

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Friday the 7th day of February 2025

I.A.No.23/2025

in

O.S.No.334/2017

1. Sri.Mandhiriappan
2. Sri.Nachimuthu (Died)
3. Sri.Thangavelsamy
4. Smt.Subbulakshmi
5. Sri.Ramesh
6. Smt.Selvi ... Petitioners/ Plaintiffs

/VS/

1. Sri.Subramaniam
2. Sri.Dharmaraj
3. Sri.Sellamuthu
4. Smt.Ranjitham
5. Sri.Karuppusamy ...Respondents/ Defendants

This petition is coming on 27.01.2025 for final hearing before me in the presence of Ms.R.Krishnaveni, Advocate for the Petitioners and Mr.K.Gopalakrishnan, Advocate for the 1st and 2nd Respondents and Mr.R.Maheshan, Advocate for the 3rd to 5th Respondents and upon perusing the records, and this court made the following:

ORDER

This petition filed Under Order 6 Rule 16 and 17 and section 151 of CPC to amend the plaint.

1. The brief averments of the affidavit filed by the petitioners as follows:

1.1. The petitioners/plaintiff have filed suit for partition and separate possession in respect of the suit properties. The 1st and 2nd respondents/defendants have filed an application in I.A.No.22/2024 to implead the 3rd to 5th respondents as the 3rd to 5th defendants in the suit and the same was allowed by this court on 10.01.2025.

1.2. Since I.A.No.22/2024 was allowed, the petitioners filing this petition to amend the plaint. The proposed amendments are consequential one and will not prejudice the respondents in any way. The proposed amendments will not change the nature and character of the suit in anyway. Hence, the petition.

2. The brief averments of Counter statement filed by the 1st and 2nd Respondents as follows:

2.1. The petition is false, frivolous not maintainable either in law or on facts of the case. The petitioner wants to introduce a new fact and a new case in respect of the suit properties. Further the details of amendment is an imaginary one invented for the purpose to fill up the lacunose in the evidence more particularly cross examination of the plaintiffs and the instant details of amendment also invented as an after thought, after the opinion of the handwriting experts in order to make the opinion in their favour. The alleged amendment is even against the plaintiffs original pleadings. Therefore for the above reasons the instant application is not maintainable both in law on facts.

2.2. The petitioner is entitled to amend the plaint by impleading the proposed parties as a consequential amendment after the order passed in the impleading petition in I.A.No.22/2024 dated 10.01.2025. The petitioner is not entitled to introduce new facts and fill up the lacunose by way of amendment after closing the plaintiff side evidence and defendant side evidence in progress.

2.3. If the instant amendment application is allowed, the nature and character of the suit will change. The details of amendment will lead much confusion in the facts and trial proceedings. Ultimately the respondents will be prejudiced and put to

heavy loss and hardship.

2.4. The details of amendment is purely abuse of process of law and court. There is no merit or substance in the details of amendment. The petitioner want to introduce the new facts at the highly belated stage. Hence, the petition ought to be dismissed.

3. Point for consideration:-

Whether the petition under Order 6 Rule 16 and 17 and section 151 of CPC to amend the plaint is to be allowed?

4. Points:-

4.1. Heard the counsels for both the parties. The suit filed for the relief of partition by one Mandiriappan and Natchimuthu who is initially purchased the suit property from Karuppasamy and Mandiriappan under the sale deed dated 08.10.2001 as they are having 2/ 3rd share in the suit property. Subsequently, the 3rd plaintiff has purchased the suit property from the 1st and 2nd plaintiffs and he impleaded as party to the case. The defendants in their written statement has pleaded that the 1st and 2nd plaintiffs i.e., Mandiriappan son of Kumarasamy and Natchimuthu son of Arumugasamy are purchased the suit property from one Muthugounder son of Karuppasamy and Arunachala gounder son of Mandiriappa gounder on 08.10.2001. Originally the Mandiriappa gounder and Karuppasamy gounder are not sons of Muthugounder and Arunachala gounder as mentioned in the document. They are the sons of one Chellappa gounder. They fraudulently impersonated their father name and executed the sale deed in favour of 1st and 2nd plaintiffs.

4.2. Further, pleaded that, the persons who sold the suit property to the plaintiffs Muthugounder, Arunachala gounder are not the real owners of the suit property. Hence, the defendants as petitioners filed a petition to compare the thumb impression on the sale deed dated 08.10.2001 which is marked as Ex.A.6 through the PW.1 with the document alleged by the petitioners as a partition deed dated 22.10.1979 which is executed between Mandiriappa gounder and Karuppasamy gounder who are sons of Chellappa gounder with one Palanigounder which is marked

as Ex.B.3 through DW.1.

4.3. The Thumb impression Expert Report has been received by this court and the thumb impression found in the sale deed dated 08.10.2001 and thumb impression found in 22.10.1979 partition deed are identical one. Hence, the defendants filed petition in IA.No.22/2025 to implead the vendors of the 1st and 2nd plaintiffs who are Mandiriappa gounder and Karuppasamy gounder as a party to this proceedings and the said IA was allowed the case is posted to steps to amend the plaint.

4.4. Now the plaintiffs field this petition to amend the plaint by including the consequential portion and further amendments in pleadings ie., the proposed respondents in this application are 7th to 9th respondents have filed their counter by stating that they are the sons of Muthugounder and Arunachala gounder and executed sale deed in favour of 1st and 2nd plaintiffs on 08.10.2001. But the mistake arose in the sale deed in mentioning of the father's name of Mandiriappa gounder and Karuppasamy gounder and to amend the further facts regarding the sale deed dated 08.10.2001.

4.5. But on perusal of records already, both side evidence has been adduced and defendants side taken defence that 08.10.2001 sale deed was not executed by the sons of Arunachala gounder and Muthu gounder but it was executed by sons of Sellappa gounder. But, the plaintiffs now stated that by oversight the father name of vendor of the plaintiffs mentioned as Muthugounder and Arunachala gounder but originally the Muthugounder and Arunachala gounder died issue less. Hence, the vendor of the plaintiffs being the legal heirs, have executed the sale deed the only mistake arosed is mentioning the fathers name alone.

4.6. On perusal of the said avernments in the proposed amendment it leads to taking away the defence of the 1st and 2nd defendants in their written statement. Further the both side evidences has been let in already inrespect of said facts and petition also filed to prove the impersonation and result of Expert Opinion received. Hence, by now including the proposed amendment portion, the very base of the defendants defence will go off and it ought to have alter the nature of case and both

side pleadings. Hence, this court finds the paragraph in **4 as iv – D to iv – J** is not allowed to amendment or add in the main suit. If it is allowed, it will be alter the nature and character of main suit.

4.7. Here the defendants denying the title of vendor of the plaintiffs and the plaintiffs filed the main suit for partition, his title was questioned by the defendants, hence in the interest of justice the vendors of the plaintiffs namely the proposed 7th to 9th respondents are to be added as necessary party to get the complete adjudication of the present case and to find decision for the real dispute between parties.

4.8. Further the details of amendment portion iv – D to iv – J is not allowed by this court. Hence, this petition is partly allowed in respect of details of amendment in para 1, 2, 3 and 4. iv – K, and in respect of remaining portion this petition is dismissed.

In the result, this petition is partly allowed in respect of details of amendment in para 1, 2, 3 and 4. iv – K, and in respect of remaining portion this petition is dismissed . No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 7th day of February 2025.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on Petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.23/2025 in
O.S.No.334/2017
Dated : 07.02.2025
DMC, Sulur