

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Friday, the 25th day of July 2025

I.A.No.4/2025

in

O.S.No.161/2019

1. J.Panchu

2. Gowri

..... Petitioners/3rd and 4th Defendants

// Vs //

P.Kandasamy

..... Respondent/ Plaintiff

This petition is coming up for final hearing before this court on 19.06.2025 in the presence of Advocate.Mr.K.R.Sudharsan Prabhu, Advocate for the Petitioners and Advocate.Mr.Venkatesh, Advocate for the Respondent and upon hearing the arguments on both sides and on perusal of the records and having stood over for consideration till this day, this court delivers the following:-

ORDERS

This petition has been filed Under Order 8 Rule 9 of CPC pass an order to granting leave to file additional pleadings in the form of additional written statement.

1. Brief averments of the Petition :-

(I) The 2nd Petitioner herein is the 4th Defendant in the main suit. The 2nd petitioner filing this affidavit for herself and on behalf of the 1st Petitioner / 3rd Defendant also. The Respondent / Plaintiff is the brother of the 2nd petitioner . The Respondent/Plaintiff has filed a suit in O.S.No.161 of 2019 for the relieves of Declaration that he is absolutely entitled to suit Item No.1 to 3 of the suit descriptive properties and also sought for declaration that he is entitled to 1/5th undivided share over the item No.4 & 5 of suit properties and for consequential relief of injunction against us. It is alleged by the Respondent that the properties allotted to her parents in the partition deed dated 04.05.2003 through A-Schedule were sold to her mother, brothers and sisters on 18.06.2008. He further alleged on the same day that we along with other defendants 1, 2 & 5 executed a release deed in favour of the Respondent / Plaintiff and also in favor of other brothers. On the basis of the above said unproved pleadings, the Respondent claimed that an oral partition was effected between him with other brothers with respect to item No.1 to 3 of the suit properties and also have 1/5 share in item No.4 & 5 as if it were the facts. The said averment of the Respondent was though properly resisted by us through our written statement. Certain exact details with

respect to the above denial were inadvertently omitted to have mentioned in our earlier written statement.

(ii) In the written statement we denied due execution of the alleged release deed dated 18.06.2008 and about the oral partition that alleged to have been entered by our brothers with respect to item No.1 to 3 and with respect to the right claimed against Item No.4 & 5. In the written statement that was filed earlier by us, we clearly averred that the suit properties were settled by our father in favour of our mother on the basis of registered settlement deed dated 06.11.1963. Later, our mother who was in possession and enjoyment of the same settled the same in our favour by virtue of a registered settlement deed dated 23.06.2014. Though, we are in established possession and enjoyment of the suit properties with respect to item Nos. 1, 2 & 5 and S.No.23/5B that forms part of item No.3 of the suit properties by virtue of the settlement deed dated 23.06.2014, the Respondent attitude by suppressing the material facts as stated above shows that his claim is mala-fide. As such being the exact position, the petitioners have mistakenly omitted to exclusively mention the above relevant facts with respect to our claim over the suit property items Nos. 1, 2 & 5 and Sy.No.23/5B that forms part of item No.3. The above inadvertence to mention the same as aforesaid was neither willful nor wanton and we came to knowledge only now when our present counsel specifically found the absence of the above facts in our pleadings. Apart from this, during the pendency of the suit the 1st petitioner has settled her undivided share in item No.1, 2 & 5 of the suit properties and part of the suit property in Item No.3 that lies in

Sy.No.23/5B, in her favor by executing a registered settlement deed dated 24.12.2020.

(iii) The above pleadings and documents relied by us place a vital role for the effective adjudication of exclusive rights of parties and issues involved therein. I have neither introduced any new plea inconsistent to earlier one and nor a different bundle of facts. The proposed additional pleadings were raised in bonafide to facilitate this court to render substantial justice to parties with respect to the suit properties in an expedient manner. Hence this petition has to be allowed.

2. Brief averments of the counter affidavit filed by the Respondent :-

(I) The respondent herein is the plaintiff in the original suit. The respondent admitted averments hereunder, all the other averments are denied and the petitioners are put to strict proof of the same. The original suit has been filed for declaration and for permanent injunction. In the partition deed of 1959, the property in question, item Nos.1,2,3 and 5 were acquired by the defendant father Mr.Pandi, through a will. The above mentioned Mr.Pandi write a gift settlement for his wife based on the above mentioned properties. The above gift settlement deed is an invalid document. In addition to the property found in this plaint and other properties were also written off in the above mentioned gift settlement. Since the above mentioned gift settlement did not come into effect, Bhuvanewari, Pandi, Ganapathi, Manoharan, Kandasamy, Kannan, Pandiyarajan are divided all their properties except for these properties.

(ii) After that, another part was made in 2003. The above part document is signed by Bhuvaneswari. It was written in it that we have the authority to divide the undivided property in the future, as contained in the 2003 partition deed. Therefore, the gift settlement deed No.6979/1963 is a nominal deed which has not come into effect. Based on the above nominal deed, the subsequent deed dated 23.06.2014 is also a void deed. Furthermore, the 3rd and 4th defendants have no right to write a settlement to the 4th defendant on 24.12.2020 in respect of this suit property. If you write it down like that, it will be an invalid document. Also, 64 Cents of the Item No.3 of property in S.No.23/6 in a crematorium. The above mentioned place is the burial place of the ancestors of the plaintiff and defendants. Therefore, this place cannot be divided as above. The above property in Item No.4 the above house, is already divided between the sisters and is in the possession of the brothers. Hence this petition has to be dismissed with costs.

3. The point for consideration aroused is that :-

Whether the petition has to be allowed or not ?

4. Point :-

Both sides heard. Records perused. The petitioner has filed this petition to receive additional written statement.

Already the suit has been amendment and the legal heirs of the deceased 6th defendant have been impleaded. Hence in order to give an opportunity to the Petitioners/3rd and 4th defendants to make additional pleadings, this court inclines to pass an order in favour of the petitioner.

5. Result:-

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

Written to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 25th day of July 2025.

**Sub Judge,
Melur.**

Both sides of witness and documents : Nil

**Sub Judge,
Melur.**

**Draft/Fair Order
IA.No.4/2025
in
O.S.No.161/2019
Dt : 25.07.2025
Sub Court, Melur**