

**IN THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
PUDUKKOTTAI.**

PRESENT : Thiru.K.Poorana Jeya Anand, M.A., M.L.,
Principal District Judge, Pudukkottai.

Monday, the 05th day of January, 2026.
(Thiruvalluvarandu 2056 Sri Visuvavasu Varudam Margazhi Thingal 21st day)

I.A.No.05/2025 in O.S.No.74/2018

Unnamalai ... Petitioner / Plaintiff
versus
1. Kulanthaivelan Chettiyar (died)
2. Visalakshi
3. Meenakshi (died)
4. Meenal
5. Nachchal
6. Umaiyal
7. Padmavathi
8. Manjula
9. Abirami
10. RM.Nachiyappan
11. Karthickperichiyappan ... Respondents/Defendants

This Interlocutory application has come up for final hearing before me on 01.12.2025 and upon hearing the arguments of Mr.M.Veerappan, Learned Advocate appearing for the petitioner and of Mr.S.Muthamilselvan, Learned Advocate appearing for the respondents No.2 to 4 and 6 to 11 and of Mr.C.Thirumoorthy, Learned Advocate appearing for the 5th respondent and the respondent No.1 and 3 were died and upon perusing the records and having stood over for consideration till date, this court passed the following...

ORDER

1) This Interlocutory Application has been filed by the petitioner / plaintiff under Order VI Rule 17 of CPC praying to amend the plaint as detailed in the petition.

2) **The brief averments of the petition are as follows:-**

The petitioner is the plaintiff in the original suit. The petitioner filed a suit for the relief of partition against the defendants. During the evidence of DW1, the DW1 has filed one document namely Will dated 03.06.2015. It was only known to the petitioner after perusing the aforementioned Will that the undivided properties belonging to the joint family were omitted from the plaint. The aforesaid properties must be included in the original plaint to avoid partial partition, prevent multiplicity of suits, and preclude unnecessary complications or confusion. This will not change the nature of the suit or the character of the suit. The petition filed in I.A.No.4/2025 for adding legal heirs of the 3rd defendant who died when the suit is pending and the same was allowed. Therefore this petition is filed by the petitioner to amend the plaint as detailed in the petition. Hence, this petition.

3) **The Brief averments of the counter filed by the 2nd respondent and the same was adopted by the respondents 3, 4 and 6 to 11 are as follows:**

This petition is not maintainable either in law or on facts. The petitioner/plaintiff is the eldest daughter of the 1st defendant Kulanthaivelan Chettiar. If the plaintiff was in fact a joint family, the details of all the properties were well known at the time

of filing the suit. All the properties were mentioned in the petition were partitioned between the 1st respondent Kulanthaivel Chettiyar and his son the deceased Parthasarathy on 26.10.1976 and the same were registered in the Pudukkottai District Registrar Office in Document No.1351-1976, so the properties were not included in the plaint at the time of filing the suit. The 2nd daughter of the deceased Parthasarathy namely Nachchal filed a suit before this court in O.S.No.172/2004 for the relief of partition against these defendants except the plaintiff and the same was dismissed by this court stating that the suit properties were not ancestral properties or joint family properties. The said Nachchal filed appeal against the suit before the Hon'ble Madurai Bench of Madras High Court and the same is pending. It is factually incorrect to say that the properties which are not related to the suit should be included in the suit. The petitioner filed this petition with an intention to intimidating the defendants. Hence, prays for dismissal of the petition with costs.

4) The learned counsel for the 5th respondent has made an endorsement that no counter.

5) **Point that arises for consideration in this Petition is that**

Whether this petition is to be allowed as prayed for?

Point:

6) Heard both sides. Records perused.

7) This is the application filed by the petitioner/plaintiff to include the properties mentioned in the petition.

8) The petitioner contended that the petitioner came to know about the properties after seeing the Will dated 03.06.2015 during the examination of DW1. Further the petitioner contended that to avoid technicality and to prevent multiplicity of proceedings, the petitioner prays to allow the petition.

9) Per contra, the learned counsel appearing for the respondents have submitted that the properties were partitioned on 26.10.1976 between the 1st defendant with his son deceased Parthasarathy. Thereafter another suit in O.S.No.172/2004 was decided. In the said suit the plaintiff is not the party. Now the appeal pending before the Hon'ble Madurai Bench of Madras High Court. In that suit the court has decided that the properties are separate properties of 1st defendant. Now the petitioner filed this petition at the fake end of trial. Hence the respondents prays for dismissal of the application.

10) I have carefully considered the arguments advanced by either side and perused the records.

11) It is admitted case of the respondents that the petitioner is not the party in O.S.No.172/2004. Further, the properties found in the Will are available or not for partition is to be decided only at the time of trial. Whether the properties are separate properties of 1st defendant or the plaintiff is having any right or share over the suit properties should be decided only at the time trial. If the contentions raised by the petitioner is true, then the suit properties are necessary for deciding this Lis. To avoid multiplicity of proceedings and for effective adjudication, there is no

prejudice would be caused while allowing this application. While allowing this amendment, the nature of suit or character of suit would not be changed. Further the petitioner contended that the petitioner came to know about the Will at the time of chief examination of DW1 only.

