

IN THE COURT OF I ADDITIONAL DISTRICT JUDGE, TIRUVALLUR

**PRESENT: Thiru.S.GANAPATHISAMY, B.A., B.L.,
I Additional District Judge, Tiruvallur**

Thursday, the 01st day of September 2022

**I.A.No.5 of 22
in
O.S.No.393/2021**

D.Umapathi ... Petitioner / Plaintiff

Vs.

- 1.D.Thulasi Ammal
- 2.D.Karunakaran
- 3.S.Ezilarasi
- 4.The District Collector, Thiruvallur District
- 5.The Revenue Divisional Officer (RDO), Thiruvallur
6. The Thasildar, Thiruvallur
7. The Sub Registrar, Manavala Nagar ... Respondents / Defendants

This Petition coming on 01.08.2022 before me for final hearing in the presence of M/s. B.Kamarajan, G.Saravanan, M.Nagendran, N.Neelagandan, B.Gokulakrishnan, learned counsels for the Petitioner / Plaintiff; M/s. T.S.Elangovan, learned counsel for the Respondents 1 to 3 / Defendants 1 to 3, other respondents remaining in exparte in the main suit and upon hearing both side arguments; perusing the related records, and having stood over for consideration till this day, this Court delivers the following:-

ORDER

The petitioner / plaintiff has filed this application under O VI R 17 seeking for permission to include new survey No.334/24 in the first item of suit property and to add the second item of the petition mentioned properties in the plaint.

2. The relevant facts contained in the affidavit filed in support of the application by the petitioner are shortly as follows :

Old survey number for the suit property is 334/1A1 measuring 2587 sq.ft. and a new survey number has been given as 334/24 and the new survey number has to be inserted in the description of suit property. The plaintiff and his brother the second defendant jointly purchased the petition mentioned property in survey No.205/1 plot No.15 measuring 1942 sq.ft. from the ancestral nucleus in the name of their sister the 3rd defendant and the plaintiff has averred about the above fact in the 5th para of the plaint and the property in survey No.205/1 shall be included as second item in the description of property in the plaint.

3. The averments of the counter filed by the 3rd respondent adopted by the first and second respondents are shortly as follows:

The second defendant purchased the property in survey No.205/1 in plot No.15 on 31.08.2005 through a registered sale deed and he sold the same to the

3rd defendant on 03.06.2009 under a registered sale deed and the 3rd defendant has been in possession of the property as an absolute owner. The 3rd defendant has 1/4th share in the plaint schedule property and in order to deprive of 2/4th share of the 3rd respondent and the first respondent, the plaintiff has filed this vexatious suit. The petitioner has filed this application only to drag on the proceedings and the first to third respondents have no objection for the inclusion of the new survey number in the suit property.

4. Both side heard.

5. The point for consideration in this application is whether the property in survey No.205/1 can be included as second item in the description of the property in the plaint?

6. The plaintiff has filed the main suit for the relief of preliminary decree for partition of half share in the suit property describing it as self acquired property of one Devarajan who is father of the plaintiff and second and third defendants and husband of the first defendant. In 5th para of the plaint, the plaintiff has stated that the plaintiff and the second defendant purchased the property in survey No.205/1 in plot No.14 measuring 1942 sq.ft. and they executed a sale deed in favour of the 3rd defendant as her share in Hindu Undivided Family properties. Now, the plaintiff wants to include the above property as second

item in the description of the property.

7. It is the claim of the first to third respondents that the second respondent purchased the above property in 2005 and sold it to 3rd respondent in 2009 and there is no contribution on the side of the plaintiff for the purchase of the property in the name of the second defendant. Therefore, the plaintiff has averred in the plaint that the property in survey No.205/1 is also a joint family property consisting of the plaintiff and the first to third defendants. Therefore, the question whether the property in survey No.205/1 is Hindu Joint Family property or it was an absolute property of the second defendant then, and now the 3rd defendant, can be decided only on appreciation of oral and documentary evidence as may be placed before the court.

8. While considering the application for amendment of pleadings, the courts cannot go into the veracity or falsity of the proposed amendments. All the amendments of the pleadings which are necessary for determination of the real controversies in the suit should be allowed, provided the proposed amendment does not alter or substitute the new cause of action on the basis of which the original lis was raised or defence taken. The inclusion of the property in survey No.205/1 would not alter the nature of the suit. If the property is not included in the suit for partition, the plaintiff would face a defence that the suit is bad for

partial partition. But the question whether it is an absolute property of the 3rd defendant can be decided only at the time of adjudication of the dispute.

9. Our Hon'ble Supreme Court in a decision reported in 2006 (4) SCC 385 in Rajesh Kumar Agarwal Case has held as follows.

“The object of the Order 6 Rule 17 of CPC is that the court should try the merits of the case that come before them and should allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to other side. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment.”

10. In another decision reported in 2007 (6) MLJ SC 313 in Andhra Bank Vs. ABN Amoro Bank, our Hon'ble Supreme Court has held as follows :

“While diciding an application for amendment of pleadings, the courts cannot go into the question of merits of such amendments whether the suit is maintainable or not. Only question to be considered is whether the proposed amendment would be necessary for the decision of the real controversy between the parties to the suit.”

11. Therefore, it is clear from the above decisions that while deciding an

amendment, the falsity or the veracity of the proposed amendment shall not be decided. Therefore, the proposed amendment is necessary for the proper adjudication of the dispute.

12. Furthermore, as per the decision reported in 2014 (1) MWN (Civil) 184 in K.Duraisamy Vs. C.Subramaniam, the properties can be included in a suit for partition.

13. Therefore I hold that the plaintiff can be permitted to include new survey number in the first item of the suit property and include the petition mentioned property in survey No.205/1 as second item in the plaint schedule property. The plaintiff has filed this application only after the case was posted for trial in the list. For the delay caused to the respondents, they can be compensated.

14. In the result, this application will be allowed on payment of cost of Rs.2,000/- by the petitioner to the 1st to 3rd respondents on or before 12.09.2022 at 11.00 a.m., failing which the application will stand dismissed. Call on 12.09.2022.

Dictated by me to the Steno-Typist and transcribed by her in the computer, corrected and pronounced by me in the open Court on this the 01st day of September 2022.

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Both side Witness & Exhibits:- Nil

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Fair/Draft Order
I.A.No.5/2022
in O.S.No.393/2021 in
DD : 01/09/2022