



C.R.P.No.143 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE P.B. BALAJI

C.R.P.No.143 of 2025

and

C.M.P.No.1097 of 2025

C.Govindasamy

... Petitioner

Vs.

1.S.Vasanthi

2.S.Radha

3.K.Munusamy

4.G.Rajkumar

5.M.Govindasamy

6.C.Munusamy

7.G.Madhaiyan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set-aside the fair and decretal order dated 14.10.2024 made in I.A.No.1 of 2024 in O.S.No.229 of 2023 on the file of the learned Additional District Court, Dharmapuri.

For Petitioner : Mr.Manoharan

For Respondents : Mr.S.Sathish [R1 & R2]
No appearance [R3 to R7]



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ORDER

WEB COPY The present revision is at the instance of the 6th defendant, who is the purchaser of the suit property from the other defendants 3 and 5, who have purchased the same from the 1st defendant.

2. It is the admitted case of the parties that the 1st defendant filed a suit for specific performance against the 2nd defendant and obtained a decree and also the decree was executed before the execution court and sale deed came to be executed in favour of the 1st defendant. Now, the present suit has been filed by the 1st respondent challenging all the sale deeds and also for the relief of injunction restraining the defendants from in any manner dealing with, alienating and encumbering the suit property. Pending the suit, an application was taken out to omit the 2nd defendant from the suit. Though it was resisted by the respondents, it came to be allowed by the Trial Court on the ground that no prejudice would be caused to the respondents/defendants, if the 2nd defendant is omitted from the array of parties under Order 1 Rule 10(2) of CPC.

3. Heard *Mr.N.Manoharan*, learned counsel for the petitioner and *Mr.S.Sathish*, learned counsel for the respondents 1 and 2.



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4. Learned counsel for the petitioner would state that the plaintiffs having challenged the sale deeds in favour of the defendants 3 and 5 as well as the 6th defendant and having chosen to make specific allegation against the 2nd defendant, who was the original owner of the suit property, whose property came to be sold through Court process, it is not open to the plaintiffs to now contend that the 2nd defendant is a fictitious person. He further states that when the plaintiffs have not been able to serve notice or summons on the 2nd defendant, he can only take resort to provisions of Order V of CPC and taking out an application under Order 1 Rule 10 would not be the solution. He also invited my attention to the averments in the plaint in O.S.No.229 of 2023, at paragraph No.7, where the plaintiffs themselves have gone on record stating that the 2nd defendant received summons in the earlier suit for specific performance and chose to remain *ex-parte*. He therefore contended that it does not lie in the mouth of the plaintiffs to state that the 2nd defendant is a fictitious person. He prays for the revision being allowed.

5. Per contra, learned counsel for the respondents 1 and 2/plaintiffs in the suit state that the 2nd defendant has in any event lost title, having



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sold the property to the 1st defendant and thereafter also the property has changed hands to the defendants 3 and 5 and is presently, with the 6th defendant. Therefore, the suit is delayed for want of service of notice/summons on the 2nd defendant and therefore, the Trial Court has rightly held that no prejudice would be caused to the defendants, if the 2nd defendant is exonerated and omitted from the array of parties under Order 1 Rule 10 of CPC.

6. I have carefully considered the submissions advanced by the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

7. Admittedly, the suit is for the substantial relief of seeking declaration to nullify sale deeds, including the one executed by the 2nd defendant in favour of the 1st defendant, which appears to be the starting point of the entire litigation and *lis* in the present suit. Specific allegations has been made in the plaint as against the 2nd defendant. Even in the plaint, it is not the case of the respondents 1 and 2 as plaintiffs that the 2nd defendant was a fictitious person. On the contrary, they have admitted that the 2nd defendant received the summons in the said suit and did not



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choose to contest the suit. Therefore, today it is not open to the respondents 1 and 2 to contend that the 2nd defendant is only a fictitious person and he should be exonerated under Order 1 Rule 10 CPC.

8. As rightly contended by the learned counsel for the petitioner, mere non-service on a defendant would not entitle exoneration of the party, as long as the presence of the parties is required for the Court adjudicating the issue that arises for consideration. As already noted that the sale is in favour of the 1st defendant was only by the 2nd defendant. It is the starting point of the cause of action for the plaintiffs in the present suit. Therefore, merely because the 2nd defendant is not being served in the suit right from the year 2020 will not entitle the plaintiffs to seek for exoneration of the 2nd defendant from the array of parties. It is always open to the plaintiffs to resort to provisions under Order V Rule 20 CPC and seek suitable orders from the Court and despite the same, if there is no appearance on the 2nd defendant, it is open to the plaintiffs to take advantage of the same, subject to the contentions and claims of other defendants, which all have to be decided at trial.



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9. For the above reasons, I am inclined to set aside the impugned

order and accordingly, the same is set aside. The plaintiffs, however are at liberty to move an appropriate application under Order V Rule 20 CPC to effect service on the 2nd defendant by substituted service. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

23.06.2025

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

The Additional District Court, Dharmapuri.



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P.B. BALAJI, J.

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