

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE (FTC),
VELLORE, VELLORE DISTRICT.**

PRESENT: Thiru.P.V.Sandilyan, M.L.

Additional District Judge (FTC), Vellore.

Wednesday, the 18th day of March, 2026

I.A.No.02/2025 in O.S.No.68/2023

1. S.Dhanasekaran
2. S.Soundararajan
3. Kotteeswari
4. Indumathi
5. Yuvaraj

... Petitioners/Plaintiffs

/Vs/

1. Mohanambal
2. Karthikeyan
3. Ramesh
4. Murali
5. Thamizhselvi

... Respondents/Defendants

This petition came up before me for final hearing on 11.03.2026, in the presence of Thiru.M.Kulothungan and Tmt.E.Radha, Counsels for the Petitioner/Plaintiff and Thiru.D.P.Paul Sudhesh, Counsel for the Respondents/Defendants and upon after hearing the arguments of both sides, upon perusal of case records and having stood over for consideration till this date, this court delivers the following:-

ORDER

This petition has been filed under Order 14 Rule 5 of C.P.C. to pass an order to frame the additional issues mentioned in the petition.

2. The averments of the affidavit are as follows:-

2.1 The 1st petitioner in this petition also 1st plaintiff in the suit. The suit was filed for the declaration of their title to the B schedule mentioned properties and injunction alleging that there was a partition between Sundaresa Mudaliar and Natarajan, though a partition deed in writing was not executed, in that partition Sundaresa Mudaliar was allotted the suit B schedule mentioned properties and on his death his legal heirs became entitled to the same. Alternatively, they prayed for partition of the A schedule properties into two equal shares and allotment of one such share to the plaintiffs.

2.2 The defendants contended in their written statement in para 8 stated that the properties are already been divided and that they owned 2/3rd share, while the remaining 1/3rd share had been divided earlier. The defendants had not mentioned the date of partition or specified which properties were allotted to Rajagopal Mudaliar and Natarajan. The plaintiffs alleged that the defendants were disputing the title and interfering with their possession and enjoyment. The court had framed the first issue regarding whether a partition had taken place about 60 years ago and whether the plaintiffs were entitled to declaration of title B schedule property and injunction. The defendants were disputing their title over the 1st item of the B schedule properties an issue should also be framed regarding the mandatory injunction sought by the plaintiffs.

2.3 The defendants had taken a plea that the 1st item belonged to Sadasivam and that Sundaresa Mudaliar had sold item 3 and 8 of the A schedule to Mohanambal. The defendants had raised claims regarding shares and the alleged partition. The plaintiffs submitted that in order to avoid multiplicity of proceedings and to determine clearly which properties belonged to them, additional issues should be framed. Unless such issues were framed, there would be no finality to the dispute and the plaintiffs would suffer hardship. Therefore, the petitioner prayed to frame the additional issues mentioned in the petition.

3. The brief averments of the Counter filed by the 3rd respondent adopted 1,2,4,5 respondents are as follows:-

The petition is not sustainable either in law or on facts. The petitioners/plaintiffs filed the suit for declaration of title and injunction of the B schedule properties and alternatively for partition of the A schedule properties into two equal shares and for allotment of one such share with delivery of possession. The respondents were resisting the claim and that the respondents had taken a plea that Item No.1 of the A schedule property described as C schedule belonged to Sadasivam who was not a member of the joint family and that without impleading him the issues regarding the 1st item of the schedule property could not be decided. Therefore, framing additional issues was neither necessary nor relevant the petition was devoid of merits and prayed to dismiss the petition with cost.

4. There is no oral and documentary evidence on both sides.

5. The point for consideration in this petition is, ***whether this petition is to be allowed or not?***

6. **Point:-**

6.1 The contention of the petitioners is that the petitioner filed petition under Order 14 Rule 5 and Sec.151 of C.P.C to frame additional issues mentioned in the petition. The contention of the petitioner is that the 1st petitioner/1st plaintiff is filed suit for declaration of their title to the suit B schedule property and grant a permanent injunction to protect their possession. The defendants had filed written statement alleging that the properties are already divided and the defendants are owners of 2/3rd share thereby disputing the title of the plaintiffs over the 1st item of B schedule property. In order to avoid the multiplicity of proceedings and to give a finality to the unending litigation prayed to frame additional issues as mentioned in the petition.

