

IN THE COURT OF THE SUBORDINATE JUDGE, KODUMUDI.

Present: Thiru.M.Ashfaq Ahamed, B.A.B.L.,

Subordinate Judge, Kodumudi.

WEDNESDAY, THE 18th DAY OF JUNE 2025

I.A.No.11/2025 in O.S.No.33/2024

Palaniammal

... Petitioner/Plaintiff

/Vs/

1. Saroja
2. Chidamparam
3. Sornathal
4. Kokila
5. Piruntha
6. Molayappagounder (died)
7. Sadasivam
8. Kavitha

... Respondents/Defendants

This petition came up for final hearing before me in the presence of Thiru.V. Shankar Advocate for the Petitioner/Plaintiff and Thiru.P. Manickam, Advocate for 3 to 5 respondents/Defendants and upon hearing both side arguments and upon perusing the pleadings and records and having stood over till this day for consideration and this court delivers the following:

ORDER

The petitioner/plaintiff has filed the above application under order 6 rule 17 CPC to amend the plaint regarding description of properties.

2. The contents of the affidavit filed the petitioner read as:

The contents of the affidavit filed by the petitioner read as the petitioner has filed the suit for partition and separate possession. In the written statement filed by D2 and D7 it is mentioned the suit 3rd item does not belongs to the family and had also pleaded the property in R.S.No. 24/5 of Murungiampalayam Village was not

included. The said property was omitted to be included mistakenly and 3rd item was also included by mistake. Hence the petition for amendment.

3. The contention of the counter filed by 4th respondent and adopted by the 3 and 5 respondents read as:-

The counter filed by the respondents 3, 4 and 5 read as the petition is not sustainable. The proposed amendment to remove the particular item based on written statement of D2 and D7 is not correct. The petitioner and the respondents 2 and 7 have colluded and attempted to withdraw the suit. This defendants also claiming partition and paid court fees. The 3rd item it a joint family property and this could be evidenced in the compromise decree passed in O.S.69/2017 before the District Munsif, Kodumudi. The petitioner by way of amendment is attempting to delete the common property. The amendment does not mentioned above the inclusion of the property in survey number 24/5. As such the petitioner has not approached the court with clean hands. There is no merits in the petition and prays for dismissal.

4. The other respondents have not filed counter.

5. No oral and documentary evidence adduced on both sides.

6. The point for consideration is whether the petition is liable to be allowed?

7. Point:-

Heard both sides. Records perused. Admittedly the petitioner has filed the present application in a suit for partition based upon the written statement filed by D2 and D7. The amendment sought for is to remove the 3rd item of the property and to include the common well in survey number 24/5. The respondents 3 to 5 are contending that there are also entitled for share in the property and have paid court fees for the same. As regard the suit for partition is concerned all the parties are deemed to be plaintiffs. In the present case the respondents 3 to 5 would contend that

since 3rd item property is the common property, the petitioner cannot delete the 3rd item by amendment. Whether the parties to the suit have got a right and share in the 3rd item property is a fact that requires consideration at the stage of trial. As rightly pointed out by the respondents 3 to 5 the petitioner has not produced any documents to show the parties to the suit are not entitled for any right over the property. The parties who have dealt with regard to the 3rd item and the parties to the suit in O.S.69/2017 which is questioned by the defendants 3 to 5 are also parties to the present suit. As such the parties are entitled for partition in the 3rd item or not cannot be gone into in this application without the parties being given opportunity to place evidence on their side which can be decided only in the trial. AS regard the property in survey number 24/5, the same has been included in the present application which was not objected by the respondents 3 to 5. If the petitioner was permitted to remove the 3rd item from the suit it would necessarily cause prejudice to the respondents 3 to 5 as they are also claiming share in the property. Accordingly the petition is partly allowed.

In the result, the petition is partly allowed only to the extent of inclusion of the property in survey number 24/5 and the petition is dismissed as regard removal of the 3rd item from the suit. No cost.

Order directly dictated to the Steno-Typist, typed by her in computer and taken print out and after rectification of mistake, Pronounced by me in open court, this the 18th day of June 2025.

Subordinate Judge,
Kodumudi.