

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

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

Monday, the 09th day of February, 2026

I.A.No. 7/2025

in

O.S.No. 166/2014

(CNR No. TNCG13- 000487-2014)

1. Sivagami

2. Kumar

... Petitioners/Petitioners/

Defendants 8 and 9

..Vs..

1. Pounammal

...Respondent/Plaintiff

2. Chinnakuzhandai

3. Siva @ Anitha

4. Govindammal

5. Anjalakshi

6. Srinivasan

7. S. Mohana

8. Arunachalam

... Respondents/Defendants 1 to 7

This petition coming up for final hearing on 30.01.2026 in the presence of Mr.R.S.Ranganathan, counsel for the Petitioners/Petitioners/Defendants 8 and 9 and Mr.R.Arumugam, counsel for 1stRespondent/Plaintiff Mr.A.Karunanidhi, A.Ravichandran and S.Santhanakrishnan, Counsels for respondents 2 to 6/defendants 1 to 5, M/s.Arunamunuswamy, A.Karunanidhi and A.Ravichandran, counsels for 7th Respondent/6th Defendant and 8th Respondent/7th Defendant was called absent and set exparte in main suit 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 petitioners under Order VI Rule 17 of Civil Procedure Code to direct the plaintiff to amend the plaint.

2. Petition in brief:

Petitioners are the defendants 8 and 9 in the above suit. Suit filed by the plaintiff for partition and separate possession of their 1/5 share in the suit properties. Petitioners defend the suit as the suit is bad of non joinder of necessary parties. Plaintiff miserably failed to include some properties detailed in the petition. Hence this application is filed to include the said properties as suit Item Nos. 17 to 33.

Petitioners admit that the suit properties were purchased by Ragavapillai under the various sale deeds mentioned in the plaint. Further there is no division between sons and daughters of Ragavapillai. 1st petitioner being the daughter of Ragavapillai is entitled 1/5th share over the said suit properties. 2nd petitioner who is grandson of Ragavapillai and son of deceased Smt.Chinnaponnu D/o. Ragavapillai, is also entitled 1/5 share over the suit properties.

There are other properties purchased by Ragavapillai are not included in the suit. Ragavapillai purchased the said properties under the Sale Deeds dated 04.11.1965 (Doc.No. 2498/1965), 05.01.1958 (Doc.No. 40/1958), 07.11.1965 (Doc.No. 2506/1965), 10.11.1965 (Doc. No. 2497/1965) and other Sale Deeds. The patta stands in the name of Irusapillai alone included, the Patta Stands in the name of Arunachalam Pillai under Patta No. 2, Joint Patta stands in the name of Arunachalam Pillai and Irusapillai under Patta No. 386, Patta stands in the name of 1st Defendant Chinnakuzhandhai under Patta No. 829 are not included in the suit. Further S.No. 124/22A an extent of 0.04 acres was also patta stands in the name of Irusapillai under Patta No. 26 was also not included in the schedule of properties. Hence, the petitioners filed this application to include the properties in the suit as suit Item Nos. 17 to 33 as the suit is bad for partial partition.

Those properties are available in the family to divide the properties. Those properties should be added in the suit also. The Plaintiff ought to have included the above said properties in the suit. As the plaintiff failed to do so, the petitioners filed this application to include the said properties as suit item Nos. 17 to 33 by way of amendment application.

Now the plaintiff and the defendants 1 to 4 are colluded together without adding the properties. It is a highly illegal one. Hence, the petitioners have no other option to file this amendment application to include the properties mentioned hereunder as suit Item Nos. 17 to 33.

Hence the petitioners files this petition to direct the plaintiff to amend the plaint.

3. Counter of 2nd Respondent adopted by Respondents 3 to 6 in brief:

The respondents denies the allegations set out in the affidavit. The properties stands in the names of Irusapillai and Chinnakuzhandhai ammal are all their absolute properties and the petitioners are not entitled to share over the

same. Properties covered in the patta 829, apart from that properties purchased by 1st defendant are all absolute property of 1st defendant. Petitioners, plaintiffs and the 7th defendant are all have no any right and title over the same. Though the petitioners took a stand that the suit is bad for nonjoinder of necessary parties, there is no details that who are all the necessary parties.

Petitioners have no right to file this application, since the 7th defendant already sold his property by receiving proper and valuable consideration. Irusapillai alone have got absolute ownership thereof. Hence, now those items cannot be included in the plaint by the petitioners. Suit filed in the year 2014. Plaintiffs, the petitioners and 7th defendant legal heirs born through Loganayagi and these defendants are surviving legal heirs of Sivagami, who is legally wedded wife of Irusapillai. If those properties included in the suit, then the suit claim valuation is more than Rs.10 lakhs. Hence this Hon'ble court have no pecuniary jurisdiction to try the case. After commencement of trail amendment is not permissible. It is submitted that now so many items mentioned to include which are than the items stated in the original plaint. The application was filed in part heard stage.

Hence the respondents pray for dismissal of the application.

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?”

This petition is filed under Order VI Rule 17 of the Code of Civil Procedure by the petitioners/defendants 8 and 9 seeking direction to the plaintiff to amend the plaint by inclusion of additional properties as suit Item Nos. 17 to 33, on the ground that the suit for partition suffers from partial partition.

Case of petitioners is that the plaintiffs failed to include certain properties in the suit for partition filed by the plaintiffs and hence this application. On the other hand the respondents/plaintiffs defend that the said properties are not available for partition and that it was the absolute properties of the persons in whose name the patta stands.

