

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
KANCHEEPURAM DISTRICT AT CHENGALPATTU

Present: **Thiru.K.Ayyappan, B.Sc., B.L. L.L.M.,**
Additional District Judge,
Chengalpattu.

Monday, the 23rd day of August 2021
I.A.No.1/2019 in O.S.No.51/2016

1.S.Ravi

2.R.Umashankari

. .Petitioners/Plaintiffs

//Versus//

1.Amudha

2.Purushothaman

3.Srinivasan

4.Devanathan

5.Nandhini

..Respondents/Defendants

This Petition coming on 13.8.2021 for final hearing before me in the presence of M/s.S.V.Vijay Prashanth, and Thiru.B.Manickam, learned counsels for the Petitioners/Plaintiffs and the Respondents 1 to 3 remained exparte and Thiru.N.K.Sankaranarayanan and R.Sivachandran, learned counsels for the 4th and 5th Respondents/defendants and upon hearing the arguments of both side and after perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

This Petition has been filed by the Petitioners/Plaintiffs under Order

VI Rule 17 and Section 151 of CPC to amend the plaint as per particulars of amendment furnished along with the petition.

2. The averments in the affidavit filed by the

Petitioners/Plaintiffs run as follows:-

In respect of Item No.3 instead of mentioning Survey No.73/1A part, the petitioner mistakenly mentioned as S.No.73/1 part.

The property measuring 0.55 cents in Ottiyambakkam Village in S.No.145/1 is omitted to be included as suit property, the said property is a joint family property and that has to be included.

After going through the Written statement of D4 and D5, the petitioner came to know that apart from the Settlement Deed dated 23.1.2008, the father of the petitioner also executed the registered settlement deed dated 28.9.2004. Since the property covered under the settlement deed also the joint family property, the document has to be declared null and void.

Therefore, the plaint is to be amended in respect of the survey number in item No.3, the property in S.No.145/1 is to be added as item no.5 of the suit property and to a declaration that settlement deed dated 28.9.2004 is invalid.

To avoid multiplicity of proceedings the petition is to be allowed.

The Respondent 1 to 3 remained exparte.

3. The Averments in the Counter filed by the 4th and 5th

Respondents /Defendants run as follows:-

The 1st plaintiff and 2nd defendant are also occupying a part of the larger extent of Grama Natham and both of them obtained Patta in their respective names. However, the plaintiff failed to add the properties in the suit, the Settlement Deed in Doc.No.6821/2004 was witnessed by the 1st plaintiff and the defendants 1, 3 and 4 signed as witnesses, therefore, the present application to add the property is not maintainable. The petitioner had clear knowledge about the execution of Settlement deed in Doc.No.6821/2004, in this also defendants 1 to 3 signed as witnesses and the 1st Plaintiff also witnessed the execution. Therefore, the petition is to be dismissed.

4. The point for Consideration in the above petition is

1. Whether the petition is to be allowed or not?

5. On Point:-

Heard both sides. Records perused. This petition is filed by the Petitioners/Plaintiffs under Order 6 Rule 17 and Section 151 of CPC to amend the plaint as per the particulars of amendment furnished along with the petition.

This amendment is a pretrial amendment. Till date no witness was examined on the side of the plaintiff as well as the defendants. The application for amendment is to be dismissed only for the following 3 reasons.

- I) If the said proposed amendment constitutionally or fundamentally changes the nature and character, said amendment is not permissible.
- II) If proposed amendment would result in introducing new cause of action or change in the nature of the suit, such amendment is not permissible.
- III) If amendment changes the nature and character of the suit, such amendment is not permissible.

6. In the case on hand, the aforesaid 3 conditions does not arise. The 1st plaintiff and the defendants are brothers and sisters. To change the Survey number, included the property and to declare the Settlement deed as null and void the petitioner need not file a fresh suit. Already the suit is pending for past 5 years without any progress.

Hon'ble Supreme Court in " Rameshkumar Agarwal v. Rajmala Exports Private Limited and others reported in 2012 (2) MWN (Civil) 219 (SC) held as follows:-

" While deciding the Application for Amendment, ordinarily the

Court must not refuse bona fide, legitimate, honest and necessary amendment. Liberal approach should be the general rule, particularly in case, where the other side can be compensated with Costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations. "

From the aforesaid authority it is clear that legitimate, honest and necessary amendments are to be liberally allowed to avoid multiplicity of litigations. As already observed above for these amendment the petitioners need not file a fresh suit. Since this is a pretrial amendment and the amendments are not going to change the nature of the suit, this court is inclined to allow this petition, accordingly, this petition is allowed

7. In the result, this petition is allowed. No costs.

Dictated to the Shorthand writer and computerized by her and corrected and pronounced by me in open Court, this the 23rd day of August 2021.

Sd/-.K.Ayyappan,
Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Both side Exhibits and Witnesses : NIL

Sd/-.K.Ayyappan,
Additional District & Sessions Judge,
Kancheepuram District at Chengalpattu.

/TRUE COPY/

Draft/Fair Order
I. A. No.1/2019 in
O.S.No.51/2016
Dated :23.8.2021
ADJ/CPT
