

**IN THE COURT OF THE SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T.GANESH, B.A., B.L.,
Subordinate Judge,
Maduranthakam**

**Wednesday, the 04th day of June 2025
I.A.No. 2/2025
in
O.S.No. 2/2010
(CNR No. TNCG13- 000112-2010)**

1. Manamalli (Died)

2. Gomathi

3. D. Gajalakshmi

4. Mageshwari

5. Seethalakshmi

6. Arumugham

7. Ashika

... Petitioners/ plaintiffs 1 to 7

..Vs..

1. Veerammal (Died)

2. Kuppuswamy

3. Gunasekar

4. Krishnaveni

5. Elangovan

...Respondents 1 to 5/defendants

6. V.E. Mahiyazhagan

7. E. Kantha

8. E. Maheswari (Died)

9. Jegathsandar

10. Rajendraprasad

... Respondents 6 to 10/

Proposed defendants 1 to 10

This petition coming up for final hearing on 25.03.2025 in the presence of Mr.S.Senthilkumaran, counsel for the Petitioners/plaintiffs and Mr. Rajesh, Counsel for 2nd respondent/defendant and M/s. M.Natarajan and E. Sivalingam, Counsel for the respondents/defendants 3, 5, 9 and 10 and Mr.Mohan, Counsel for 4th respondent/defendant and Mr. B. Ramnath, Counsel for respondents/defendants 6 and 7 and respondents/defendants 1 and 2 are died and having heard the arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner under Order VI Rule 17 of CPC to amend the plaint.

2. Petition in brief:

Petitioners filed the suit for partition and separate possession of their share in the suit properties. Some of the properties mentioned in the schedule are ancestral joint family properties, which were originally possessed and enjoyed by the plaintiffs' ancestors. Certain other properties were acquired from the income derived from those ancestral properties. Additionally, some of the properties were purchased using the sale proceeds of ancestral lands through a registered sale deed dated 11.06.1981, bearing Document No. 1024/1981, executed by the 2nd defendant's father Perumal, the 2nd defendant Gunasekar, the

5th defendant Elangovan, Thangavelu, Meenakshiammal, and Govindaraj. The recitals in the said sale deed clearly indicate that the properties were sold for the purpose of purchasing the present suit properties from Subarayan and others. Hence, it is submitted that the suit properties are deemed to be part of the ancestral joint family estate.

Ancestral properties were partitioned among the defendants 2, 3 and 5 through a registered partition deed dated 26.10.1998, bearing Document No. 1330/1998. As per the said deed, A-Schedule property was allotted to the 2nd defendant, which includes Punja Survey No. 15/1 to an extent of 1 acre 10 cents, Survey No. 15/3 to an extent of 1 acre out of total 2 acres and 54 cents, Survey No. 15/4 to an extent of 0.10 cents with a terraced house and a well, and Survey No. 28/10 to an extent of 0.96 cents. Similarly, B-Schedule property was allotted to the 3rd defendant, and C-Schedule property was allotted to the 5th defendant. Suit properties, along with other properties mentioned in the partition deed, are all to be treated as ancestral joint family properties belonging to the plaintiffs. The said deed also contains a specific recital in respect of the same. It clearly indicates that the properties are considered to have originated from the joint family lineage, including acquisitions made from the income and efforts of the family.

At the time of filing the original plaint, the earlier counsel had inadvertently and erroneously stated certain facts. For example, it was wrongly mentioned that Item No. 8, being Punja Survey No. 15/3A to an extent of 1.00 acre, was the only property allotted to the 2nd defendant Kuppusamy. Moreover, Survey No. 15/4 to an extent of 0.10 cents, which contains a well and EB service connection, was omitted from the plaint. The share of the plaintiffs was also incorrectly stated. Petitioners aware of these errors only recently, and it has therefore become necessary to amend the plaint in accordance with the correct

facts now set forth. If the amendment is not permitted, the petitioner will suffer serious hardship and irreparable loss. Hence this petitioner filed this petition for amendment.

3. Counter of 5th respondent and adopted by Respondents 3, 9 and 10 in brief:

The respondents denies the allegations set out in the affidavit. This application was filed harass the respondents and to protract the proceedings. Suit properties purchased in the name of Perumal out of the income from the joint family consisting of respondents 2 to 5 and the said Perumal. Since Perumal was the elder member of the family, the property was registered in his name. Ever since from the date of purchase, the defendants 1, 2, 3 and 5, along with the deceased Perumal, have been in joint possession and enjoyment of the said property.

