

IN THE COURT OF SUBORDINATE JUDGE : LALGUDI

Present : Tmt.R.Mohana, B.L.,

Subordinate Court, Lalgudi

Dated Wednesday, the 18th day December 2024

I.A No.19/ 2024 in OS.No.30/2018

(CNR.No.TNTP180051962017)

1. Panneerselvam

2. Kandan (died)

3. P. Ravi

4. Selvamani

..Petitioners.

- Vs -

1. Chandramohan (died)

2. Settu

3. Anandan

4. Shanmugam

5. V. Ramasamy

6. Paramasivam

7. Gunasekaran

8. Rosavalli

9. S. Subadevi

10. S.Revathy

11. S. Gomathi

.. Respondents.

This petition came up before this court for final hearing on 28.11.2024 in the presence of the Learned Counsels Thiru.K.Jayaraman - advocate for the petitioners and of Tmt.M.Manikandan Advocate for the respondents No.2 to 4, 8 to 11 and of

Thiru.K.Prabhakaran Advocate for the 7th respondent and 5 and 6th respondent remained as ex parte and heard both side arguments and upon perusing the case records and having stood over for consideration before this court till this day, today this court hereby delivers the following. . .

ORDER

The petitioner has preferred this petition under order 6 rule 17 of CPC, pleaded to order amendment of the plaint.

2. Short and Summary of affidavit and petition -

The petitioner is the 3rd party in the above suit. Her father Periyasamy udaiyar, leaving behind the plaintiff being the four sons and herself being the daughter the plaintiff filed the above suit for partition of suit item 1 to 8 into two equal shares and allot one such shares to the plaintiff and for partition for suit item no 1 to 9 into 6 equal share and allot three equal shares to the plaintiff. The petitioner have filed the above suit for partition and at this stage a new party has to be implead to being the legal heirs of Periyasamy. Periyasamy died plaintiffs 1 to 3 and one daughter by name Selvamani. The petitioner is filed petition order 1 rule 10 (2) have been allowed the plaintiffs and loss. Unless plaint is to be amended, the petitioner will be put to serious hardship and loss. It is therefore prayed that this Court may be pleased to order amendment of the plaint.

3. Gist of Counter filed by the 4th respondent (2,3 & 8 to 11 respondents adopt the same) -

All the allegations stated in the support of the petition save those that are specifically admitted herein are hereby otherwise denied as false, frivolously and vexatious. The petitioner must prove the same. This petition is not maintainable in either in law nor on facts. The allegation made in para 2 of the affidavit is denied as false. The petitioner must prove the same. The petitioner said that the periyasamy had

four sons and one daughter. But the petition show only 3 sons. The plaint and this petition has not say what about 4th son. The allegation made in para 2 and 3 are contra. The petitioner must prove the Periyasamy is father. The allegation made in para 4 of the affidavit is imaginary one. Because the petition show only the four plaintiff. But petitioner says that implead as 5th plaintiff. The petitioner has not stated in this affidavit why they are omitted in the plaint and that when did she know the case. The plaintiff filed genealogy along with plaint. But not mentioned as the petitioner as a legal heir of Periyasamy. The plaintiff deliberately did not include this petitioner. The petitioner knows the case from starting. Sometimes she present in this Court with her brother and sons. This respondents already field a partition deed between the petitioner and her brothers dated 16.07.2021. After one year she filed this petition. The petitioner has not stated valid reason in this petition. The petitioner and plaintiff wantonly drug on the proceeding. The case is posted for Judgment. If the petition could not allow the petitioner has not affected. It is therefore prayed that this Court may be pleased to dismiss the petition with cost.

4. There is no oral and documentary evidence let in by both sides. Both side argument heard. Available case records perused.

5. Point for determination -

Whether this Petition is allowed or not ?

6. The Learned Counsel for the petitioners argued that admittedly the 4th proposed petitioner is the daughter of the Periyasamy udaiyar and she has not been added as party to the proceedings and since she was omitted to be impleaded as party, the impleading petition is filed in IA No 18/2024 and consequently this Petition may be allowed for taking amendment in the Plaint.