At the outset it is the primary defence of respondents that the petitioners who are defendants cannot direct the plaintiff to amend the plaint by including properties and hence the application ought to be dismissed. Learned counsel for the petitioners invited this court to decisions of our Hon'ble High Court in *Solavaiammal and others Vs Ezhumalai and others*, reported in *2012 -1 - CTC - 159 (DB)* and *Sithika Begam and another Vs Mohammed Yusuf and others dated 20.10.2021*. As per the above said decisions the defendants have right to file an application under Order VI Rule 17 of C.P.C. So, the petitioners who are defendants in the suit are permitted to file this application and there is no bar.

Before parting to discussions it is useful to see the root cause for the suit. One Ragavapillai had two wives namely Sivakami and Loganayagi, where the second marriage took place after the death of first wife. Irusapillai is the only son born to Ragavapillai through his first wife. Plaintiffs, defendants 7 and 8 and one Chinnaponnu are the children born through 2nd wife to Ragavapillai. As Ragavapillai died, the plaintiffs being the daughters of 2nd wife filed this suit for partition of their father's Ragavapillai's self acquired properties.

Now the defendants 8 and 9, the daughter of Ragavapillai and grand son born to Chinnaponnu stated supra came up with this application to include other properties, as such those petition mentioned properties were also purchased by Ragavapillai under sale deeds dated 04.11.1965, 05.01.1958, 07.11.1965 and 10.11.1965 and other sale deeds. Unfortunately for the reasons best known to the

petitioners no single document muchless copy of the document was produced by the petitioners to prove their contention. There is no document produced to show that properties mentioned in the petition alone purchased under the above said sale deeds and that it was self acquired properties of Ragavapillai. On this short ground itself this application is liable to be dismissed.

Next the petitioners has filed patta extracts for the properties mentioned in the application, where none of the patta stood in the name of Ragavapillai. The said patta stands in the name of Irusapillai, Arunachalam and Chinnakuzhandai. As the case of plaintiffs was partition in respect of self acquired properties of Ragavapillai, then how the properties in the name of his son, daughter in law and other person could be included in the suit. There is no pleadings in the affidavit muchless in the written statement of petitioners that the properties were purchased in the name of Irusapillai, Arunachalam and Chinnakuzhandai by the said Ragavapillai and hence it ought to be included in the suit. It is also not the case of both parties that the suit was laid for joint family properties. If it so, how the properties stands in the name of third parties could be included in the suit. Learned counsel vehemently argued that as per the above division bench decision of Hon'ble High Court stated supra, the properties can be included in the suit. Now this court want to extract relevant portion from the said decision. In ***Solavaiammal and others Vs Ezhumalai and others***, reported in **2012 -1 – CTC – 159 (DB)**, where it is held that,

In a suit for partition application for amendment of plaint at the instance of either parties to the suit is maintainable under Order VI Rule 17 of the Code of Civil Procedure Code. However if there is a dispute over the inclusion of properties by contending that those properties are not available for partition the Court has to prima facie satisfy itself as to whether the properties sought to be included are available for partition or not. When there is dispute over the

inclusion of the parties that those properties are not available for partition the only course available for defendants is to file a separate suit for partition by including the properties and the Court has only to reject the application for amendment on that ground.”

So, the same decisions relied by the learned counsel for the petitioners would held that if there is dispute over the inclusion of properties by contending that those properties are not available for partition, the only course available for defendants to file a separate suit for partition by including the properties. Here also there is no document produced to show that the petition mentioned properties are self acquired properties of Ragavapillai and that the documents produced would show that it stands in the name of other persons. If it so, the petitioners cannot maintain this application as it is clear abuse of process of court. If at all the petitioners wants to seek partition in the said properties, they can very well file separate suit as per the above said division bench decision of our Hon’ble High Court. On this aspect itself this application is liable to be dismissed.

Apart from that it is pertinent to note that the amendment sought by the petitioners is not a simple or formal amendment, but seeks to introduce a large number of new properties nearly 34 items into the suit, which are seriously disputed in respect of title and entitlement. The suit has been pending since the year 2014 and the trial has already commenced, with evidence having been recorded. The petitioners have admittedly entered the fray at a later stage of the proceedings and have not satisfactorily explained as to why steps were not taken earlier, when the facts now pleaded were allegedly within their knowledge. It is well settled law that after commencement of trial, an amendment of pleadings can be permitted only if the party seeking amendment satisfies the Court that despite due diligence, such amendment could not have been sought earlier. In

the present case, the petitioners have failed to establish due diligence. On the contrary, the proposed amendment would enlarge the scope of the suit, reopen the entire trial, and cause serious prejudice to the contesting respondents. It is settled principle that belated amendments, which introduce new claims and alter the nature of the suit after commencement of trial, ought not to be permitted in the absence of compelling reasons. On this ground also this application is liable to be dismissed.

In view of the above facts and circumstances, this Court is of the considered opinion that the amendment sought by the petitioners is neither bona fide nor necessary for the effective adjudication of the suit at this advanced stage. The petitioners have failed to satisfy the requirements of Order VI Rule 17 CPC. Hence, this Court is not inclined to allow the amendment. Accordingly, this point is answered against the petitioners.

7. Result:-

In the result this application is dismissed as devoid of merits. No costs.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 09th day of February, 2026.

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. 7/2025
in
O.S No. 166/2014
D.O.D: 09.02.2026
SUB JUDGE,
MADURANTAKAM