

***IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS
JUDGE, VELLORE, VELLORE DISTRICT.**

PRESENT: Tmt.G.Santhi, BA., ML.,
I Additional District and Sessions Judge,
Vellore.

Tuesday, the 16th day of July, 2024

I.A. No.3/2022 in O.S. No.34/2020

V.Murugan

... Petitioner/Plaintiff

Versus

1. V.T.Raman
2. V.Madhavan
3. R.Prema
4. R.Vinayagam
5. R.Vishnu
6. B.Kala @ Kalavathi
7. P.Jaya @ Jayapratha
8. G.Patmanaban
9. J.Siva
10.P.Pandian
11.K.Naveen Kumar
12.The Sub-Registrar of Pallikonda,
Pallikonda Sub-Registrar Office,
Pallikonda, Vellore

... Respondents/Defendants

This petition is coming on 10.07.2024 before this court for final hearing in the presence of Tmt.J.Kanchana Arivazhagan, Advocate for the Petitioner/Plaintiff, Thiru.A.Ganesh, Advocate for the Respondents/Defendants 1 to 5, Thiru.V.Chandrasekaran, Advocate for the Respondents/Defendants 6 to 11 and the 12th Respondent/Defendant was set exparte and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

This petition filed on behalf of the Petitioner under Order 6 Rule 17 and Section 151 of C.P.C. to grant permission to amend the plaint as follows:

1. After the prayer c, add C (i) directing division of the suit property between the plaintiff and 1st to 5th defendant into 1/4th equal share and allot one such share to the plaintiff regards being had to the good and bad nature soil and for delivery of possession of such separated shares to the plaintiff.

2. C (ii) To appoint an Advocate Commissioner for the said if necessary.

3. In Para-9 of the plaint add section 37 (2) TNCF Act.

4. In the particulars of Valuation add 1/4th share value of the plaintiff is Rs.3,82,590/-.

The court fee paid under Section 37(2) is less than Section 25 (d) hence the maximum value adopted and paid.

2. Brief averments in the affidavit are read as follows:

The petitioner is the plaintiff in the above suit. He has filed the above suit for declaration and for injunction and now it is posted for trial, since the property described in the suit happened to be the joint Hindu undivided property of the petitioner and the respondents/defendants 1 and 5, therefore the prayer of division of the suit property is mandatory one, therefore the petitioner filed this petition to carry out necessary amendment thereby claiming alternative prayer of partition among the joint family members and allot 1/4th of petitioner's separate share over the suit property. To avoid multiplicity of proceedings it is just and necessary to amend the

plaint or otherwise the petitioner will be put to irreparable hardship. Hence, this petition to grant permission to amend the plaint as follows:

1. After the prayer c, add C (i) directing division of the suit property between the plaintiff and 1st to 5th defendant into 1/4th equal share and allot one such share to the plaintiff regards being had to the good and bad nature soil and for delivery of possession of such separated shares to the plaintiff.

2. C (ii) To appoint an Advocate Commissioner for the said if necessary.

3. In Para-9 of the plaint add section 37 (2) TNCF Act.

4. In the particulars of Valuation add 1/4th share value of the plaintiff is Rs.3,82,590/-.

The court fee paid under Section 37(2) is less than Section 25 (d) hence the maximum value adopted and paid.

2. The counsel for the Respondents/Defendants 1 to 5 endorsed 'No Counter'.

3. Brief averments in the counter filed by the Respondents/Defendants 6 to 11 are read as follows:

i) The petition is not maintainable either in law or on facts. The 8th respondent knows the entire facts and he filed this counter on behalf of other respondents too. The respondents submit that the petitioner without challenging the partition deed which is the current document regarding the suit property filed this vexatious suit for declaration and now he come forward for partition. The petitioner himself admitted in the suit that there was partition held between the legal heirs of his father's brother i.e., between the karta of the 6th and 7th respondent with his siblings. The petitioner

also filed a copy of the partition deed dated 28.10.1992 which was held between the Gopal Reddy and others. The respondent further submits that the suit itself is vexatious in nature and with an intention to grab suit property from the respondents, the petitioner colluded with the 1st respondent and upon the instigation of the 1st respondent filed this suit to harass and annoy the respondents.

ii) The respondents further submit that the 1st respondent has part purchased properties regarding the partition deed dated 28.10.1992 and the petitioner and 1st respondent well known and aware of the partition held between the Gopal Reddy and others. But filed this vexatious suit after lapse of 30 years and also only against the 6th and 7th respondents/defendants without adding other legal heirs of Gopal Reddy. From the above it is clear that the suit is barred by limitation and is liable to be rejected for nonjoinder of necessary parties to the suit. Hence, the petition is liable to be dismissed in the grounds of limitation and non-joinder of necessary parties in the main suit. The respondents further submit that the 6th and 7th respondents are the absolute owners of the suit properties and they sold it to the 8th respondent and subsequently he sold it to the 9 to 11 respondents. The petitioner has no title and right over the suit property, hence the amendment petition for alternative relief of partition cannot lie and on this ground alone the petition is held liable to be dismissed. It is therefore prayed to dismiss the petition with the costs.

