

TNRM010028072023



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IN THE COURT OF PRINCIPAL DISTRICT JUDGE, RAMANATHAPURAM.

PRESENT: **THIRU.S.KUMARAGURU, B.L.,**  
Principal District Judge,  
Ramanathapuram.

**Thursday the 3<sup>rd</sup> day of October 2024**

**I.A.No.8/2024 in O.S.No.46/2023**

1. Kamatchi Ammal

2. Ramesh

... Petitioners / Plaintiffs

/Vs/

1. Latha

2. Rani

3. Susila

4. Nagavalli

5. Balu @ Balasubramanian

6. Sankar

7. Chandra

8. Viji

9. Kavitha

10.Selvi

11.Divya

12.Kala

13.Suganya

14.Mugeshkannan

... Respondents/ Defendants

This petition is coming before me for final hearing on 27.09.2024 in the presence of Thiru.K.Nagarajan, learned counsel for the petitioners and



Tmt.J.Chandrleka, learned counsel for the 5<sup>th</sup> respondent and of Thiru.A.Habeeb, learned counsel for the 12<sup>th</sup> to 14<sup>th</sup> respondents and 1 to 4 and 6 to 11 respondents are called absent set exparte and upon hearing both side arguments and having stood over for consideration till this date, this court passing the following:

**ORDER**

This petition is filed by the petitioners under Order 6 Rule 17 of CPC to amend the plaint.

**2. The averments raised by the petitioners in their affidavit which are summarized as follows:-**

The petitioner is 2<sup>nd</sup> plaintiff in the original suit. The petitioner filed this petition for himself and on behalf of 1<sup>st</sup> plaintiff for seeking the amendment of the plaint in this suit. This petitioners/plaintiffs have filed the suit for partition and declaration. In the above said suit, the husband of the 12<sup>th</sup> defendant's name was wrongly mentioned as Late.Velusamy and the defendents 13<sup>th</sup> and 14<sup>th</sup> father name was wrongly mentioned in plaint as Late.Marimuthu. The 13<sup>th</sup> and 14<sup>th</sup> defendants age was wrongly mentioned in short and long cause title of the plaint. The 12<sup>th</sup> item of properties mentioned in this petition is not mentioned in suit schedule property in plaint. The said suit property is



belongs to one Kamatchiammal. Hence, the 12<sup>th</sup> item of suit schedule property is need to added in the suit schedule property in plaint. The petitioners are very necessary to file this petition to amend the plaint. If the petition is not allowed, the petitioners will put to irreparable loss. Hence this petition is to be allowed.

3. R1 to R4, R6 to R11 called absent set exparte. R5 no counter. R13 filed counter. The counter of R13 is adopted the counter of R12 and R14.

4. **The averments raised by the respondents in their counter which are summarized as follows:**

This petition is not maintainable either in law or on facts. Except admitted the facts in his counter, all other facts mentioned in the petition, the petitioner strictly proved. This respondent not admitted the contents of affidavit which supported the petition. This respondent submitted that to drag on the suit proceedings, the petitioners were filed this petition in belatedly. Further this respondent submitted that the petition mentioned 12<sup>th</sup> item of property is order to include in plaint schedule property, it will possible to change the cause of action and character of the suit. It is prejudice caused to the respondents. The respondents have not admitted that if the suit is not



amend, the petitioners put to irreparable loss. Hence this petition is to be dismissed.

**5. Based on the contentions raised by the petitioners and respondent in their petition affidavit and counter statement, this court has framed the following point for final determination?**

*Whether the petition can be allowed?*

**6. Answer to Point:-**

Heard both side. No oral and documentary evidence was adduced on both sides. The learned counsel for the petitioners contention is that by oversight of the petitioners/plaintiffs, husband name of the 12<sup>th</sup> defendant and father name of the 13<sup>th</sup> and 14<sup>th</sup> defendants was wrongly mentioned in the plaint. Further by oversight of the petitioners/plaintiffs, the 12<sup>th</sup> item of properties mentioned in this petition not included in the plaint schedule property. The learned counsel for the petitioners has submitted to rectify the mistake it is very necessary to amend the plaint. Further the petitioners are submitted that if this petition is allowed, not possible to change the cause of auction and change of character of the suit. Further he has submitted that the petition was not allowed, court can not arrive correct decision. It will possible the petitioner put to irreparable loss. Further the learned counsel for the



petitioners has submitted that the petitioner is entitled to file the petition at any time prior to commence of trial. The settled principle if at any time of trial proceedings or before commencement of trial, court can power to permit to the parties to amend the pleadings. Therefore this petition is to be allowed.

