

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,  
THANJAVUR.**

Present : Thiru.**S.Baskaran**, B.Sc., B.L.,  
II Additional District & Sessions Judge, Thanjavur.

Tuesday the 3<sup>rd</sup> day of July 2018  
(Thiruvalluvar Aandu 2049 -Aani Matham 19<sup>th</sup> day)

**I.A.No. 33/2018 in O.S. NO.103/2015**

1. K.Nithiya  
2. K.Saraswathi ..Petitioners/ Defendants 3 and 1

/vs/

(1) S.Kalyanasundaram  
(2) T.Meena  
(3) S.Shanthi  
(4) B.Savithri  
(5) K.Ashokkumar ..... ..Respondents/Plaintiffs  
(6) K.Manimozhi .....Respondent/2nd Defendant

This petition having come up for final hearing before me on 21.6.2018 in the presence of Thiru. **R.Udhayakumar.,M.A.,B.L.**, Advocate for the petitioners and of Tmt. **N.Poongothai, B.Sc.,B.L.**, Advocate for the Respondents 1 to 5/Plaintiffs and of Thiru. **R.Elayaraja,B.A.,B.L.**, Advocate for the 6<sup>th</sup> respondent/2nd defendant, upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

**ORDER**

(1) This petition has been filed by the petitioners/Defendants 3 and 1 u/o.6 R.17 of C.P.C to cause amendments in the plaint .

(2)

**(2) The Gist of the affidavit filed along with the petition can be stated as follows:**

The suit properties are ancestral and joint family properties. Only the second defendant is contesting the suit and he wanted to grab the entire suit properties. The suit properties were formed into a layout and the 2<sup>nd</sup> defendant was allowed to sell 7 plots in the said layout for a sum of Rs.40,00,000/-. He has kept the entire sum with him without giving any share either to the plaintiffs or to the petitioners. The 2<sup>nd</sup> defendant has purchased the petition mentioned properties out of the said amount and those properties are also to be subjected to partition. Therefore the plaint has to be ordered to be amended suitably by including the petition mentioned properties as suit properties.

(3 ) The respondents 1 to 5, who are the plaintiffs in the suit have endorsed that they have no counter on this application and that it may be allowed.

(4) Only the 6<sup>th</sup> respondent/2nd defendant has filed a counter in this application .

**The contents of the said counter can be summarized as follows:**

This petition is not maintainable. The allegations that this respondent attempted to grab the entire family properties and that he retained the sale proceeds of 7 plots with him are false and scandalous. The further allegations that out of the said sale proceeds the 6<sup>th</sup> respondent has purchased the petition mentioned properties is also false. The 6<sup>th</sup> respondent only invested huge amounts for converting the properties into layouts. He has spent about Rs.16,00,000/- for the development of the layout. This fact has been admitted in the plaint itself. Hence the 6<sup>th</sup> respondent has independent income is an

(3)

admitted fact. The petition mentioned properties are the self-acquisition of the 6<sup>th</sup> respondent out of his independent income. Now the petitioners have joined hands with the plaintiffs and have filed this application in order to defraud the 6<sup>th</sup> respondent. Hence this petition has to be dismissed.

**(5) The point for consideration here is**

Whether this petition can be allowed?

**(6) Point:**

Originally these petitioners and the contesting 6<sup>th</sup> respondent /2<sup>nd</sup> defendant have jointly filed a written statements and were jointly resisting the suit. There is an allegation in the original written statement filed on behalf of the petitioners as well as the 6<sup>th</sup> respondent herein to the effect that the sale proceeds of 7 plots were shared among the plaintiffs as well as the defendants and it is only the plaintiffs who failed to pay the share in the expenses incurred by the second defendant to promote the layout. It is the admitted case of the plaintiffs in para No.6 of the plaint that the 6<sup>th</sup> respondent/2<sup>nd</sup> defendant was permitted to develop the suit properties into house sites and that only the 2<sup>nd</sup> defendant spent his own money for the development of the layouts. These petitioners who were jointly resisting the suit claim along with the 2<sup>nd</sup> defendant by filing a common written statement later got separated from him and chose to file a separate written statement admitting the prime allegations against the 2<sup>nd</sup> defendant in the plaint . Similarly the petitioners along with the 2<sup>nd</sup> defendant have jointly filed a suit against the plaintiffs herein and against some Government authorities in O.S.No.86/2015 on the file of the District Munsif cum Judicial Magistrate, Papanasam in respect of the suit properties for the relief of permanent injunction to prevent the plaintiffs herein from alienating or encumbering the suit properties. That suit has been now transferred to this court for joint trial with this suit in view of the fact that the subject matter is common in both the suits. However the petitioners are still continuing to prosecute the said suit only along with the 2<sup>nd</sup> defendant. When the allegations in the common written statement filed by these petitioners and the 2<sup>nd</sup> defendant are similar to the plaint allegations in O.S.No.86/2015(now O.S.No.28/2018) the

