

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil

Tuesday, on the 8th day of April 2025

I.A. No. 7 of 2025

in

O.S. No. 204 of 2022

CNR. No. TNKK04-000436-2022

P.Dhurai

....Petitioner/Plaintiff

-vs-

C.Ajan

....Respondent/Defendant

This Petition came before this Court on 03.04.2025 for final hearing in the presence of Mr. T. Shunmugham, Advocate for the Petitioner, Mr. T.Santhosh Kumar, Advocate for Respondent. Upon hearing both sides and Upon Perusing the case records, having stood over till date for consideration this Court hereby delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Order VI Rule 17 and Section 151 Code of Civil Procedure seeking an order to amend the Plaint, byincorporating paragraph 4A in the Plaint.

2. The Petitioner has stated that the suit property and more area belonged to his grandfather and after his death, the Petitioner's father and his siblings inherited the

property and they effected Partition amongst them, under Partition Deed bearing Doc. No. 1303 dated 09.06.1955 Edalakudi Sub Registrar Office. As per the said Partition Deed, the suit property was allotted to the Petitioner's father, as schedule 'B' item No. 13 property. The Petitioner's father died on 14.06.1970 leaving the Petitioner and his sister, as his legalheirs.

3. After his death, the Petitioner and his sister took possession of the property. Subsequently on 18.10.2007 the Petitioner's sister Rani executed Release Deed bearing Doc. No. 3588 of 2007 Edalakudi Sub Registrar Office in favour of the Petitioner. Further the adjoining southern side of Plaintiff schedule property, the Defendant's property is situated. The Defendant's predecessors-in-title have acquired the said property, as per the schedule 'A' item No.14 of the Partition Deed. In between the Petitioner's property and the Respondent's property, thorny fence was available. On 08.04.2005, the Defendant's predecessors namely Paulthurai had destroyed the thorny fence and committed waste in the Plaintiff schedule property after obtaining Interim Injunction in O.S. No. 240 2005, filed by the said Paulthurai against the Petitioner and his sister.

4. The Petitioner is in possession and enjoyment of 85 cents in the eastern first Valiyakandam. The same is described as Plaintiff schedule property. By oversight, the said fact is not mentioned in the Plaintiff. The same is neither wilful nor wanton. Hence necessitated for filing the above amendment Petition.

5. The Respondent had filed counter, stating that the Petitioner's amendment Petition is not maintainable in law or on facts. The suit itself is not maintainable.

There is no sufficient ground to entertain the application. The above application is filed, in order to keep the suit pending forever. The proposed amendment will definitely alter the nature and character of the suit. The Plaintiff's claim that one acre 36 & 7/8 cents originally belonged to the grandfather of the Plaintiff is false. There is no such property. There is no scope of any inheritance as alleged. The Petitioner's claim that the Defendant's predecessors have destroyed the thorny fence and committed waste in the Plaint schedule property is false and they are vexatious allegations, raised for the sole purpose of filing this Petition.

6. The proposed amendments are without any basis and as such the same cannot be entertained. The Petition filed by the Plaintiff is highly belated. The Petitioner's claim that he is in possession of 85 cents in the first eastern Valiyakandam is false. There is no property on land as pleaded. The Petitioner is not entitled to file this application, seeking amendment of the Plaint by introducing a new property and new cause of action. By way of this amendment, the Petitioner attempts to introduce a new cause of action, the same cannot entertained. Hence the Respondent prayed for dismissal of the above Petition.

7. The point for consideration is Whether the above Petition has to be allowed or not?

8. The Petitioner by filing the above Petition, sought leave of this Court to amend the Plaint Paragraph No. 4A. The Respondent had filed counter objecting to the same. The Learned Counsel for the Respondent relied on the Judgement of the Hon'ble Supreme Court dated 29.02.2024 made in Civil Appeal No. 2886 of 2012,

Basavaraj -vs- Indira and Others, had held with amendment cannot be claim as matter of right. In that judgement, the Hon'ble Supreme Court had held as follows:- “ This Court in M. Revanna -vs- Anjanamma (dead) by legal representatives and others reported in (2019) 4 SCC 332, *opined that an application for amendment may be rejected, if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order VI Rule 17 C.P.C. prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence, the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial, to show that inspite of due diligence such amendment could not be sought earlier. It is not a matter of right. Paragraph No.7 thereof is extracted below:*

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any state. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that inspite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendment are allowed in the pleadings to avoid

mutiplicity of litigation, the court needs to take into consideration whether the application for amendment is bonafide or malafide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

9. In the above citation, the amendment application was filed after several years of obtaining Compromise Decree. The said legal preposition stated in the said Citation, do not apply to the facts of this case, for the reason that case Decree was passed, upon compromise entered inbetween the parties therein. In the case on hand, Trial has not yet commenced. As such the Proviso to Order VI Rule 17 Code of Civil Procedure, do not apply to this case. In the Judgement of the Hon’ble Supreme Court dated 24.09.2024 made in SLP(Civil) No. 30324 of 2019, in Dinesh Goyal @ Pappu -vs- Suman Agarwal (Bindal) & Ors, 2024 INSC 726, the Hon’ble Supreme Court had held that all Amendments are to be allowed, which are necessary for determining the real question in controversy. In view of the law declared by the Hon’ble Supreme Court and the fact that the Trial has not commenced in the above suit, this Court is of the considered view that the amendment could be allowed on terms.

In the result, the above Petition is allowed on Condition that the Petitioner pays a sum of Rs. 1,000/- (Rupees One Thousand Only) to the Respondent on or before 21.04.2025, call on 22.04.2025.

Dictated to the Steno Typist, transcribed and typed by her and corrected and pronounced by me, in Open Court this, the 8th day of April, 2025.

I Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

I ADM, Nagercoil
Draft/Fair Order
I.A.No.7/2025 in
O.S.No.204/2022
Date: 08.04.2025