12) At this juncture, it is relevant to refer the decision reported in “ **(2005) 4 MLJ 258** in a case of *Thiru Alankadu Immudi Ahora Dharma Sivachariar Aiyra Vaisya Madam, Nerinchipettai, Erode District Vs Udumalpet Samayapuram Aiyra Vaisya Sangam*”, in Para 4 and 5 wherein it was held as follows:-

4. Substantiating his plea, learned counsel for the petitioner would cite the following judgments :

(i) (K.S. Alagarsamy v. P. Natarajan and Anr.);

(ii) (Muthammal v. Thamburati and 6 Ors.);

(iii) (Kalavathi v. Chitra);

(iv) 2003 (2) L.W.21 (Sampath Kumar v. Ayyakannu and Anr.); and

(v) (Pankaja and Ane. v. Yellappa (dead) by Lrs. and Ors.)

5. A perusal of the above judgments could set forth the following guidelines, while dealing with an application under Order 6 Rule 17 C.P.C., seeking for amendment of the prayer :

(1) The general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred.

(2) It is well recognized that where the amendment does not constitute the addition of a new cause of action or

raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation.

(3) The object of Courts and rules of procedures is to decide the rights of the parties and not to punish them for their mistakes. Further, a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended.

(4) Even though the amendment sought to be made is subject to law of limitation, if the cause of action is not going to be changed, it is open to the affected party to take necessary steps for amendment of the plaint. No doubt, no amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party of lapse of time.

(5) For merely allowing an application for amendment, there is no adjudication of the merits of the amended pleas introduced that the merits of the amended pleas have got to be adjudicated upon after allowing the opposite side to put-forth additional pleadings in answer to the same and that certainly the additional pleadings may take in also the plea of bar of limitation.

(6) By allowing the amendment, no injury or injustice is caused to the other side. No jurisdictional error is also involved in this case because of the amendment being ordered. The amendment application should be allowed, since it is not going to change the nature of the plea nor

does it affect the rights of the defendants. The defendants are entitled to put-forward all their contentions even after the amendment is allowed.

(7) The question of limitation should not have been decided by the Court below at present, since it is a question to be decided on merits with oral and documentary evidence. At present, we are concerned with the amendment application, which is governed only under Order 6 Rule 17 C.P.C. The amendment application should be allowed, if it is not going to change the nature of suit nor does it affect the rights of the defendants.

(8) The basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial Court, it is open to the plaintiff to file a fresh suit and that is one of the reasons, which has prevailed with the trial Court. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief, which could be prayed for in a new suit, cannot be permitted to be incorporated in the pending suit.

(9) Where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically, but to allow the plaintiff to make necessary amendment, if he seeks to do so.

(10) Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case, generally, it can be assumed that the

defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases, the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case.

(11) The law in this regard is quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed.

(12) In regard to the stand of the defendants that the declaration sought by the plaintiffs is barred by limitation, there is dispute and it is not an admitted fact. While the defendants pleaded that Under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the plaintiffs in this case ought to have been within three years when the right to sue first accrued, the plaintiffs contend that the same does not fall under the said entry but falls under Entry 64 or 65 of the said Schedule to the Limitation Act, which provides for a limitation of 12 years, therefore, according to them, the prayer for declaration of title is not barred by limitation. In such a situation, where

there is a dispute as to the bar of limitation, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea of limitation, being disputed, could be made a subject-matter of the issue, after allowing the amendment prayed for.

“ Civil Procedure Code (V of 1908), O.6 Rule 17 – Amendment of plaint – No change of cause of action – No introduction of new cause – The amendment ought to have been allowed – The trial court cannot at this stage give a finding on limitation.

When there is no change of cause of action and no introduction of a new case, the trial court ought to have allowed the application for amendment and also the parties to put-forth their contentions, with reference to the bar of limitation also, during the course of trial. In stead of doing so, the trial court had chosen to give a finding that since the case fell under Entry 58 of the Schedule to the Limitation Act, the application would be barred by limitation, which is wrong. Therefore, the order impugned is set aside. The trial court is directed to frame an issue with reference to the point of limitation also and go on with the trial, after giving necessary opportunity to the parties.

“ When there is no change of cause of action and no introduction of a new case, the trial court ought to have allowed the application for amendment.”

Further in the above Judgment, the Hon'ble High court set forth some guidelines, while dealing with an application under Order 6 Rule 17 CPC seeking for amendment of the suit. There are twelve guidelines were given. As per the above Judgment, if there is no new case introduced or new cause of action is set out, there is no impediment for allowing the amendment petition. The petitioner prayed for amending the plaint to include some of the properties which are omitted to include in the plaint. In view of the decision cited supra, the cause of action is not going to be changed in this case also. Further merely allowing an application for amendment, there is no adjudication of the merits of the amended pleas are introduced. It should be adjudicated to be in the trial only. Further there is no harm caused to the other side. In view of the above guidelines given by the Hon'ble High Court, the amendment should be allowed in the interest of justice. Hence, this court is inclined to allow this petition. Thus, the point is answered accordingly.

13) In the result, this petition should be allowed on payment of cost of Rs.10,000/- to the respondents on or before 19.01.2026, failing which the petition should be stands dismissed automatically. **Call on 20.01.2026.**

This Order is directly dictated by me to the Stenographer Grade-III of this Court, typed by him in computer, corrected and pronounced by me in open court, this the 05th day of January, 2026.

**Principal District Judge,
Pudukkottai.**