After the demise of Perumal, the defendants 2 to 5 partitioned the suit properties under a registered partition deed dated 26.10.1998. Despite the said partition, the petitioners have, after a lapse of 12 years, filed the present suit seeking partition of the properties, including the properties already partitioned. Petitioners have unnecessarily filed the present amendment petition seeking to amend various parts of the plaint, including the details in paragraphs 3, 4, 5, 6, and 7, and seeking amendment of share from 6/30 to 5/6. They have also sought amendments to the details mentioned under Items 1, 2, 3, 5, 6, 7, 8, and 9 in paragraph 7. Hence this application is liable to be dismissed with costs.

4. No oral or documentary evidence adduced by both sides.

5. Heard both sides and perused the records.

6. Point:***“Whether the petition can be allowed?”***

Petitioners files this application seeking amendment of the plaint in respect of pleadings about the ancestral properties in body of plaint, insertion and deletion of items in suit properties and amendment of share, as such their previous counsel fails to do so. Respondents defend that the application is false and found for the occasion. The alleged amendment sought primarily pertains to correction and clarification of the recitals regarding the character of the properties, description of properties and the shares claimed therein. The proposed amendment also includes rectification of certain survey numbers, inclusion of omitted property details, and correction of the share percentage claimed by the plaintiffs.

On a perusal of the records, it is seen that the petitioner has stated that the earlier plaint was drafted based on erroneous facts furnished by the then counsel, and that several important aspects, including the source of acquisition and the nature of the properties, were either misstated or omitted. The petitioner submits that only upon a detailed scrutiny of the documents, including the partition deed dated 26.10.1998 (Doc No. 1330/1998) and the sale deed dated 11.06.1981 (Doc No. 1024/1981), the true nature of the properties and their classification as ancestral joint family properties came to light. The proposed amendment is therefore intended to bring the pleadings in line with the documentary evidence already available on record.

It is also not in dispute that the suit is one for partition, and the amendment does not introduce any new cause of action or change the nature of the suit. Rather, it seeks to give proper particulars and legal clarity to the claim already made. Courts have consistently held that in partition suits, liberal view has to be taken while considering amendment applications, as the rights of

parties have to be determined based on their shares and the correct status of the properties. Further it is pertinent to note that this is only pretrial amendment. Hence liberal approach has to be made.

Respondents opposed the application on the ground that the petition is an afterthought and an abuse of process. It is alleged that the amendment seeks to rewrite the entire plaint and change the basis of the claim. It is also contended that the suit properties were acquired by the joint efforts of certain members of the family and was already partitioned under a registered deed, and that allowing the amendment at this stage would cause hardship to the respondents.

This Court notes that while some amendments proposed are extensive, they are essential in nature and are based on documents that are not newly introduced but already part of the case record or capable of being produced. It is also pertinent to note that the proposed amendment does not prejudice the respondents to an irreparable extent, as they will have ample opportunity to file an additional written statement, adduce evidence, and contest the amended pleadings.

In this context, it is also well settled that procedural laws are meant to advance justice and not to thwart it. Technical objections should not be allowed to defeat substantive rights, especially in matters involving family disputes and partition of properties that require adjudication based on correct and complete facts.

Hence, this Court is of the considered opinion that allowing the amendment will facilitate a complete and effective adjudication of the issues involved in the suit, and no serious prejudice will be caused to the respondents. Accordingly, the petition deserves to be allowed. Considering the suit pending

for more than 15 years this inclined to allow this application on conditions. Hence this point is decided accordingly.

7. Result:-

In the result this application this allowed on condition that the petitioner shall carry out the amendment on 09.06.2025 and file the copy of amended plaint copy on the same day. No costs. Call on 09.06.2025.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 04th day of June 2025.

Subordinate Judge,
Madurantakam.

I. Petitioner side evidence and Exhibits :

Nil.

II. Respondents side Evidence and Exhibits :

Nil.

Subordinate Judge,
Madurantakam.

FAIR/DRAFT ORDER
I.A No. 2/2025
IN
O.S No. 2/2010
D.O.D: 04.06.2025
SUB COURT,
MADURANTAKAM