

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI

Present: Tmt.U.Monica,M.L.,  
Additional District Judge,  
Dharmapuri.

Wednesday, this the 23rd day of April 2025

I.A.No.6/2025  
in  
O.S.No.198/2022

Mrs.Jayalakshmi.

...Petitioner/Plaintiff

/versus/

1)Mrs.Palaniammal

2)Mrs.Kamatchi

3)P.Madhaiyan

4)P.Kumar.

...Respondents/Defendants

This petition is coming on 5.4.2025 for final hearing before me in presence of Tmt.N.Radha, Advocate for the petitioner and Thiru.C.Gandhi, Advocate for the third respondent and upon hearing both side arguments, on perusal of the entire case records and having stood over till this day, this court pronounces the following order:

### ORDER

This petition has been filed under Order-8, Rule 9 and 151 CPC to amend the plaint.

#### 2. The averments in the petition in brief is as follows:

i) In the above suit, interim injunction was granted on 3rd day of January 2024 restraining the respondents from alienating or encumbering the suit properties pending disposal of the suit. Fully aware of the operation of ad interim injunction, the 3rd and 4th respondents sold the suit schedule property to Mr.Deepan Chakravarthy, vide registered

sale deed in Document No.2089/2024 dated 30.09.2024, measuring to the total extent of 46 Are in survey no.92/2, and sold another property in favour of Mr.Hariharan vide Sale deed in Document No.2090/2024, dated 30.09.2024 in Survey No.92/2, measuring to the total extent of 37 Are, wilfully and wantonly, which amounts to clear disobedience of the order of this court.

ii) Further, the property in Survey No.91/1, situated at Thangavel Nagar, consisting of commercial shops totally measuring about 1300 sq.ft, was owned by Late Pachiyappa Chettiar, as she was residing far away from the suit properties, so, she was not able to get the exact details of the said property, therefore she could not be able to get the exact details of the said property, The above property is an ancestral property in which she is entitled to proportionate share.

iii) There is no change in the nature of the suit or the cause of action. Hence no prejudice would be caused to the respondents, if the amendment sought for is ordered. If the amendment is not ordered, petitioner will be put to irreparable loss and serious hardship besides to avoid multiplicity of proceedings. Hence petition has to be allowed.

**3. The counter filed by the third respondent in brief is as follows:**

i) The Petitioner being a party to the Partition Deed dated 23.07.2001 is estopped from claiming the rights over the partitioned properties which were allotted to the share of the Respondents 3 and 4. As they are the absolute owner of the properties they have sold the same to one Deepan Chakavarthy and to one Hariharan. The above said two are

the absolute owners of the same. They have no locus standi to question the above documents to declared as null and void.

ii) They have come out with this vexatious petition belatedly only to protract the proceedings at this Argument stage. The petitioner has not included the property mention in item No.9 i.e S.No.91/1. Even though she had knowledge above said property she has purposely omitted to mention in the suit schedule of property. The prayer for inclusion of another property will change the nature and character of the suit. If this petition is allowed, the respondents would be put to great hardship and injury. Hence petition is liable to be dismissed.

**4. The point for consideration:**

Whether the petition is to be allowed or not?

5. Heard both side. No oral or documentary evidence have been adduced on either side.

**6. Point:**

6.1) The petitioner alleges that pending suit, respondents 3 and 4 have created Sale deeds dated: 30.9.24 in respect of suit properties which will not bind plaintiff share, these documents have to be declared as null and void. Further petitioner was unable to collect details of commercial shops owned by father Pachiyappa Chettiar at the time of filing of suit, they have recently obtained details, the said property has to be included in suit, hence plaint has to be amended.

6.2) The respondents resisted petition by contending that they have absolute

ownership, they have executed Sale deeds dated:30.9.2024, as petitioner has executed Partition deed: 23.7.21, she has no locus standi to question the sale deeds. The petitioner even though had knowledge about S.No.91/1, has wantonly not included it. This petition has been filed only to drag on proceedings and liable to be dismissed.

6.3) This is a suit for partition. The case is in stage of arguments. The respondents admit execution of Sale deeds dated:30.9.20 pending suit, but alleges that properties sold are their separate properties. This court is of view that during pendency of suit, as these documents have been executed in respect of suit properties for proper adjudication of case, the plaint has to be amended to include relief of declaration of Sale deeds as null and void.

6.4) The respondents admit that S.No.91/1 belongs to Pachiyappa Chettiar. The above property has not been included in this suit. As this is a partition suit, this court is of view that an opportunity should be given to petitioner to prove the case.

6.5) The amendment sought for does not amount to change the nature of the suit or cause of action of the suit. Further the amendment sought for will not give any advantage to the petitioner as the petitioner has to prove it. The petition has been filed at belated stage, same cannot be a ground to reject it.

6.6) In instant case, the only prejudice that may be caused to the plaintiff can be due to the stage at which the application has been filed, i.e., when case is in stage of arguments. However, it is always open to the defendants to disprove the case of the

plaintiff, by filing additional written statement if necessary, by way of cross-examination and by letting in evidence to prove the case. Therefore, the prejudice that may be caused to the other side can very well be compensated by costs. On other hand, considering the nature of suit, if the petitioner is deprived of opportunity to put forth her case, it would really cause great prejudice to her.

6.7) In view of foregoing discussions, in interest of justice, to provide petitioner an opportunity to prove case, to prevent multiplicity of proceedings, petition has to be allowed. As amendment is sought for during arguments and considering the financial and personal inconvenience caused to the defendants in terms of time, additional court hearings, the defendants are entitled to costs. Hence point for consideration is answered in favour of petitioner.

**In the result the petition is allowed on payment of cost of Rs.5000/- to respondent. Cost has to be paid on or before 30.04.2025 failing which petition stands dismissed. Call on 30.04.2025**

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 23rd day of April 2025.

Additional District Judge,  
Dharmapuri.

**Petitioners Side witness, Exhibits: Nil**  
**Respondents Side witness, Exhibits: Nil**

Additional District Judge,  
Dharmapuri.

**Fair Order**  
I.A.No.6/2025 in  
O.S.No.198/2022  
Dated:23.4.2025.