

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 18TH DAY OF SEPTEMBER 2018

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A.No.5082 of 2018

in

C.S.No.709 of 2013

T.Saravanan  
S/o.Thirugnanasambandam  
25 Balaji Nagar  
Ernavoor  
Chennai 600 057

...Plaintiff

**Vs.**

1.C.M.Peranantham @ AnanthamPillai  
S/o.MaheswaramPillai

2.P.Saraswathy  
W/o.C.M.Peranantham @ AnanthamPillai

Both residing at No.24 Bazaar Road  
Mylapore  
Chennai 600 004.

...Defendants

**A.No.5082 of 2018:**

|                  |                       |                 |           |
|------------------|-----------------------|-----------------|-----------|
| 1.A.M.Krishna    | ...Applicant/Proposed | 3 <sup>rd</sup> | Defendant |
| 2.Pushpanathan   | ...Applicant/Proposed | 4 <sup>th</sup> | Defendant |
| 3.Leelavathi     | ...Applicant/Proposed | 5 <sup>th</sup> | Defendant |
| 4.Maragathavalli | ...Applicant/Proposed | 6 <sup>th</sup> | Defendant |
| 5.Thatchayani    | ...Applicant/Proposed | 7 <sup>th</sup> | Defendant |
| 6.Thulasi        | ...Applicant/Proposed | 8 <sup>th</sup> | Defendant |

All are residing at  
Old no.34, New No.69 New Street  
Mylapore, Chennai 600 004.

-Vs-

1) T.Saravanan  
S/o.Thirugnanasambandam  
25 Balaji Nagar  
Ernavoor, Chennai 600 057

...Applicant/Plaintiff

-Vs-

1.C.M.Peranantham @ AnanthamPillai  
S/o.MaheswaramPillai

2.P.Saraswathy  
W/o.C.M.Peranantham @ AnanthamPillai

Both residing at No.24 Bazaar Road  
Mylapore  
Chennai 600 004.

...2<sup>nd</sup> & 3<sup>rd</sup> Respondents/Defendants

Application praying that this Hon'ble Court be pleased to Implead the Applicants who are necessary and proper party in the above Suit - C.S.No.709 of 2013.

This Application coming on this day before this court for hearing the court made the following order:

The present application is filed by an applicant on behalf of himself and four others seeking their impleadment in C.S.No.709 of 2013 on the ground that they are necessary and proper parties to the suit.

2. The plaintiff in the suit has been arrayed as the first respondent in the application and respondents 2 and 3 are the defendants in the suit.

3. The suit has been filed by R1 seeking a relief of specific performance as against respondent 2 and 3 in relation to Schedule 'A' and 'B' properties described in agreement dated 04.07.2008

4. Heard Mr. Arvind Subramaniam appearing for all the applicants and Mr.K.Chandrasekaran, learned counsel for the first respondent

and Mr.M.Sriram, learned counsel for respondent Nos.2 and 3.

5. According to the applicant, one Mr.K.Meganathan, late father of the first applicant, was the original pattadar of the schedule properties having obtained possession of the properties through his father who was in possession of the same for more than 60 years.

6. The present applicants are the sons, and daughters of late Mr.K.Meganathan. The properties set out in the schedule to the plaint were under the care of one Duraivelu, the younger brother of K.Meganathan and the applicants' uncle. After the demise of Meganathan, R2 and R3 according to the applicant fabricated false documents and obtained a false patta for the properties which is now under litigation.

7. A writ petition in W.P.No.2065 of 2016 has been filed challenging the patta and enquiry in that regard is pending. He states that agreement dated 04.07.2008 had been entered into solely as a measure of denying the applicants their legitimate right to the properties. Thus according to the applicant, the suit is a collusive suit as between the plaintiff/R1 and defendants/respondents 2 and 3 in this application.

8. He draws support in this regard from the fact the properties in question stand outside the jurisdiction of this court and this defence has not been canvassed by the defendants in the suit, thus lending credence to the position that the suit is collusive.

