandy died and so only the legal heirs of Muthumuniyandy were made as defendants 1 to 3. Now it is known that said Alagarsamy, S/o Podampatti Ramasamy is still alive and so he has to be impleaded as party in this case.

3) The respondents/defendants filed counter contending that this petition is misleading and ill motivated. The averment that Alagarsamy sold the suit property to M/s Thirumalai Real Estate is admitted. The further averment that the Alagarsamy, S/o Podampatti Ramasamy is still alive and he has to be impleaded in the suit are put to strict proof by the petitioners. The petitioners well aware of the fact that Alagarsamy is alive and wantonly suppressed the fact and now come forward with this petition. Hence, this petition has to be dismissed.

4) There is no oral or documentary evidence on both sides.

5) The point for consideration is whether the petition deserves to be allowed?

6) Heard and documents perused.

7) **Point:**

This petition is filed by the petitioners/plaintiffs to implead one Alagarsamy as 4th defendant. It is seen from the pleadings that according to the plaintiffs, the plaint schedule property originally belonged to their father and they inherited the property. On 29.03.2004, the 4th respondent Alagarsamy, who is not having any right over the property, executed a sale deed No.1470/2004 in favour of one Muthumuniyandy. Said Alagarsamy and Muthumuniyandy died and so the suit is filed against the legal heirs of Muthumuniyandy. Now it is submitted that said Alagarsamy, S/o Podampatti Ramasamy is still alive and the person, who died, is some other Alagarsamy. The respondents contended that the petitioners, well knowing that Alagarsamy is alive, did not implead him in this case at the earliest stage and now filed this petition.

8) The suit is for declaration. The 4th respondent/proposed 4th defendant Alagarsamy is allegedly the vendor of the property to the father of defendants 1 to 3. So, in a suit for declaration, said Alagarsamy is also necessary party. Hence, this court is of the view that this petition has to be allowed.

9) In the result, this petition is allowed. No order as to cost.

Dictated to the steno-typist, typed by her, corrected and pronounced by me in open court, on this the 27th day of January, 2025.

(Sd.) T.V.Hemanandakumar,
Additional District Judge,
Virudhunagar.

Witness and Exhibits on the side of the Petitioners:

Nil.

Witness and Exhibits on the side of the Respondents:

Nil.

(Sd.) T.V.Hemanandakumar,
Additional District Judge,
Virudhunagar.