

In the Court of the Additional Subordinate Judge at Kanchipuram

Present: Thiru.T. Thirumal, B.A.,B.L.,  
Additional Subordinate Judge

Thursday, the 20<sup>th</sup> day of March 2025.

I.A. No.2/2023 in O.S. No.326/2023

M.Ekambaram

.. Petitioner/Defendant

Vs.

1. M.Kumari,  
2. M.Selvam.

...Respondents/Plaintiffs

This petition came before me on 27.02.2025 for final hearing in the presence of M/s.P.Gunasekaran, C.Govindasamy Advocates for petitioner and Thiru.N.Bakthavachalam Advocate for Respondents and upon hearing both side and having stood over for consideration this day, this court delivered the following

### ORDER

This petition is filed under Order 6 Rule 17 of CPC to order to permit the Respondents/plaintiffs to amend the plaint as per the particulars of amendment.

2. Brief averments contained in the affidavit of the petitioner are as follows:-

The Petitioner is the defendant herein in the above case. The Respondents/plaintiffs are filed the suit for partition as against the petitioner. The suit property in Kanchipuram District, Kanchipuram Taluk, in No.131, Pullalur Village, in Nanja landed property in Patta No.469 comprised in Survey No.339/3 in total extent 0.74 cents. The 1<sup>st</sup> Respondent/plaintiff is mother and 2<sup>nd</sup>

Respondent/Plaintiff is brother of petitioner. At the time of jointly living the 2<sup>nd</sup> respondent/plaintiff and petitioner was jointly purchased the above said property an extent of 0.37 cents out of 0.74 cents from 1.P.Siva, 2.P.Panneerselvam, 3.P.Kaveri, 4.K.Anjali, 5.P.Chandriga those are the sons and daughters of the 1<sup>st</sup> Respondent/plaintiff brother namely L.Parthasarathy. The above said persons are ready and willing to sale their share of the property in favour of the petitioner. At the time of the sale the above said persons are told they sale the property for him but not for his mother, because she was disturbed their father so far they are not ready to sale the 1<sup>st</sup> respondent/plaintiff. Further, they are assured to the petitioner the property is their family property. Therefore, they are not like to sale the third party, so the 2<sup>nd</sup> Respondent/plaintiff and petitioner was jointly purchase the property through document No.2218/2002 date 28.08.2002. After purchase the property the petitioner was cultivating his part of the property which was allotted by the respondents/plaintiffs as well as villagers that was found in adjacent of the channel. Further, the revenue authority are treated to all are single family so the joint patta No.469 was issued and stand in the name of petitioner and other respondents/plaintiffs. The 1<sup>st</sup> respondent/1st plaintiff cannot raise or claim the above said suit property of 0.37 cents out of 0.74 cents. Further, the above said respondents/plaintiffs are wantonly to omit the some of the survey numbers. Which was found in Kanchipuram District, Kanchipuram Taluk, in No.131, Pullalur 'A' village, in Nanja landed property in Patta No.399 comprised in Survey numbers belonged to Natesa Mudaliar who is the grandfather of

petitioner. After demise of the above said Natesa Mudaliar, petitioner's father Murugesha Mudaliar was enjoying the property in 1) S.No.176/2 an extent of 0.23 cents, 2) S.No.198/2B an extent of 0.28 cents, 3)S.No.198/3 an extent of 0.27 cents, 4) S.No.200/3A an extent of 0.86 cents, totally 1.64 cents. The petitioner entitle right his share in the above said properties. The petitioner's father 1.Murugesha Mudaliar, 2.Manigandan (died), 3.Ekambaram (Petitioner/Defendant), 4.Selvaraj(2nd Plaintiff) all are executed a Mortgage deed in favour of Walajabad Co-Operative Land Development Bank Ltd., through document No.1233/1994 dated 28.04.1994. Further that the loan was discharged the same through document No.4600/2019 dated 06.08.2019. One Murugesha Mudaliar intentionally to create the settlement deed in favour of the 1<sup>st</sup> respondent/1st plaintiff, who is the father and mother of petitioner. The 1<sup>st</sup> respondent/1st plaintiff pre planned route was made and demand to the above Murugesha Mudaliar for the execution of the settlement deed. Further, that the 1<sup>st</sup> respondent/1st plaintiff is colluded to the 2<sup>nd</sup> respondent/2nd plaintiff and they are try to grab the petitioner's rightful share of the properties. The petitioner was not signed the above said settlement deed ad that the document was not bind to petitioner. Hence, this petition for steps and carryout the consequential amendment in plaint. Otherwise the petitioner will be suffered very much. Hence, the petitioner prays to order to permit the respondents/plaintiffs to amend the plaint as per the particulars of amendment.

3. Brief averments in the counter filed by the 1<sup>st</sup> respondent are as follows:

The respondent denied all the allegations of the petition. The suit filed by the plaintiff is only in respect of property comprised in Survey.No.339/3 to an extent of 74 cents with reference their 3/4th share. The petitioner is not entitled to share in Survey No.176/s an extent of 23 cents, 198/2B an extent of 28 cents, 198/3 an extent of 27 cents, 200/3A an extent of 86 cents totally 164 cents are joint family property in which this defendant entitled to get partition. That the petition for amendment of plaint is not sustainable since the petitioner/defendant is entitled to 1/3rd share, and to that effect the plaint can be amended since the plaintiff filed suit only in respect of the property which was purchased jointly by the plaintiffs and defendant and this suit is not for general partition and it is for the specific item. The petitioner is seeking partition in the properties belonged to Murugesu Mudaliar who is not the party to the above suit. Thus, without Murugesu Mudaliar as a party to suit the petitioner cannot seek any partition in the properties of Murugesu Mudaliar thus the petition is not maintainable and liable to dismiss. Hence petition may be dismissed.