7. The Learned Counsel for respondents No.2 to 4 and 8 to 11 argued that there is no reason stated in the affidavit for the omission of the female legal heirs and the

genealogy filed along with plaint itself does not reveal that the Proposed Plaintiff is the daughter of the Periyasamy and hence the Plaintiffs in the main suit have deliberately did not include this proposed party and this Petition has filed after placing both side arguments, in the belated stage only to drag on the suit proceedings without any valid reason and hence impleading petition alongwith this consequential amendment Petition has to be dismissed with cost of this respondents.

8. The Learned Counsel for 7th respondent argued that the Plaintiffs knew all the facts that the proposed party is one of the legal heir of Periyasamy and despite they have not chosen to implead her and the Partition deed dated 16.09.2021 is brought to the notice of the plaintiffs by filing the document as ExB.38 and after extensive cross examination and placing arguments, the plaintiffs have preferred this application only to drag on the suit proceedings. It is further argued that there is no case on the side of the defendants that the suit is bad for non joinder and the defendants have raised plea that already partition made effected between the Periyasamy and his brother Murugesan and it is not at all necessary to implead her as a necessary party to the suit and hence this consequential amendment Petition may also be dismissed with cost.

9. Both side argument heard. Perused in the light of available case records. This is suit for Partition filed by the Petitioners/Plaintiffs stating that the property is belonged to the kandasamy who had two sons namely periyasamy and Murugesan. It is admitted by the Plaintiffs and 1 to 4 and 7 to 11 defendants have admitted that the suit Properties are belonged to one Kandasamy, he had two sons namely Periyasamy and Murugesan and they were already partitioned the properties including suit properties six decades ago. It is also admitted the relationship of the Parties to the suit.

10. The Plaint averments reveal that the male legal heirs of the said Periyasamy have preferred this suit for partition without saying about the female legal heirs of the said Periyasamy. The geneology has also been filed along with Plaint. It does not

disclose about the proposed female legal heirs. But, the 1 to 4th defendants have admitted that the Proposed party who is the female legal heirs of the deceased Periyasamy.

11. The pleadings raised by the defendants in the main case is that the partition was already effected between the father of the Plaintiffs and 1 to 4 defendants. The above said plea can only be decided in main case. But it is admitted that the proposed party who is the female legal heir of the deceased periyasamy. The suit has been filed to seek the remedy for partition. Since, the right of the Parties have to be decided in main case, the final adjudication should be binded over all the legal heirs who are having right over the properties. Therefore, this Court is of the opinion that it is necessary to implead the female legal heirs for arriving final adjudication between the parties as per the Hindu Succession Act, since the female heir is also becoming coparcener.

12. Since it is decided to implead the female legal heirs of the deceased Periyasamy in IA No 18/2024, this consequential amendment would not curtail the rights of the respondents in main suit properties and the main plea raised by both sides will be decided on merits in the main case itself and hence there is no prejudice would cause to the respondents by allowing this application. But, considering the suit which is pending for more than 10 years, conditional order has been passed in IA No 18/24 and hence, this Petition will be allowed subject to the result of the IA No 18/24.

In the result, this Petition is allowed subject to the result of the Petition in I.A. No. 18/2024. Call on 08.01.2025.

Dictated to steno-typist, typed by her directly in computer, corrected and pronounced by me in open court on this the **18th** day of **December 2024**.

Sd./-Tmt.R.Mohana, B.L.,
SUB JUDGE
LALGUDI.

List of Documents

Petitioners side witness and document - Nil.

Respondents side witness and document - Nil.

Sd./-Tmt.R.Mohana, B.L.,

SUB JUDGE

LALGUDI.

/True copy/

Sub Court, Lalgudi

I IA.No.19/2024 in OS.No.30/2018

Fair/ Draft Orders

Dated – 18.12.2024