

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
TIRUVANNAMALAI.

PRESENT : **P. Mathusuthanan**, B.A., B.L.,
Principal District Judge,
Tiruvannamalai.

Wednesday, the 08th day of January, 2025.

I.A.No.02/2022 in O.S.No.60/2020

1. Narayanasamy
2. Krishnamurthy
3. Sundramurthy
4. VEDIYAMMAL(DIED)
5. Sadaichiammal
6. Sakthivel
7. Palaniyammal
8. Selvi
9. Soundar
10. Sangeetha
11. Minor Vigneshwaran
12. Minor Lingeswaran
13. Minor Supriya
- (11 to 13 represented by their Mother
10th Plaintiff)
14. Shanthi
15. Ishwariya
16. Vetrivel
17. Anbazhgi
18. Aandhakrishnan
19. Soundaravalli
20. Yogalakshmi

Petitioners/ Plaintiff

versus

- | | | |
|--|-----|----------------------------------|
| 1. Rajamanickam | | |
| 2. Saravanan | | |
| 3. Rani | | |
| 4. Amudha | | |
| 5. Meena | ... | Respondents / Defendants |
| 6. Muthu(died) | | |
| 7. Janaki ammal | | |
| 8. Saroja ammal | | |
| 9. Gunasekaran | | |
| 10. Dhandapani | | |
| 11. Palani | | |
| 12. Suresh | | |
| 13. Subash Chandra Boss | | |
| 14. Iyappan | | |
| 15. Murugan | | |
| 16. Kalaiselvi(Amended as per
I.A.4/2023 allowed on 17.08.2023
Legal heirs of deceased 6th defendant
Muthu) | ... | Respondent/Proposed
parties |
| 17. Vijayalakshmi (insane) (Amended
as per I.A.4/2023 allowed on
17.08.2023 Legal heirs of deceased 6th
defendant Muthu) (the insane proposed
17th respondent is represented by her
brother Iyyappan 14th respondent) | | .. Respondent /proposed
party |

This Interlocutory Application has been came up for final hearing before me today (on 08.01.2025) and upon hearing the arguments of Tr.**S.Kannan**, Learned Advocate appearing for the Petitioners and Tr.A.Parthiban, Learned Advocate appearing for the 1st to 4th, 8th , 14th , 15th Respondents and 6th Respondent died and 5, 7, 9 to 13 and 16th respondents remained exparte and

Tr.R.Peter Johan, Learned Advocate appearing for 17th Respondent and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

ORDER

The petitioner filed this petition under Order 22 Rule 4 and Section 151 of CPC seeking to add the proposed parties/ 7 to 17 (amended as per order in I.A.no.4/2023 dated 17.08.2023) who are the legal heirs of deceased Muthugounder.

2) Brief averments of the petition:

The petitioners plaintiffs in the above suit. The petitioners have filed the above suit for directing the respondents/defendants to division of the suit properties in to 8 equal shares and allot 6 such share to us and taking good and bad soil in to consideration, appointing an advocate commissioner to divide the suit properties in to 8 equal shares and allot 6 such share to the petitioners taking good and bad soil in to consideration, directing the respondents / defendants to put the possession of 6 shares in the suit properties, if the defendants fail to do so, the suit properties, may be delivered to the plaintiff 6 share through the process of court.

After the filing of the above suit the respondents received the court summon and they have filed their vakalath through their counsel

Mr.A.Parthiban and they have been seeking adjournments for filing the written statement. In the meanwhile that on 02.05.2021, the 6th defendant Muthu died intestate leaving behind the proposed respondents 7 to 16/ defendants 7 to 16 as his wives, sons and daughters as per the provisions of Hindu succession act 1956. The said Muthu married one Janaki ammal (7th the proposed party) as his 1st wife and through her begot the respondents/ proposed parties 9 and 10 and one Jaya ammal. The aforesaid jayammal already died in the year 2019 leaving behind her husband palani(11th proposed party) her sons name by suresh (12th proposed party), Subash Chandra boos (13th proposed party) and sangeetha (10th plaintiff). The said Muthu married one saroja ammal (8th proposed party) as his 2ⁿ wife and out of their wedlock they begot the respondents/ proposed parties 14 to 16, namely 1.Aiyappan, 2.Murugan and 3.Kalaiselvi. The petitioners filed herewith the death registrar extract of the deceased Muthu gounder and the same may be read as part and parcel of this affidavit. Unless the proposed parties are not added as a party to the suit, they will be put to irreparable loss and hardship, on the other hand the respondents/ defendants will not prejudice.

