

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE, ERODE

Present: **Tmt.Dr.R. MALATHI, M.L.,**
Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court), Erode.
Full Additional charge of
II Additional District Judge,
Erode.

Tuesday the 13th day of June 2023

I.A.No.3/2022
in
O.S. No.494/2021
CNR No.TNED01-003849-2021

Rathnakumar
Proprietor,
M/s.S.R.Tex

... Petitioner/Plaintiff

Vs.

M.Shalini

... Respondent/ Defendant

Proposed party
S.Lingasamy

This petition came up before this court for final hearing on 22.02.2023 in the presence of Thiru.G.Kalaivanan, Advocate for the petitioner and Thiru.K.Shanmugasundaram, Advocate for the respondent and after hearing the arguments of both counsels and upon perusing the records and having stood over for consideration till this day, this court delivered the following:-

O R D E R

This petition is filed by the petitioner/plaintiff under Order 1 Rule 10(2) and Sec.151 of CPC to implead the proposed party as 2nd respondent in I.A 2/2021 is O.S.No. 494/2021.

2. Brief averments in the affidavit filed by the petitioner/plaintiff in support of the petition :-

Petitioner have filed the suit against the respondent/ defendant for recover the suit amount with which, petitioner have filed a petition in I.A No.02/2021 Under Order 38 Rule 5, 6 and Section 151 of CPC sought for order of attachment before judgment over the petition mentioned property, which only belonged to the respondent/defendant herein. Petitioner stated that this court was pleased to pass an order against the respondent/defendant for furnish security of the suit claim. On knowing the order of this Court, with a view to defeat my lawful claim, the respondent /defendant and proposed party both are connivance together and the 1st respondent sold the property belonged to her to the proposed party dated 30.05.2022. It is registered under document No. 3735/2022 on the file of Joint I Sub Registrar, Erode for the value Rs. 8,19,800/-. The said sale deed is not bona fide and it is not enforceable as per law. It is created by the respondent and proposed party with a view to defeat him. Petitioner came to knowledge of the fraudulent document created between respondent and proposed party. Hence, to implead the proposed party in the I.A. No. 2/2021 for proper adjudication, unless petitioner will be put to

much loss and hardship and unable to realize lawful claim for the respondent/defendant. Hence prayed to implead the proposed party as 2nd respondent in I.A 2/2021 is O.S.No. 494/2021.

3. Brief averments in the counter filed by the respondent :-

The genuineness of the sale deed dated 30.5.2022 and the alleged fraudulent act cannot be adjudicated in the attachment application. Therefore no purpose will be served even if the proposed party is added as party to I.A.No.2 of 2021. The proposed party is neither necessary party nor proper party to I.A.2 of 2021. Therefore there is no need to implead him as party to the proceedings. Mere raising vague allegations in the petitioner's affidavit without any proof the petitioner is not entitled to get the relief as prayed.

4. Brief averments in the counter filed by the proposed party :-

The allegations in the petition is totally false. This proposed party is not aware of neither the pendency of the suit for recovery of money nor the pendency of the attachment application in I.A.No.2 of 2021 till he received notice in the above I.A.No 3 of 2022. The proposed party state that under a registered gift deed dated 27.8.2020 the mother of the proposed party gifted the property in favour of him. He accepted the said gift and was in possession and enjoyment of the same as absolute owner. In the 3rd week of April 2021 the proposed party was in dire need of money for his family expenses. In spite of best efforts taken by him he was unable to mobilize fund. Therefore the proposed party has no other option than to sell the

property. The proposed party was able to mobilize money and purchased the property back through sale deed dated 30.5.2022 and he is the absolute owner. The genuineness of the sale deed dated 30.5.2022 and the alleged fraudulent act cannot be adjudicated in the attachment application. Therefore no purpose will be served even if the proposed party is added as party to I.A.No.2 of 2021. The proposed party is neither necessary party nor proper party to I.A.2 of 2021. Therefore there is no need to implead him as party to the proceedings. Mere raising vague allegations in the petitioner's affidavit without any proof the petitioner is not entitled to get the relief as prayed.

5. The point for consideration in this petition is whether for the reasons stated in this petition, this petition has to be allowed as prayed for by the petitioner or not?

6. During enquiry, On the side of the petitioner, no oral and documentary evidence. On the side of the respondents ExR1 to R3 were marked.

7. POINT:

Head both side.