7. In this case, R1 to R4, R6 to R11 called absent remained set exparte. R5 no counter. The learned counsel for the 12<sup>th</sup> to 14<sup>th</sup> respondents have objected to the petition to allow the amendment petition. Further the learned counsel for the 12<sup>th</sup> to 14<sup>th</sup> respondent contention is that the intention of the petitioner to drag on the proceedings, the petitioners were filed this petition in belatedly. Further the learned counsel for the 12<sup>th</sup> to 14<sup>th</sup> respondents submitted that the 12<sup>th</sup> item of petition mentioned property is order to include in plaint schedule property it will possible to change the cause of action and character of the suit. It is prejudice caused to the respondents. Hence this petition is to be dismissed.

8. After taking into consideration of the both sides learned counsel arguments and on perusal of the case records this court's opinion is that the petitioners' contention is acceptable one. This court has gone through the case records, it found that trial proceeding yet to commenced. The settled



principle, prior to the commencement of trial, at any time, parties are entitled to seeking permission from the court to amend the plaint. In the present case, trial proceedings not commenced. Under these circumstances, this petition is allowed.

9. Further the petitioners contention is that the husband name of the 12<sup>th</sup> defendant and fathers' name of the 13<sup>th</sup> and 14<sup>th</sup> defendants are wrongly mentioned in plaint, it is very necessary to rectify the mistake, the petitioners filed this petition to seeking the amend the plaint. This court's gone through the respondents' counter, they have not specially, denied the petitioners' case. After considering contention raised by the both side, this court's opinion is that that the husband name of the 12<sup>th</sup> respondent and fathers' name of the 13<sup>th</sup> and 14<sup>th</sup> defendants are amend, there is no possible to change cause of action and character of the suit. The settled principle, it is not possible to change the character of suit and cause of action of the suit, court can power to permit to amend the petition at any stage of the suit. Therefore this petition is maintainable one.

10. Further this court has gone through the petitioner case, the 12<sup>th</sup> item of petition mentioned property not included is schedule property of the suit. Hence he has seeking amendment to amend the suit schedule property for way



including the the petition mentioned 12<sup>th</sup> item of property added in suit schedule property. In this regard, the respondent contention is that if the petition is allowed and to permit to amend the plaint, nature and character of the suit to be changed. It prejudice caused to the respondent. The learned counsel for the respondent contention is not sustainable one. In this regard, the respondent has not averred in his counter, if the petition mention property is added as suit schedule property, what way, he was affected and also not mention in his counter in what way the nature and character of the suit to be changed. The settled principle, prior to commencement of the trial proceedings, court can empower to permit the amend the plaint. The principle is applicable in the present fact of the case. Further this petition is allowed no prejudice caused to the respondent. The respondent having opportunities to file additional written statement and challenge the plaintiff case, at same time, if the petition is not allowed, and this court not permit to amend the plaint, the petitioner not able to prove their case. Further if the petition is not allowed, this court has arrive correct findings in suit. It is create multiple proceedings arises in future. To avoid to create multiple proceedings in suit, this petition is allowed. The above said all aspects are consider by this court and comes to the conclusion, petition is allowed. Nature of the suit, no order as to costs.



In the result, this petition is allowed. Nature of the suit, no order as to costs.

The order was directly dictated by me to the Steno-Typist, printed out by her, corrected and pronounced by me in open court, this the 3<sup>rd</sup> day of October 2024.

**Sd/Thiru. S.KUMARAGURU,**  
Principal District Judge,  
Ramanathapuram.  
03.10.2024

**Both side witness and Documents :** Nil

**Sd/Thiru. S.KUMARAGURU,**  
Principal District Judge,  
Ramanathapuram.  
03.10.2024