4. Whether the petition is to be allowed or not?

5. On perusal of records, the petition is pending at the stage of enquiry. Many hearings given for enquiry. The plaintiff's side argument also heard. For

respondents' side arguments sufficient time given, but they have not come forward for arguments. Hence, by giving very long time for filing written arguments, the petition deserved for orders. Accordingly, the petition coming for for orders today.

6. Records perused. This suit is for declaring the title of the suit schedule property in the name of the plaintiff and 1 to 5 defendants and for declaring the sale deeds dated 19.08.2014 and 10.06.2019 as null and void and for permanent injunction and for costs. In this petition the petitioner prayed for seeking division of the property into 4 equal shares and allot one such share to the plaintiff and related reliefs. The petitioner prayed this amendment on the basis that the property is the Hindu joint family property of the petitioner. Therefore division of property is necessary and as per the petitioner this petition filed to avoid multiplicity of proceedings.

7. Whereas the respondents objected that the petitioner filed a vexatious suit and now come forward with this application for partition. Already partition held between Gopal Reddy and others as per the deed dated 28.10.1992. Knowing this fact, after the lapse of 30 years without adding other legal heirs of Gopal Reddy this suit filed against defendants 6 and 7. The respondents 6 and 7 are absolute owners of the suit property and they sold it to the 8th respondent and subsequently he sold it to the respondents 9 to 11. Further it is objected that the petitioner has no title and right over the suit property. Hence amendment for alternative relief of partition cannot lie.

8. While perusing the plaint, the plaintiff stated that the suit property is the ancestral property to an extent of 30 cents, out of the extent of 2.42 acres in Dry

S.No.242/2 which is the suit property in this case. As per the plaintiff, the plaintiff and defendants 1 and 2 are blood relatives and grand sons of one Adikesavalu Reddiar. The suit property purchased by the said Adikesavalu Reddiyar to the extent of 1.21 cents through registered sale deed dated 19.01.1944 and the another half share was purchased by his brother Krishna Reddy. The said Adikesavalu Reddy died intestate on 21.12.1964 leaving behind his five sons, viz.1.Gopal Reddy, 2.Venu Reddy, 3.Duraisamy Reddy, 4.Kannan Reddy and 5.Perumal Reddy. After the death of Adikesavalu Reddy, his sons effected oral partition in the year 1965 by metes and bounds. One of his sons, viz.Perumal Reddy accepted a property in different place and all other four members got share of property in S.No.242 which is 1.21 cents in area. Each of them divided by oral partition the said S.No.242/2b and they got a total extent of 30 cent from the said property and enjoyed as its owners without any interruption. The said Venu Reddy has four sons, viz.1.V.T.Raman, 2.V.Madhavan, 3.Late.V.Raghupathy and 4.V.Murugan, the plaintiff and defendants 1 and 2. One of the sons of Venu Reddy, viz.Ragupathy predeceased him on 05.04.1995 leaving behind his wife and 2 sons, viz. the 3rd to 5th defendants. After the partition the said Venu Reddy was in peaceful possession and enjoyment of the suit property till his life, he died on 30.08.2007 intestate leaving behind above said his sons. Thus each of them got 7.5 cents by inheritance from their father, Venu Reddy. After the death of Venu Reddy the plaintiff and the defendants 1 to 5 are in possession of the said 30 cents in S.No.242/2B2 as owners and title holders of the said area. The 6th defendant is the wife of one Balaraman who is the son of the above said Gopal

Reddy, the 1st son of the above said Adikesavalu Reddiyar. The 7th defendant is the daughter of Balaraman and the 8th defendant is the son-in-law of Balaraman and husband of 7th defendant. The dispute is that the boundaries of the properties merged with his property and obtain revenue records.

9. Now this petitioner filed a suit for a declaration of his title and declaration of sale deeds. In this situation he filed this application seeking division of the suit property between the plaintiff and defendants 1 to 5 into 1/4th equal share and allot one such share to the plaintiff. By considering the nature of claim, in order to avoid multiplicity of proceedings, the amendment is necessary. The suit is pending for trial. Since the amendment necessary is to avoid multiplicity of proceedings and proper adjudication this Court decided to allow this application.

As a result, this petition is allowed. No order for costs.

Dictated by me to the Steno-typist, typed by him in computer, corrected and pronounced by me in the Open Court, this the 16th day of July, 2024.

I Additional District Judge,
Vellore.