

**IN THE COURT OF THE SUBORDINATE JUDGE AT ARNI,
TIRUVANNAMALAI DISTRICT**

Present : **Tmt. A.Daoudh Ammal, B.A., M.L.,**
Subordinate Judge, Arni

Saturday, the 02nd day of September, 2023

IA.No.3/2023 in O.S. No.209/2016

1. Lakshmi
2. Mageshkumar
3. Sivaranjini
4. Vigneshwaran

... Petitioners/Plaintiffs

-Vs-

1. Balakrishnan(Died)
2. Kannan
3. Komathi
4. Kannagi

... Respondents/Defendants

This Petition coming before me for final hearing on 11.08.2023 in the presence of Tr.C.M.Radhakrishanan, Advocate for the Petitioners/Plaintiffs and 1st Respondent/1st Defendant Died, Tr.N.Sankarasubramanian, Advocate for the Respondents No.2 to 4/Defendants No.2 to 4 and having stood over for consideration till this date, this court delivered the following

ORDER

Petition filed under Order 6 Rule 17 and Sec.151 of C.P.C. to amend the Plaint in O.S.No.209/2016 and pass such or other orders.

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2. Petition Averments in brief:

The Petitioners are the Plaintiffs in the suit. During the pendency of suit, the 1st Defendant Balakrishnan had died on 25.06.2021, leaving the Respondents 2 and 3/Defendant 2 and 3 as his legal heirs. Since all the legal heirs of the deceased Balakrishnan were on record, no steps to implead the further legal heirs is necessary. A memo was filed to that effect and it was recorded by this court. In the plaint, with regard to calculation of share ratio, there were some typographical errors and it was now only noticed by the Petitioner and it has to be suitable amended and it had happened due to oversight. Since, the 1st Respondent had died, it has become just and necessary for the Petitioner to file this Petition seeking permission of this court to amend the plaint as scheduled in the annexed petition. No prejudice will be caused to the Respondents, if this petition is allowed. Balance of convenience is in his favour. Hence it is necessary to amend the Plaint with regard to the death of 1st Defendant Balakrishnan. Hence the Petition.

3. Counter Averments in brief:

The Respondents deny those allegations except those that are specifically admitted herein. The 2nd Respondent and his sister third Respondent have no objection to be recognized as legal heirs of 1st Respondent, who died on 25.06.2021. The amendment of the plaint sought for on ground of typographical error filed belatedly 6 years after the filing of the suit cannot be allowed and it has been filed malafide in order to drag on the proceedings. The 2nd Petitioner, who claims to be a Lawyer and part time lecturer cannot plead ignorance of law i.e. Section 29 A of the Hindu Succession Act, 1956 conferring equal right to daughter in coparcenary property. The Petitioners have admitted Respondents 1 to 3 are entitled to half share in the suit properties but denies equal right to the 4th Respondent, who is the daughter of Gopal Gounder, whose son Anbarasu, is the husband of 1st Petitioner and father of

Petitioners 2 to 4. In view of clear bar in section 29A of the Hindu Succession Act, the Complaint ought not to have been taken to file by this court. The Petitioners did not file any title deed to show that the suit properties are ancestral properties. Document No.2, filed along with the complaint is the Partition Deed dated 10.12.2012 which shows that the suit land is Natham Manai bearing No.244 of 2012 and Patta stood in the name of Ayyakannu Gounder, father of 1st Respondent and his brother Gopal Gounder. Therefore on vague grounds, complaint cannot be amended. Hence this Petition has to be dismissed with costs.

4. Point for Consideration :

(i) Whether this Petition filed under Order 6 Rule 17 and Sec.151 of C.P.C. to amend the Complaint in O.S.No.209/2016 has to be allowed or not?

(ii) To what other reliefs, the Petitioner are entitled for?

5. Heard. Records Perused. There is no oral or documentary evidence let in on both the sides.

Points No.1 & 2:

6. The Petitioner has stated that they are the Plaintiffs in the suit. During the pendency of suit, the 1st Defendant Balakrishnan had died on 25.06.2021, leaving the Respondents 2 and 3/Defendant 2 and 3 as his legal heirs. Since all the legal heirs of the deceased Balakrishnan were on record, no steps to implead the further legal heirs is necessary. A memo was filed to that effect and it was recorded by this court. In the complaint, with regard to calculation of share ratio, there were some typographical errors and it was now only noticed by the Petitioner and it has to be suitable amended and it had happened due to oversight. Since, the 1st Respondent had died, it has become just and necessary for the Petitioner to file this Petition seeking permission of this court to

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amend the plaint as scheduled in the annexed petition. No prejudice will be caused to the Respondents, if this petition is allowed. Balance of convenience is in his favour. Hence it is necessary to amend the Plaint with regard to the death of 1st Defendant Balakrishnan. Hence the Petition. The Respondents have stated that the 2nd Respondent and his sister third Respondent have no objection to be recognized as legal heirs of 1st Respondent, who died on 25.06.2021. The amendment of the plaint sought for on ground of typographical error filed belatedly 6 years after the filing of the suit cannot be allowed and it has been filed malafide in order to drag on the proceedings. The 2nd Petitioner, who claims to be a Lawyer and part time lecturer cannot plead ignorance of law i.e. Section 29 A of the Hindu Succession Act, 1956 conferring equal right to daughter in coparcenary property. The Petitioners have admitted Respondents 1 to 3 are entitled to half share in the suit properties but denies equal right to the 4th Respondent, who is the daughter of Gopal Gounder, whose son Anbarasu, is the husband of 1st Petitioner and father of Petitioners 2 to 4. In view of clear bar in section 29A of the Hindu Succession Act, the Plaint ought not to have been taken to file by this court. The Petitioners did not file any title deed to show that the suit properties are ancestral properties. Document No.2, filed along with the plaint is the Partition Deed dated 10.12.2012 which shows that the suit land is Natham Manai bearing No.244 of 2012 and Patta stood in the name of Ayyakannu Gounder, father of 1st Respondent and his brother Gopal Gounder. Therefore on vague grounds, plaint cannot be amended. Hence this Petition has to be dismissed with costs.

7. It is pertinent to note that this Petition has been filed to amend the Plaint with regard to the calculation of share ratio, since there were some typographical errors and now only noticed by the Petitioner, which had happened due to oversight and since, the 1st Respondent had died, it has become just and necessary for the Petitioner to file this Petition seeking permission of this court to amend the plaint as

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scheduled in the annexed Petition, this court considers that no prejudice would be caused to the Respondents in allowing this Petition. Hence this court is inclined to allow this Petition, in the interest of justice.

8. In the result, this Petition stands Allowed, without costs, in the interest of justice.

Directly dictated by me to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court, on this, the 02nd day of September, 2023.

(Sd/-A.Daoudh Ammal),
Subordinate Judge,
Arni.

Petitioners side witnesses and documents: NIL

Respondents side witnesses and Documents: NIL

(Sd/-A.Daoudh Ammal),
Subordinate Judge,
Arni.

Subordinate Judge, Arni.