The petitioners/plaintiffs have filed this application under Order 1 Rule 10(2) of CPC praying to implead the proposed party as 2nd respondent in I.A 2/2021 is O.S.No. 494/2021. The petitioner/plaintiff goes to submit that it is just and necessary to allow the application and add this proposed party as respondent for proper adjudication of the application.

8. The suit filed by this petitioner/plaintiff is for recovery of money of Rs. 56,86,525.00. The application IA 2/2021 is the interim application filed for an order under order 38 rule 5 of the CPC for attachment before the Judgment. IA 2/2021 has been taken on file on 15.12.21 and 6-A notice issue to furnish security for the suit claim of Rs.56,86,525.00. This first respondent/defendant had requested time to furnish security. The first respondent goes to submit before this court that the property is not in his name. Meanwhile, the petitioner/plaintiff found that the a regarding petition mentioned property sale deed was executed in favour of the proposed party, sale deed dated 30.5.2022. The petitioner submits that after gaining knowledge about the application on 15.12.21 this first respondent had entered into a fraudulent sale deed dated 30.5.2022 for name sake to defeat the genuine claim of this petitioner/plaintiff. Therefore the proposed party is a necessary party for the claim and he had to be added as respondent for further adjudication.

Under Order 1 Rule 10(2) of CPC read as follows:-

“ Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, 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”.

The suit before this court is for a money claim of Rs. Rs.56,86,525.00. The IA 2/2021 is for attachment before Judgment. In Mahadeva Rice & Oil Mills Vs. Chennimalai Gounder reported in AIR 1968 Mad. 287, the object of the provision Order 1 Rule 10 C.P.C., had been laid down with following the principles:

1.If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.

2.It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself;

3.The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;

4.Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and

5.It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject matter of the suit.

The main consideration in the present application is whether or not

the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit. The main suit is for the recovery of money against this first respondent and therefore there is no nexus between the proposed party and the claim. The petitioner/Plaintiff had filed a petition for attachment before Judgment. This respondent/defendant is directed to furnish security meanwhile before it reaches the finality the petitioner. The 2nd respondent purchased the petition mentioned properties. Order 38 rule 5 CPC reads as below;

- (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-*
- (a) is about to dispose of the whole or any part of his property, or*
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.*
- (2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.*
- (3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.*
- (4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void*

9. It is clear that to comply with the condition in clause (1) the court had ordered to furnish security. And the same is pending. No specific order has been passed by the court that the first respondent had failed to furnish security and therefore there is necessary to attach the petition mentioned property. The first respondent has an option of furnishing any other security. Without giving that opportunity we cannot conclude that the property sold out to the respondent/proposed party is the only property and therefore he is a necessary party to the suit. No presumption can be raised that the first respondent had failed to furnish the security when no final order has not been passed by this court. This court further observes that if this proposed party added in petition considerable prejudice would be caused to the proposed party whose interest has no nexus to the subject matter of the suit.

10. Further more the application under order 1 rule 10(2) to satisfy two test laid down in *Kasturi vs., Uyyamperumal and others* reported in (2005) 6 SCC 733 the Hon'ble Apex Court observed that "it is now clear that two tests are to be satisfied for determining the question who is a necessary party. (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party."

11. This court finds that the averment in the petition do no satisfy the above principles also. This proposed party cannot be allowed to be added

as a party to the petition IA 2/2021. From the above discussion, this court finds that the petition is devoid of merits, hence liable to be dismissed.

In the result, the petition is dismissed without cost.

This order is dictated by me directly to the stenographer and typed by her directly in Computer and corrected by me and pronounced by me in the open court this the 13th day of June 2023.

Sd/-Dr.R.Malathi
Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court), Erode.
Full Additional charge of
II Additional District Judge, Erode.

Exhibits on the side of the petitioners:-

NIL

Exhibits on the side of the respondent:-

| | | |
|-------|------------|----------------------------------|
| Ex.R1 | 27.08.2020 | Copy of the Gift settlement deed |
| Ex.R2 | 20.04.2021 | Copy of the Sale deed |
| Ex.R3 | 30.05.2022 | Copy of the Sale deed |

Sd/-Dr.R.Malathi
Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court), Erode.
Full Additional charge of
II Additional District Judge, Erode.

Draft/Fair Order
IA 3 of 2022
OS 494 of 2021
Date: 13.06.2023