9. Learned counsel refers to an application filed by Duraivelu to implead himself as a party to the suit and a counter filed by the respondents in that application wherein they admit, according to him that the present applicants would be necessary parties in the suit.

10. The applicants rely on an unreported decision of a Division Bench of this Court in O.S.A.No.117 dated 17.07.2018 in the case of *Anandhi vs. Marathon Electric India Pvt.Ltd. and 5 ors.*

11. A counter has been filed by the first respondent denying all the averments in the application and contesting the prayer of the applicants for Impleadment.

12. Heavy reliance is placed on the order of this Court dated 20.08.2014 dismissing the application of Duraivelu in A.No.1495 of 2014 seeking impleadment in the suit on the ground that he was a third party not liable to be impleaded, being a stranger to the suit seeking specific performance.

13. The respondents rely on the decision of this Court in the case of *Manikandian and ors. Vs. Smile and ors* (2014) 1 MLJ 492 reiterating the settled legal principle that a stranger to a contract is not liable to be impleaded as a party in a suit for specific performance particularly to enlarge the scope of the suit into a suit for title and possession.

14. It is not disputed that the present applicants are strangers to agreement dated 04.07.2008 which is the subject matter of the plaint filed in C.S.No.709 of 2013.

15. The first respondent has filed a counter objecting to the grant of the prayer in application and pointing out that O.S.No.913 of 1997 has been filed by the present applicants before the District Munsif Court, Tiruvallur praying for a permanent injunction as against R2 and R3 in respect of the present suit properties that had been dismissed. An appeal filed in A.S.No.55 of 2002 has also been dismissed.

16. Reliance by the applicants upon the counter filed by the first respondent in A.No.1495 of 2014 also does not advance their case. What has been stated at paragraph No.3 therein is as follows:-

*The application filed for impleading the applicant as 3<sup>rd</sup> defendant in the suit is not maintainable under law. The suit is filed for specific performance of Agreement of sale Dated 04.07.2008. Admittedly the applicant is third party to the contract. A reading of paragraphs 4 to 10 would show that the applicant is claiming title to the property. He has categorically stated that the property belongs to Valluvar madam and was handled by Meganathan his brother. Thus neither Valluvar Madam is sought to be added nor Meganathan's heirs. Even if they are sought to be added even they cannot maintain an application for impleadint as the suit is for specific performace of contract and not one for declaration of title.*

17. There is thus no admission to the effect that the present applicants are necessary or proper parties to the suit as the applicants would have me believe.

18. It is also an admitted position that this Court, while considering an almost identical position where Duraivelu had sought his impleadment in this suit, had rejected the prayer as early as on 20.08.2014 on the ground that the plaint contained no material or averment as against the applicant therein and no relief was sought for as against him.

19. This is true even in the present case. Thus, even in the case of a decree being passed in suit, the same would not bind the present applicants. It is also relevant to note that no material has been placed before me in support of the various averments and allegations that have been made in the present application and impleadment of a party cannot be granted for the mere asking.

20. The applicants rely upon the provisions of Order I Rule 10 of the C.P.C. I am of the of the view that the provision has no application to the present factual matrix. There is no quarrel on the position that this Court has the discretion to implead parties who are necessary and proper in a matter. However the present suit is one for specific performance and the burden upon the applicants to establish their so-called right to the property has not been discharged, in my view.

21. The decision of the Division Bench of this Court in *Anandhi's* case (supra) relied upon by the applicants does not support their case in any manner, since that decision turns on different and distinguishable facts. The Division Bench in that case was concerned with an application for impleadment filed by a purchaser of the suit property and the application was contested on the ground that the applicants were not bonafide purchasers. This was an issue to be decided in suit. Thus, in the light of the admitted position that the parties seeking impleadment had indeed purchased the property and the suit had been filed seeking recovery of money upon mortgage, the Division Bench had allowed the prayer for impleadment.

22. In the light of the discussion as above, I have no hesitation in rejecting the prayer for impleadment and the application stands dismissed.

Sd./- A.S.M.J.

18.09.2018

//Certified to be a true copy//

Dated this the                      day of                      2018.

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DL/27.11.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.