



IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
PERIYAKULAM, THENI DISTRICT.

Present: Thiru. C.SANKAR, B.A. M.L. PGDCFS.,
Additional District and Sessions Judge,
Periyakulam, Theni District.

Wednesday, the 09th day of September, 2026.

IA. No.03/2026

- in -

OS.No.110/2025

(CNR. NO. TNTH090000862025)

Angaiyarkanni

... Petitioner / Plaintiff

// Vs. //

1) S.Sivaramakrishnan

2) D.Raja

...Respondants / Defendants

This petition came up for final hearing before this Court on 28.08.2026, in the presence of **Mr.B.Dhanapandian**, Learned Counsel for the Petitioner / Plaintiff and **Mr.V.Maran**, Learned Counsel for the 1st Respondent / Defendant and **Mr.S.Kajamydeen**, Learned Counsel for the 2nd Respondent / Defendant and upon perusing the Petition, Counter, Documents and upon hearing both side arguments and having stood over for consideration till this day, this Court delivered the following...

ORDER

This petition has been filed by the petitioner under Order 6, Rule 17 and Section 151 of the CPC, seeking to amend the relief claimed in the original suit.

2) Averments made in the Petition in brief is as follows:

i) The petitioner executed a nominal gift settlement deed, Document No. 5535/2016 at the Chinnamanur Sub-Registrar Office on 09.09.2016 in favor of her mother, sister, and brother regarding her share of the paternal property, she did so due to coercion, threats, and fear for her life from her mother and brother (the 1st respondent), as well as a desire to escape the mental agony associated with her marital life. The said gift settlement never came into effect, instead, the petitioner, her mother, her sister, and her brothers continued to enjoy the property jointly. The petitioner's sister passed away on 06.06.2020. As the petitioner's mother was incapacitated due to cancer, the 1st respondent with the fraudulent intent of acquiring the said properties executed a fraudulent partition deed on 01.09.2020 without the mother's knowledge. Subsequently, the petitioner's mother passed away on 31.01.2021. Thereafter, the petitioner and the 1st respondent continued to jointly enjoy the joint family properties. Furthermore, differences of opinion arose between the petitioner and the 1st respondent. It was only when the petitioner asked the 1st respondent in 2023 to partition and allot her share of the joint family properties that she became aware of the fraudulent partition deed executed by the 1st respondent on 01.09.2020. The aforementioned fraudulent partition deed dated 01.09.2020 is not valid.

ii) Furthermore, the petitioner has filed a substantive suit seeking to cancel the gift settlement deed executed by her mother in favor of her siblings under duress on 09.09.2016, as well as the fraudulent partition deed dated 01.09.2020, and to restrain the creation of any encumbrances using the said documents, however, the relief of

partitioning the property and handing over separate possession of the petitioner's 1/3rd share therein was omitted from the original suit. The petitioner has filed the present petition to amend the plaint to include the relief of partitioning and allotting the petitioner's 1/3rd share in the suit property.

3) Averments made in the Counter filed by the 1st respondent and accepted by the 2nd respondent in brief is as follows:

i) Except for the facts admitted as true by the respondents, all other averments made in the affidavit filed by the petitioner are contrary to the truth. The petitioner of his own free will, wholeheartedly, while of sound mind, and upon receiving full consideration executed and registered a Gift Settlement Deed Document No. 5535/2016 at the Sub-Registrar's Office on 09.09.2016. Through this deed, She gifted her undivided one-fourth (1/4) share in the property to her mother (the late. Muthulakshmi), her sister (the late. Janani), and her brother (the 1st respondent), fully understanding the nature of the document and complying with the law and registration regulations, She also handed over actual possession of the property to the said three individuals. Following the said Gift Settlement of 09.09.2016, the petitioner retains no legal right or title over the suit properties. Therefore, the petitioner's claim for a one-third (1/3) share in the partition is not legally sustainable.

ii) While it is true that negligence, carelessness, or delay should not necessarily be held against a party seeking an amendment under Order VI Rule 17 of the CPC, the present petition is not maintainable. In this instance filed after the trial had already commenced the petitioner merely states that the relief of partition was omitted from the original plaint but fails to provide any valid legal reasons explaining why such relief was not sought initially. Furthermore, the petitioner's attempt to seek partition now having failed to claim it in any paragraph or prayer of the original plaint is legally untenable and

contrary to Order VI Rule 17 of the CPC. It is legally impermissible for the petitioner to now claim a 1/3 share in the suit properties through partition, given that they had previously asserted in Paragraph 15 of the original plaint that the second respondent possessed no right whatsoever to said properties. Consequently, the respondents have filed a counter seeking the dismissal of this petition with costs.

4) No witnesses or documentary evidence have been adduced on behalf of the both side.

