

IN THE COURT OF THE DISTRICT MUNSIF AT AMBATTUR.

PRESENT: TMT. FANNY RAJAN, B.A., B.L(Hons.),
DISTRICT MUNSIF, AMBATTUR

Friday, the 29th day of July 2022.

INTERLOCUTORY APPLICATION NO.1 OF 2019

AND

INTERLOCUTORY APPLICATION NO.2 OF 2019

IN

ORIGINAL SUIT NO.564 OF 2012

CNR No.TNTR 22 – 000171 - 2012

1. Samanthi
2. K.Mari
3. K.Murugan

..... Petitioners/Plaintiffs

Versus

1. Munusamy (Died)
2. S.Lakshmi
3. The Sub-Registrar, Ambattur Sub Registration Office.

..... Respondents/defendants

This petition having come on 22.07.2022 before me for final hearing in the presence of Shri.V.S.Raghavan, learned counsel for the petitioners/plaintiffs Shri.D.Senthil, Ramesh @ Ambeth and V.Alamelu, learned counsels for the 2nd Respondents/defendants, upon hearing the arguments made by the learned counsel for the petitioners and the learned counsel for the 2nd respondent and perusal of the records, this Petition having stood over for consideration till this day, this Court delivers the following:

COMMON ORDER

1. **I.A.No. 1 of 2019:** This petition has been filed under Section 151 of CPC to permit and amend the proof affidavit as the detailed in the petition.

2. **I.A.No. 2 of 2019:** This petition has been filed under Order 6 Rule 17 of CPC seeking to the petitioner to amend the plaint as detailed in the petition.

3. **CONCISE STATEMENT OF THE PETITIONER AS PER THE AFFIDAVIT:** The Petitioner has averred that the suit is filed for permanent injunction. During PW1 evidence, it was noted that the 1st document in the plaint is not a sale deed but a General power of attorney. It had been wrongly mentioned and therefore it is necessary to amend the Plaint and proof affidavit. Further, some averments not stated in the plaint, have to be added to prove his case. Further, no prejudice will be caused to the other side by allowing this petition. Hence, this Petition to amend.

CONCISE STATEMENT OF THE 2nd RESPONDENT AS PER THE COUNTER AFFIDAVIT IN IA NO.1 of 2019 and I.A.No.2 of 2019:

4. The 2nd respondent has denied the Petition averments and the Petitioner had filed this petition with unclean hands. The petitioner had not shown the true owner and his possession in the suit property. There is no clear averment regarding the conveyance of title to the Petitioner. Further, she stated that the suit property was originally owned and possessed by (late) Kuppan, husband of the 1st plaintiff and father of the other defendants, the Petitioner is her husband's brother. The suit property is an ancestral property. The plaintiffs enjoyed the suit property and sold 954 sq.ft. to Sadagopan through a registered sale deed dated 28.04.1994. The 1st plaintiff by way of Chief examination filed her proof affidavit and Ex.A1 to Ex.A3 were

marked. The plaintiffs being in possession of the plaint documents should have known the nature of the documents and the amendment will change the cause of action. This Petition after 7 years is not tenable. The prayer cannot be amended. It has been held by the Hon'ble Court and Supreme Court categorically held that the amendment of the plaint will not create, alter and extinguish, the cause of action.

5. In this instant case, the plaint, written statement were filed, issues were framed based on the pleading and trial was commenced by examining PW1 through proof affidavit. The above suit now stands reposted to cross of PW1. At this juncture the above IA. was filed for the amendment of plaint. If the amendment is allowed it will extinguish the existing cause of action and create new cause of action and the nature of the suit will be changed. The petition is not maintainable as hit by res judicata. In the interest of justice, the amendment of plaint could not be allowed at this stage. Hence, this Petition has to be dismissed with exemplary cost.

6. The 3rd Respondent herein has been already set exparte in the suit on 17.06.2017, hence this court is of the considered view that the notice to the 3rd respondent may be dispensed with in this Petition.

7. **POINT FOR DETERMINATION:**

I.A.No.1 of 2019: Whether the Petition to amend the proof affidavit as the detailed in the petition has to be allowed or not?

I.A.No.2 of 2019: Whether the Petition to amend the plaint as detailed in the petition has to be allowed or not?

