

**IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.**

**PRESENT: Tmt. V. Vannamalar, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,  
District Munsif, Ponneri.**

Tuesday, the 21<sup>st</sup> day of November 2023

**I.A.No.5/2023**

in

**O.S.No.39/2016**

1. Muthammal
2. Shanmugam
3. Seeyalan (Died)
4. Deivasigamani
5. Dhanapal Reddy (Died)
6. Yamuna
7. Sathish
8. Anu
9. Amsa

.....Petitioners/Defendants 1, 2, 4 & 6 to 9

-Vs -

Sumithra alias Dilliammal

.....Respondent/Plaintiff

This petition came up for hearing on 21.11.2023, in the presence of Mr.R.Krishnaswamy, learned counsel for the petitioners and Mr.T.Susairaj, learned counsel for the respondent and upon hearing the arguments of the counsel for petitioners and the respondent and on perusal of the material case records and having stood over for consideration before this court till this day, this court delivers the following

**ORDER**

1. This petition has been filed under Order VI Rule 17 of CPC to permit the petitioners to amend the written statement in the OS.No.39 of 2016 as per particulars mentioned in the petition.

**2. The averments of the affidavit filed by the petitioners are as follows:**

2.1 The petitioners are the defendants in the suit. The petitioners state that the suit was initially filed by the plaintiff against the defendants 1 to 5. While so pending the above suit, the 5<sup>th</sup> defendant namely Dhanapal Reddy died leaving behind his legal representatives who are not only the other defendants against whom the suit was filed but also the defendants 6 to 9 in the suit.

2.2 The plaintiff also had already taken steps to implead all the other legal heirs of the said Dhanapal Reddy i.e., as defendants 6 to 9 and the said application was allowed and the plaint was also suitably amended in that regard.

2.3. The petitioners further submit that in the written statement filed in the suit praying for certain reliefs as counter claim, subsequent to the death of the said Dhanapal Reddy amendment has to be made suitably to amend the short cause title in the written statement to include his other legal heirs. Hence this petition.

**3. The averments of the counter filed by the respondent are as follows:**

3.1. The respondent who is the plaintiff in the suit submits that when the suit was posted for cross examination of PW1 and it was represented that counter claim has been filed by the 5<sup>th</sup> defendant and adopted by the defendants 1, 2 &4. Further the written statement filed by the 5<sup>th</sup> defendant though contains some prayer as a counter claim, the very written statement does not conform to the requirements of the plaint. The respondent has not received any notice or summons regarding the counter claim in the said counter claim.

3.2. The respondent submits that the petitioners/defendants have no right to amend the written statement. If the application is allowed for amendment it will change the very character of the suit and the present application for amendment is not sustainable. Hence this petition is liable to be dismissed.

4. Neither the petitioner nor the respondents have placed any oral or documentary evidence before this court. Now, it is the paramount duty of the court to decide whether this petition is to be allowed or not?

5. Heard both sides arguments. Records Perused.

6. On careful consideration of the material case records, evidences and arguments placed before this court, this court finds that the petitioners are the defendants in the suit and the respondent is the plaintiff in the suit. The plaintiff has filed the suit for declaration of title and for consequential relief of permanent injunction with respect to the suit property and to declare the Judgment and Decree passed by this court in OS No. 94 of 1998 as null and void. The 5<sup>th</sup> defendant has filed his written statement along with a counter claim praying to uphold the Judgment and Decree passed by this court in OS No. 94 of 1998 and for a direction against the plaintiff to vacate the suit property. The said written statement with counter claim has been adopted by the defendants 1,2 and 4. When the suit is pending for production of further witness on the side of the plaintiff, this petition has been filed to seek leave of this court to amend the written statement to include the legal heirs of the deceased 5<sup>th</sup> defendant stating that if this application for amendment is not allowed even if the counter claim is granted that will lead to unnecessary complications.

7. On the other hand, the respondent has objected to allow this petition stating that the written statement with counter claim does not conform to the requirements of the plaint and that no notice to the plaintiff was given in the same. Further, the respondent stated that the amendment sought to be made will change the very character of the suit.

8. On careful consideration of the rival submissions made by both parties and on perusal of the case records, this court finds that on 19.07.2016, the 5<sup>th</sup> Defendant has filed his written statement along with counter claim and the same was adopted by

Defendants 1, 2 and 4. Subsequently, the said counter claim was amended to include the memo of valuation paragraph and to pay the court fees. The respondent / plaintiff has also filed her rejoinder on 15.04.2021. Hence the contention of the respondent that she did not have any notice to the written statement is not acceptable.

9. Also, this court views that that the proposed amendment will not alter the nature of the suit or the cause of action in any manner. Infact, the respondent would be afforded an opportunity to test the veracity of the evidences placed by the petitioners in support of their case, if the amendment is allowed in this case. Considering the nature of the suit, and the nature of the written statement with counter claim and the facts that are sought to be included in the suit, this court is of the view that the said amendment sought for would only be helpful in proper and effective adjudication of the suit and the counter claim and the said amendment, if allowed, will not cause any prejudice to the respondent. Further the said amendment shall bring clarity and help in the adjudication and also will help in avoiding multiplicity of proceedings.

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

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 21<sup>st</sup> day of November 2023.

**Sd/-V. VANNAMALAR,  
DISTRICT MUNSIF  
PONNERI**

Both side witnesses and documents:- NIL

**Sd/-V. VANNAMALAR,  
DISTRICT MUNSIF  
PONNERI**

Fair/ Draft Order  
I.A.No.5/2023  
O.S.No.39/2016  
Date:21.11.2023  
DMC,PNI.