5) **Point for determination:**

1. **Whether this petition is allowed or not ?**

6) **Point No.1**

i) Arguments from both sides were heard, and the documents were perused. During his submissions, the learned counsel for the petitioner stated that the petitioner's mother passed away on 31.01.2021 and that the petitioner and the 1st respondent had been jointly enjoying the joint family properties. He further submitted that, following a dispute between the petitioner and the 1st respondent, when the petitioner requested the partition and allotment of her share in the joint family property in 2023, it came to light that the 1st respondent had fraudulently created a partition deed dated 01.09.2020. He argued that the said partition deed dated 01.09.2020 was fraudulent and invalid. He explained that the relief seeking the handing over of separate possession regarding the petitioner's 1/3rd share in the suit property had been omitted in the original suit and that the partition of the petitioner's share in the suit properties was sought but emphasized that the omission to seek the specific relief of separate possession in the original suit was not intentional but rather an inadvertent oversight. Next, the learned counsel for the

respondent argued that the petitioner had of her own free will, wholeheartedly, while of sound mind, and in accordance with the law executed and registered a Gift Settlement Deed Document No. 5535/2016 at the Sub-Registrar's Office on 09.09.2016. Through this deed, she gifted her undivided 1/4th share to the first respondent (her brother), her mother Muthulakshmi, and her sister Janani, thereby handing over actual possession to them. Consequently, the counsel contended that the petitioner retained no right or title to the suit properties following the said settlement, thus, her claim for a 1/3rd share in the current petition was legally untenable. Furthermore, the counsel argued that seeking partition through this petition after failing to claim it in the pleadings and prayer of the original suit was legally impermissible, and therefore, the petition should be dismissed.

ii) Next, the explanation regarding Order 6 Rule 17 of the Code of Civil Procedure is as follows,

17. Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

In the petition filed by the petitioner, there is no details of any facts stating that the parties are co-owners of the suit properties, nor did the original plaint or the prayer therein assert that the petitioner held the status of a co-owner regarding the properties mentioned in the schedule. In the main suit, relief is sought solely in respect of the Gift Settlement Deed dated 09.09.2016 and the Partition Deed dated 01.09.2020 concerning

the suit schedule properties. During his arguments, the learned counsel for the petitioner drew attention to the following citation.

**2026 (1) MWN (Civil) 157
IN THE HIGH COURT OF MADRAS
P.B. Balaji, J.**

**C.R.P. No.1858 of 2024 & C.M.P. No.9777 of 2024
12.9.2025**

M. Mohan

....Petitioner

Vs.

G. Janarthanan

....Respondent

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 6, Rule 17 Application for Amendment of Suit prayer to include Declaration of Title - Belated filing of Effect - Purpose of Order 6, Rule 17 is to minimize litigation Amendment permitted even at belated stage, if such amendment necessary to determine real controversy and serve ends of justice - Mere delay in seeking amendment does not constitute sufficient ground for rejection-Amendment allowed with Cost to compensate Defendant for delay.

iii) The suit in question was originally filed seeking the relief of a permanent injunction and was subsequently sought to be amended to include a prayer for a declaratory decree. Regarding this suit, the original plaint filed by the petitioner contains no averments stating that the petitioner is currently a co-owner of the properties described in the suit schedule. Furthermore, while the relief sought is limited to a declaration that the partition deed dated 01.09.2020 is invalid, the original plaint lacks any averments stating that the suit schedule properties are currently being enjoyed jointly and in common without having been partitioned. Additionally, the original plaint filed by the petitioner does not specify the extent of the petitioner's share in the suit

schedule properties. Neither the cause of action nor the pleadings state that the suit schedule properties are being enjoyed as joint family property or that the petitioner holds a share therein.

iv) In the course of the proceedings, the suit was posted for trial starting 09.02.2026, the petitioner (plaintiff) was examined as PW1 on 09.04.2026, and the cross-examination of PW2 by the defendants was concluded on 19.06.2026. Subsequently, the case was posted for the 1st defendant's evidence on 29.06.2026, the 1st defendant was examined as DW1 on 10.07.2026, and while the case stood posted for cross-examination, the present petition was filed by the petitioner. Furthermore, this petition has been filed by the petitioner at a belated stage, when the trial of the main suit is nearing its conclusion. Consequently, this Court is of the view that the citation cited by the learned counsel for the petitioner during arguments is inapplicable to the present case. Moreover, allowing the petitioner's petition could alter the nature and cause of action of the main suit. Therefore, this Court holds that there are no sufficient grounds to allow the petitioner's petition.

In the result, the petitioner's petition is dismissed without costs.

Dictated by me, directly typed by Stenographer into computer, corrected and pronounced by me in the open Court, this the 09th day of September, 2026.

**Additional District and Sessions Judge,
Periyakulam.**

Petitioner side Witnesses and Documents: Nil.

Respondents side Witnesses and Nil.

Documents:

Additional District and Sessions Judge,
Periyakulam.

Additional District &
Sessions Court,
Periyakulam, Theni District.

Fair/ Draft Order.

IA. No.3/2026

- in -

OS. No.110/2025

Dated 09.09.2026.