4. Either Petitioner or Respondents side have not produced any oral or documentary evidence on their side.

5. The point for consideration is:

Whether this petition can be allowed?

6. On Point:

The learned petitioner's counsel argued that the Respondents/plaintiffs are filed the suit for partition as against the petitioner. The suit property in Kanchipuram District, Kanchipuram Taluk, in No.131, Pullalur Village, in Nanja landed property in Patta No.469 comprised in Survey No.339/3 in total extent 0.74 cents. The 1<sup>st</sup> Respondent/plaintiff is mother and 2<sup>nd</sup> Respondent/Plaintiff is brother of petitioner. At the time of jointly living the 2<sup>nd</sup> respondent/plaintiff and petitioner was jointly purchased the above said property an extent of 0.37 cents out of 0.74 cents from 1.P.Siva, 2.P.Panneerselvam, 3.P.Kaveri, 4.K.Anjali, 5.P.Chandriga those are the sons and daughters of the 1<sup>st</sup> Respondent/plaintiff brother namely L.Parthasarathy. The above said persons are ready and willing to sale their share of the property in favour of the petitioner. At the time of the sale the above said persons are told they sale the property for him but not for his mother, because she was disturbed their father so far they are not ready to sale the 1<sup>st</sup> respondent/plaintiff. Further, they are assured to the petitioner the property is their family property. Therefore, they are not like to sale the third party, so the 2<sup>nd</sup> Respondent/plaintiff and petitioner was jointly purchase the property through document No.2218/2002 date 28.08.2002. After purchase the property the petitioner was cultivating his part of the property which was allotted by the respondents/plaintiffs as well as villagers that was found in adjacent of the channel. Further, the revenue authority are treated to all are single family so the joint patta No.469 was issued and stand in the name of petitioner and other

respondents/plaintiffs. The 1<sup>st</sup> respondent/1st plaintiff cannot raise or claim the above said suit property of 0.37 cents out of 0.74 cents. Further, the above said respondents/plaintiffs are wantonly to omit the some of the survey numbers. Which was found in Kanchipuram District, Kanchipuram Taluk, in No.131, Pullalur 'A' village, in Nanja landed property in Patta No.399 comprised in Survey numbers belonged to Natesa Mudaliar who is the grandfather of petitioner. After demise of the above said Natesa Mudaliar, petitioner's father Murugesu Mudaliar was enjoying the property in 1) S.No.176/2 an extent of 0.23 cents, 2) S.No.198/2B an extent of 0.28 cents, 3)S.No.198/3 an extent of 0.27 cents, 4) S.No.200/3A an extent of 0.86 cents, totally 1.64 cents. The petitioner entitle right his share in the above said properties. The learned respondent counsel argued that the suit filed by the plaintiff is only in respect of property comprised in Survey No.339/3 to an extent of 74 cents with reference their 3/4th share. The petitioner is not entitled to share in Survey No.176/s an extent of 23 cents, 198/2B an extent of 28 cents, 198/3 an extent of 27 cents, 200/3A an extent of 86 cents totally 164 cents are joint family property in which this defendant entitled to get partition. That the petition for amendment of plaint is not sustainable since the petitioner/defendant is entitled to 1/3rd share, and to that effect the plaint can be amended since the plaintiff filed suit only in respect of the property which was purchased jointly by the plaintiffs and defendant and this suit is not for general partition and it is for the specific item. The petitioner is seeking partition in the properties belonged to Murugesu Mudaliar who is not the

party to the above suit. Considering the both side argument it is found that the petition for amendment of plaint is not sustainable since the plaintiff filed suit only in respect of the property which was purchased jointly by the plaintiffs and defendant and this suit is not for general partition and it is for the specific item. The petitioner is seeking partition in the properties belonged to Murugesa Mudaliar who is not the party to the above suit. Thus, without Murugesa Mudaliar as a party to suit the petitioner cannot seek any partition in the properties of Murugesa Mudaliar. Plaintiff is dominus Littus. She is entitled to frame the suit. Defendant cannot seek amendment for property in the plaint. If the defendant need any claim right interest in the suit property he is entitled for the counter claim by way of payment of further court fee if any as fixed by the Court of Law. If the petition is allowed the Respondents/plaintiff will prejudiced. Hence, in the interest of justice this petition has to be liable to dismiss.

In the result, this petition is dismissed. No costs.

Directly dictated to the Steno-typist, typed by her, corrected and pronounced by me in open court, this the 20<sup>th</sup> day of March 2025.

Sd./T.Thiurmal  
Additional Subordinate Judge,  
Kanchipuram.

Exhibits and Witnesses on  
both sides: NIL.

Sd./T.Thiurmal  
Additional Subordinate Judge,  
Kanchipuram.