

IN THE COURT OF SUBORDINATE JUDGE, ERANIEL.

**Present : Tmt. D. Asha Kousalya Shanthini, B.Sc., B.L.,
Subordinate Judge, Eraniel.**

Tuesday, the 10th day of September 2024

I.A.No.4 of 2022

in

OS.No. 86 of 2021

Raveendran

... Petitioner/Plaintiff

.Vs.

1. Duraimony Nadar
2. Thilaga
3. Elango
4. Mathini

... Respondents/Defendants

This petition coming up for final hearing before me on 14.08.2024 in the presence of Thiru. A. Vimalan, Advocate for the Petitioner and Thiru. Pravin, Advocate for 1st and 3rd respondents and Thiru. S. Alwin Vethamoni Advocate for 4th respondent and 2nd respondent remained exparte and upon hearing the arguments of both sides and upon perusing the records and having stood over for my consideration till this day, this court delivers the following:

ORDER

1. The petitioner seeks for amendment under order 6 rule 17 CPC for including the petition schedule property in the plaint pleadings.
2. The petitioner/plaintiff has filed the main suit for recovery of money from the respondents by pleading that one Roselet who is the wife of the 1st defendant and mother of respondent 2 to 4 borrowed Rs.5,50,000/- on

15.04.2019 towards the repayment of which she executed the suit promissory note. As the said Roselet died on 14.06.2021, the petitioner is seeking for the relief as against the legal heirs of the deceased Roselet. The Petitioner submitted that the petition schedule property was originally owned by the said Roselet regarding which he was not able to get the details while filing the original suit, and hence the amendment petition now.

3. In the counter filed by the 4th respondent it is stated that the petition mentioned property belongs to the 3rd respondent which originally belonged to the deceased Roselet. As the proposed amendment will substantially alter the complexion of the suit by introducing the new cause of action and the petitioner was well aware of these facts and she getting knowledge very late is not proved, the I.A should not be allowed. As no counter filed by 2nd respondent he was called absent set exparte. In the additional counter filed by the 3rd respondent which is adopted by R1, it is submitted that the petition mentioned property came to her hands during the years 2012 to 2014, which are his private properties and the proposed amendment will create unnecessary encumbrance over the exclusive property of the 3rd respondent.

4. During the enquiry, the 3rd respondent relied upon Ex.R1 to R3. Ex.R1 is the copy of the sale deed dated 09.04.2014, in which 4th respondent has sold 3.5 cents in the petition schedule property infavour of the 3rd respondent for the sale consideration of Rs. 25,00,000. Ex.R2 is the copy of the kist receipt found in the name of the 3rd respondent dated 07.02.2023. Ex.R3 is the copy of settlement deed dated 09.07.2012, in which said Roselet has settled the 7 cents in favour of the 3rd respondent.

5. In the written arguments filed by the respondent 1 to 3 they reiterated that out of the total 10.500 cents, 7 cents was settled in favour of the 3rd respondent on 09.07.2012, and remaining 3.5 cents was sold by virtue of the sale deed dated 09.04.2014 and hence the property is the exclusive property of the 3rd

respondent and as the 3rd respondent did not receive the said property through inheritance or devolution on the death of their mother Roselet, the present amendment should not be allowed.

6. On perusal of the documents and the petition and the counter averments it is very clear that though the loan transaction was on 15.04.2019, as per Ex.R3, on 09.07.2012 itself the said Roselet has settled 7 cents in the petition schedule property having an extent of 10.500 cents in favour of the 3rd respondent and as per Ex.R1 sale deed dated 09.04.2014, the 4th respondent sold 3.5 cents in the petition mentioned property to the 3rd respondent. In Ex. R1 sale deed, R4 claims title based on another Doc.1629 dated 09.07.2012 which is not placed before the Court. When the original ownership of the deceased Roselet is not denied or disputed by the respondents 1 to 4, their main defence in the suit that the suit promissory note is a forged document needs a special mention here. During the enquiry, the petitioner's arguments that the deceased borrower intentionally transferred her immovable property mentioned in the petition infavour of her sons to defeat the claim of her creditors, cannot be simply brushed aside at this stage. Moreover, in a suit for recovery of money as against the legal heirs of a deceased borrower, the liability of the defendants is not personal but if they have assets inherited as legal heirs they are liable to that extent only. Here the contesting respondents who deny such malafide intention of the said Roselet, have the opportunity to prove it during the main trial.

7. Here it is very pertinent to note that issues were framed in the main suit on 19.09.2022 itself in which the issues No.2, 3 and 4 are extracted hereunder for better clarification:

2. Can the defendants be made liable for the alleged loan borrowed by Roselet?

3. Whether the defendants can be considered as legal representatives of deceased Roselet?

4. Whether the defendants are liable to pay the loan amount borrowed by Roselet?

As specific issues are framed regarding the liability of the respondents 1 to 4, allowing the present amendment is found necessary for arriving at a proper finding for such vital issues. If the I.A. is not allowed it may prejudice the interest of the petitioner, whereas if it is allowed it may not cause any irreparable loss to the respondents who are admittedly the legal heirs of the deceased Roselet. Assuming for argument sake if the respondents are found not liable, no prejudice will be caused by simply allowing the present amendment, whereas, if the property is not included in the suit schedule and if it is encumbered or alienated during the trial and if the respondents are found liable, it may lead to multiplicity of proceedings which may prejudice the interest of the petitioner.

8. Admittedly it is a pre-trial amendment which should be allowed liberally. As the amendment sought for is not changing the complexion of the suit substantially and as no new cause of action is introduced, this court is inclined to allow the IA as prayed for.

Considering the facts and circumstances of the present case, for the above said reasons, this Court is inclined to allow the present pre-trial amendment as prayed for.

In the result, I.A. is allowed. No cost.

Pronounced by me in open court on this the 10th day September, 2024.

Sd/-
Subordinate Judge,
Eraniel.