6.2 Per contra, the 3rd respondent/defendant vehemently opposed this petition by taking a plea that Item No.1 of the A schedule property described as C schedule belonged to Sadasivam who was not a member of the joint family and that without impleading him the issues regarding the 1st item of the schedule property could not be decided. Therefore, framing additional issues

was neither necessary nor relevant, the petition was devoid of merits and prayed to dismiss the petition.

6.3 The petitioners are the plaintiffs filed the suit for the relief of declaration of their title to the B schedule property and consequential relief of permanent injunction for their possession, enjoyment against the defendant with the alternative relief as decree for partition of the A schedule mentioned properties in to two equal shares and to allot one such share to the plaintiffs and for delivery of possession, mandatory injunction to demolish and remove on the portion plaintiffs 1st item of B schedule which described in the C schedule property and to deliver vacant possession and for costs.

6.4 Based on pleadings my predecessor on 04.04.2024 framed 6 issues and the suit is in the stage of commencement of trial.

6.5 As per order 14 Rule 5 of CPC the court may at any time before passing a decree amend the issue or frame additional issues on such terms as it things fit for determination of the matters in controversy between the parties and at the same time before passing a decree at any time the court may strike out any issues which appears to be wrongly framed or unnecessary.

6.6 The respondents in their written statement in para 8 pleaded that the properties are already divided they are the owners of 2/3rd share as per the oral partition took place before 30 years. The contention of the petitioner is that the

respondents in their written statements pleaded oral partition before 30 years however they have failed to state date of partition of the A schedule properties and which properties are allotted to Rajagopal Mudaliar and Natarajan. Further no issue has been framed for the mandatory injunctory relief with regard to 1st item of the B schedule property which was morefully described in the C schedule.

6.7 The contention raised by the petitioner that the defendant omitted to mention which are all the properties allotted to Rajagopal Mudaliar and Natarajan in view of oral partition in that regard additional issues ought to be framed and it is essential to determine the issue among the parties. Further it is clear with regard to mandatory injunctory relief no issues were framed by this court. Hence the petition mentioned additional issues need to be framed to determine the controversy between the parties. Further in the counter it is alleged by the respondent that one Sadasivam is not a member of joint family but C schedule of the property belongs to Sadasivam and without impleading Sadasivam there cannot be any issue framed with regard to 1st item of schedule mentioned properties. As per the averments of the 3rd respondent in the counter the additional issue need to be framed with regard to whether the suit is hit by non joinder of necessary party i.e., Sadasivam. Though the petitioner in plaint contented that

the Rajagopal Mudaliar had three sons namely Natarajan, Sundaresa Mudaliyar and Sadasivam. The said Sadasivam was given adoption to one Murugesha Mudaliyar long ago. It is stated by the petitioner that the respondent filed earlier partition suit without mentioning the share of Sadasivam. However whether the Sadasivam is necessary party or not will be decided in the trial.

In the result, this petition is allowed and the additional issues are framed as mentioned in the petition in addition to framing of non joinder of necessary party Sadasivam.

Additional Issues:

i. If the A schedule properties were already partitioned between Sundaresa Mudaliyar and Nataraja Mudaliyar, if so which properties were allotted to Sundaresa Mudaliyar ?.

ii. Whether the plaintiffs are entitled for the mandatory injunction regarding the C schedule property as prayed for ?.

iii. Whether the suit is hit by non joinder of necessary party Sadasivam?.

Dictated to the Steno-Typist, transcribed by her, corrected and pronounced by me in the Open Court, on this the 18th day of March, 2026.

**Additional District Judge (FTC),
Vellore.**

Both side Witnesses and Exhibits:- - NIL -

**Additional District Judge (FTC),
Vellore.**