At the time of filing the petition under order 22 Rule 4, the petitioner have wrongly mentioned the 16th respondent name as Tamilselvi, instead of mentioning Kalaiselvi. Apart from that, they have failed to add the

Vijayalakshmi, who is an insane person and she is also a daughter of deceased Muthu. The above insane person vijayalakshmi is in the care and custody of the 14th respondent Iyyappan and he is represented to the above Vijayalakshmi(amended as per I.A.No.4/2023 allowed on 17.08.2023). Hence, this petition.

3) Brief averments of Counter filed by the 1st respondent and adopted the same by 4, 8 14 and 15th respondents:-

The above petition filed under Order 22, Rule 4 cpc on behalf of the petitioner / plaintiffs to implead the proposed parties / defendants 7 to 16 who are the legal heirs of deceased Muthu gounder (D6) is false, baseless and is not sustainable either in law (or) on facts and it deserves to be dismissed with the cost of the respondents herein.

This respondents denies all the allegations averred in the petition save those that are specifically admitted herein and puts the petitioners / plaintiffs to strict proof of the same.

Firstly, the above petition is liable to be dismissed on the only ground that it has been filed with full of false and baseless allegations. Since the above suit is a suit for partition, Non joinder of necessary parties to the suit is fatal to the plaintiffs case. In the above petition, in para-2 the Lrs of the deceased Muthu through his 2nd wife Saroja Ammal are wrongly mentioned as 1.Aiyappan,

2.Murugan and 3.Tamilselvi. But the eldest daughter of the deceased Muthu namely vijayalakshmi has not been mentioned any where in the above peition. The said Vijayalakshmi is of unsound mind and she is under the care and custody of her younger brother namely Aiyappan who is shown as 14th respondent/proposed party. Moreover, the name of the deceased muthu has been wrongly mentioned in the petition as Tamilselvi instead of Kalaiselvi. For the forgoing reasons the above petition is liable to be dismissed.

4. Brief averments of Counter filed by the 17th respondent:

The above said petitioners/plaintiffs have filed the above said suit for partition. The above said 3rd petitioner/plaintiff has filed the above said petition for impleading the legal representatives of the deceased 6th defendant namely Muthu.

As per the order of the Hon'ble Court in I.A.No.5/2024 dt 22.08.2024, I have been appointed as court Guardian to 17th respondent due to she is an insane person. So, I file this counter for 17th respondent for benefit of the 17th respondent as court Guardian.

The facts stated in the above said petition by the petitioner/plaintiff is denied except admitted specifically and the petitioner/plaintiff is fully liable to prove his all facts.

The fact admitted about the father of the 17th respondent namely Muthu

who was the 6th defendant in the above said suit died on 02.05.2021 with intestate and this 17th respondent is one of the legal representatives to the deceased 6th defendant and she is an insane person.

On beginning of taken steps for impleading the legal representatives of the deceased 6th defendant namely Muthu this 17th respondent never impleaded in the above said petition otherwise afterwards the petition was amended and then now this 17th respondent has been added vide I.A.No.4/2023 dt 17.08.2023 and it is not explained clearly.

This 17th respondent is also entitled to get one share in the suit properties which is actual belonging to her deceased father / 6th defendant. But the petitioners/ plaintiffs are claiming 6 shares out of 8 shares is not sustainable and maintainable and it can be only decided by the contest the above said suit and this 17th respondent is the necessary party in the above said suit.

That this respondent is the court Guardian for the 17th respondent and he is ready to contest the above said suit for share of the 17th respondent in the suit properties and also for benefit of the 17th respondent/insane person. To contest the above said suit is only a remedy to the 17th respondent / insane person. To contest the above said suit is only a remedy to the 17th respondent / insane person for she obtains her share in the suit properties without prejudice to her rights and share. Therefore, he requested to pass the further order on the interest of justice.

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

Whether this petition is to be allowed as sought for?

6) **Point:** Heard. Perused the records. The learned counsel appearing for the 1st respondent filed his counter stating that one of the legal heir of the Muthu has not arrayed as party to the above proceedings and on that score, the petition is liable to be dismissed. However, in the course of enquiry he consented to allow this application as one of the legal heir Vijayalakshmi which was initially omitted to mention in the petition has been later arrayed as legal heir of deceased Muthu. Similarly though the guardian of 17th respondent has also filed his counter statement, he has not raised any serious objection to allow this application.

7) Hence, having considered the reason setout in the petition as well as the absence of any serious objection on the side of the respondents 1, 4, 8 14, 15th and 17, in the interest of justice, this court is inclined to allow this petition and thus the point is answered accordingly.

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

This Order is dictated by me to the Stenographer Grade-I of this Court, transcribed by her in Computer, corrected and pronounced by me in open court, this the 08th day of January, 2025.

**Principal District Judge,
Tiruvannamalai.**