(4)

petitioners cannot be permitted to amend the pleadings in this suit alone. They have to come out of the jointness with the 2<sup>nd</sup> defendant herein in O.S.No.86/2015 before taking a deviating defence in this suit to the detriment of the 2<sup>nd</sup> defendant herein. That the petitioners have taken a contrary stand and sailing with the plaintiffs now is evident from the fact that the plaintiffs /respondents 1 to 5 are not resisting the claim for amendment projected by the petitioners. It is not the plaint allegation that the petition mentioned properties have been purchased out of the sale proceeds of 7 plots sold by consent. In the first written statement these petitioners have also not raised any such plea. Even in their subsequent written statements filed after falling away from the 2<sup>nd</sup> defendant with whom they were resisting the suit claim the present amendment was not sought for by the petitioners. In this case the trial has been commenced as early as on 1.9.2016 on which date the proof affidavit in chief examination of P.W.1 has been filed. Thereafter on 5.10.2016 these petitioners have cross examined P.W.1.

( 7) There is a strong embargo in the proviso contained in Or.6.R.17 of C.P.C for permitting an amendment of the plaint after commencement of the trial. Let us extract the provisions of Or.6.R.17 of C.P.C. for the purpose of better appreciation of the question involved here.

***“ 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”***

(5)

The first part of Or.6.R.17 permits alterations and amendments of pleadings at any stage for the purpose of determining the real controversy between the parties. However the 2<sup>nd</sup> part contained in the proviso to the said provision, there is a stringent hurdle to permit an amendment in such an easy fashion once the trial of the case has commenced. A party venturing to raise a plea for amendment after commencement of the trial should prove to the utmost satisfaction of the court that despite due care and diligence exercised by him he could not raise such an amendment before the commencement of trial. Admittedly there was no plea in the first written statement filed by the petitioners along with the 6<sup>th</sup> respondent that the 6<sup>th</sup> respondent has purchased the petition mentioned properties out of the sale proceeds of the 7 plots. In fact, they have admitted that the plaintiffs and all the three defendants shared the sale proceeds jointly. Even in the second written statement filed by the petitioners subsequently on 14.9.2016 there is no allegation that the 6<sup>th</sup> respondent derived Rs.40,00,000/- out of the sale proceeds. For the first time after the commencement of the trial, the petitioners are alleging that the 2<sup>nd</sup> defendant has derived Rs.40,00,000/- out of the sale proceeds. In this case there is absolutely no satisfying material to establish that the petitioners exercised due care and diligence in raising the amendment before the commencement of trial. These petitioners have entered appearance in the suit as early as on 7.10.2015. There is no explanation much less an acceptable explanation in this application for the inordinate delay in raising this amendment. True in a suit for partition every plaintiff has to be construed as a defendant and every defendant has to be construed as a plaintiff. However that will not mean that a defendant can be lavishly permitted to amend the plaint pleadings at any stage. Viewing from any angle, this petition does not deserve any merit and therefore it is liable to be dismissed. The point is answered accordingly.

In the result, this petition is dismissed. There is no order as to costs.

(6)

Dictated to the steno-typist, typed by her directly in computer, corrected and pronounced by me in open court, this the 3<sup>rd</sup> day of July 2018.

**(Sd) S.Baskaran**

**II Additional District & Sessions Judge,  
Thanjavur.**

**Petitioners and Respondents side**

**Exhibits and Witnesses : Nil**

**(Sd) S.Baskaran**

**II Additional District & Sessions Judge,  
Thanjavur.**

**ORDER**  
**I.A.No. 33/2018 in**  
**O.S. NO.103/2015**  
**Dated: 3.7.2018**

