

**IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM**

**PRESENT:** Tmt. V. Devapriya, B.Sc.,M.L.  
District Munsif, Madurantakam

Thursday, the 27<sup>th</sup> day of July, 2023

I.A.No. 6/2023

O.S. No. 122/2017

Elumalai

...Petitioner/Plaintiff

**-vs-**

1. Venu
2. Punniakoti
3. Manicka Naicker (Died)
4. Mariammal
5. Krishnan
6. Kalyani
7. Ramu
8. Srinivasan

...Respondents/Defendants

This petition coming up before me on 17.07.2023 for final hearing in the presence of, Thiru.S.Subramaniam, Counsel for the Petitioner/Plaintiff and Respondents 1 and 6/Defendants 1 and 6 having been set exparte in the main suit, Respondents 2 and 3/Defendants 2 and 3 having been died and Thiruvalargal. Anandakumar and G.R.Anbu, Counsel for the Respondents 4,5,7 and 8 /Defendants 4,5,7 and 8 and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

**ORDER**

This petition has been filed by the Petitioner/Plaintiff under Order VI Rule 17 of Code of Civil Procedure, to amend the plaint.

**2.The averments stated in the petition in brief:**

The Petitioner/Plaintiff had filed the above suit for partition and the above case is posted for cross examination of PW1. Pending suit, the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant died. Before filing of the above suit, the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant had created a false document in favour of the 3<sup>rd</sup> Respondent/3<sup>rd</sup> Defendant. Hence the legal heirs of the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant, is not necessary. Hence the petition.

**3. The averments stated in the counter filed by the 5<sup>th</sup> Respondent/5<sup>th</sup> Defendant and adopted by Respondents 4, 7 and 8/Defendants 4, 7 and 8, in brief:**

This petition is not maintainable under law and on facts. The averments in the affidavit filed along with this petition is false. As per the Settlement Deed in document no. 251/2006, Raghava Naicker had settled his 1/3<sup>rd</sup> share of Ac.0.17 cents in the property in S.No.232/11C, in favour of his son Punniyakoti. Pending suit, the said Punniyakoti died and his legal heirs are living in the village and they are interested to conduct the case. They must be given chance to prove the Settlement Deed of their father. Therefore petition under Order 22 Rule 4 has to be filed. This petition is filed to drag on the proceedings. Hence this petition is to be dismissed with costs.

4. The point for determination is whether this petition is to be allowed or not?
5. No Exhibits marked and no witnesses were examined on both sides
6. Heard both sides and perused the records.
7. The Petitioner/Plaintiff had filed this petition to amend the plaint with regard to the death of the deceased 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant in the suit. The Respondents resisted the petition stating that the legal heirs of 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant are living in the village and therefore they should be impleaded as parties.
8. The Petitioner/Plaintiff had stated that the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant had executed a sale deed in favour of the 3<sup>rd</sup> Respondent/3<sup>rd</sup> Defendant in respect of Ac 0.17 cents in suit survey number and therefore, the legal heirs of 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant are not necessary party to the suit. Perusal of plaint reveals the case of the Petitioner/Plaintiff that the Petitioner/Plaintiff, 1<sup>st</sup> Respondent/1<sup>st</sup> Defendant and the father of the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant, namely Raghava Naicker had jointly purchased the suit property and thereafter the said Raghava Naicker had executed a settlement deed in favour of the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant, in respect of his share in the suit property and then the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant had executed a sale deed in favour of the 3<sup>rd</sup> Respondent/3<sup>rd</sup> Defendant, for the said land and that the Petitioner/Plaintiff is also having equal share in the suit property.

9. The Petitioner/Plaintiff had filed the above suit for partition and he had not disputed the right of the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant and the 3<sup>rd</sup> Respondent/3<sup>rd</sup> Defendant and also the sale deed executed by the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant in favour of 3<sup>rd</sup> Respondent/3<sup>rd</sup> Defendant. Perusal of records reveal that the 3<sup>rd</sup> Respondent/3<sup>rd</sup> Defendant also had died and the Respondents 4 to 8 had been already impleaded as parties to the suit, as the legal heirs of the 3<sup>rd</sup> Respondent/3<sup>rd</sup> Defendant.

10. Since the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant had sold the share of Raghava Naicker, to the 3<sup>rd</sup> Respondent/3<sup>rd</sup> Defendant, the right to sue survives for the surviving Respondents/Defendants. Therefore, this court is of the opinion that the legal heirs of the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant need not be impleaded in the above suit and that it is suffice, if the death of the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant is recorded. Hence, for the foregoing reasons, this court is inclined to allow this petition.

**11. In the result, this petition is allowed. No costs.**

Typed by me in my laptop, corrected and pronounced by me in open court on this the 27<sup>th</sup> day of July, 2023

District Munsif  
Madurantakam

**Petitioner/Plaintiff side witnesses and documents:**

**Nil**

**Respondents/Defendants side witnesses and documents:**

**Nil**

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Madurantakam