DISCUSSION AND FINDINGS:

8. Heard the Learned Counsel the Petitioner and 2nd Respondent. Records perused. The notice to the 3rd respondent had been dispensed with. No oral or documentary evidence has been let in by both parties.

9. This Court finds that the instant petition has been filed seeking for amending the nomenclature of the Plaint 1st document in the Plaint and as well as the Proof Affidavit as Sale Deed to Power of Attorney. The instant petition has been filed on 02.04.2019 when the suit was posted for PW1 marking of documents. It is found that the Petitioner had already filed amendment petitions in I.A.No.1391 of 2016 and I.A.No.1174 of 2018 seeking to amend the pleadings in the suit upon impleading the respondents 2 and 3 and to record the death of 1st respondent. Whiles, this Petition is filed only to clarify the wrong mentioning of the nature of the document. The purpose of I.A.No.1391 of 2016 and I.A.No.1174 of 2018 and this Petition are not the same, hence this Court opines that the question of res judicate does not arise.

10. The main bone of contention in the suit is whether the Petitioner/Plaintiffs are the owners and in possession of the suit property. In respect of the contention of the Respondents that the amendment is sought for in the description of documents and no new pleadings are made. Hence, the amendment does not in any manner alter the nature of the suit or introduces new cause of action. There are sufficient pleadings in the plaint regarding the said document No.448/1994. However, the evidentiary value of the document cannot be considered in this petition filed for the limited purpose of amending the nature of the document in the Plaint and

proof affidavit. Though the reason for such wrong mentioning is vague, this court is of the considered view that as the document was already on record, the amendment of the nomenclature as per the document does not cause any prejudice to the case of the Plaintiff or Defendants. Further, this court is of the considered view that the amendment does not amount to filling up the lacuna in the case.

11. This Court is of the considered view that there is a prima facie dispute between the parties and the merits of the case can be decided only through ocular and documentary evidences on completion of the trial. It is quite premature to decide the merits regarding the ownership and possession of the suit property at this stage of the case especially in this petition for amendment only to amend the description of documents. Further, this Court is of the considered view that the respondents/defendants are not prejudiced because they will have full opportunity of meeting the case of the petitioner/plaintiff as amended, as the trial is still in PW1 chief examination. Apart from that the amendment is only appears to be a typographical error and no malafide are exhibited. In light of the above discussions, this Court is of the considered view that the amendment is necessary to avoid any ambiguity in the documents on record. Hence, in the interest of justice, this Court is inclined to partly allow this Petition.

12. Though this Court finds that the Petition can be allowed for the above stated reasons, this Court takes note of the fact that the Petitioner has filed this Petition on 02.04.2019, when the suit was posted for PW1 marking of documents. Apart from that already amendment has been allowed in 2 earlier application in I.A.No.1391 of

2016 and I.A.No.1174 of 2018. As such, this Court is of the considered view that the instant petition having been filed at this stage has caused inconvenience to the 2nd Respondent. Considering the said fact that this Court finds it reasonable to order a sum of Rs.1000/- to be paid by the Petitioner to the 2nd Respondent for the inconvenience caused in each I.A.No.1 of 2021 and I.A.No.2 of 2021.

RESULT:

13. **I.A.No.1 of 2019:** In the result, this Petition is allowed and the Petitioner is permitted to amend the Proof Affidavit as mentioned in this Petition, on the condition that the Petitioner shall pay a sum of Rs.1000/- (Rupees One Thousand only) to the Respondent on or before 10.08.2022. Call on 10.08.2022.

14. **I.A.No.2 of 2019:** In the result, this Petition is allowed and the Petitioner is permitted to amend the Plaint as mentioned in this Petition, on the condition that the Petitioner shall pay a sum of Rs.1000/- (Rupees One Thousand only) to the Respondent on or before 10.08.2022. Call on 10.08.2022.

Dictated to the steno-typist, transcribed by her in the desktop, corrected and pronounced by me in the open Court on this the 29th day of July 2022.

DISTRICT MUNSIF,
AMBATTUR.

PETITIONERS AND RESPONDENT SIDE WITNESSES AND EXHIBITS: NIL.

DISTRICT MUNSIF,
AMBATTUR.