

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

**PRESENT: Thiru.G.Radhakrishnan, B.Com., L.L.B.,  
Additional District Judge (FTC) (FAC), Vellore.**

**Wednesday, the 26th day of March, 2025**

**I.A. No.3/2024 in O.S. No.12/2023**

Dhanalakshmi

. . . Petitioner/Plaintiff

Versus

1. Saroja Ammal
2. S.Jeevanandham
3. S.Srinivasan
4. Meenakshi
5. C.Kumarasamy
6. C.Venkatesan (Died)
7. C.Krishnamurthy
8. S.Sundararajan (a) Kalyanasundaram
9. S.Loganathan
- 10.Gunasundari (a) Guna
- 11.Rajalakshmi
- 12.Malathi
- 13.ViKishorekumar
- 14.V.Sasikala
- 15.S.Lavanya

(The Defendants 13, 14 and 15 are added as per  
Orders passed in I.A. No.2/2023, dated  
22.04.2024)

. . . Respondents/Defendants

This petition came up before me for final hearing on 24.03.2025, in the presence of Tvl.R.Loganathan and K.Balaraman, Counsel for the Petitioner/Plaintiff; Tvl.G.Giridharan, C.Saranraj and T.Sathyanarayanan, Counsel for the Respondents/Defendants 1 to 3; Thiru.K.Venkatesan, Counsel for the Respondents/Defendants 8 to 12; the Respondents/Defendants 4, 5, 6

and 13 to 15 were set exparte; and the 6<sup>th</sup> Respondent/Defendant was died; and upon hearing the arguments of both sides, perusing of case records and having stood over for consideration till this date, this court delivers the following:-

**ORDER**

This petition has been filed by the petitioner under Order VI Rule 17 and Section 151 of C.P.C. to amend the plaint with details furnished hereunder:

1. In Short Cause Title add the following persons as Defendants 13 to 15:

"13. V.Kishorekumar

14. V.Sasikala

15. S.Lavanya"

2. In Long Cause Title add the following persons as Defendants 13 to 15:

"13. V.Kishorekumar, son of C.Venkatesan, aged 39, Hindu, residing at Flat No.201, B.Block, II Floor, Porur Square Apartment, Chettiar Agaram Road, Porur, Chennai-600 116.

14. V.Sasikala, wife of V.Nadanakumar and daughter of C.Venkatesan, aged 41, Hindu, residing at No.55/27, Rajaji Saalai, Tindivanam, Villupuram District-604 001.

15. S.Lavanya, wife of P.Saravanan and daughter of C.Venkatesan, aged 37, Hindu, residing at No.20, R B Garden, Sri Muthumariamman Nagar, S-3, II

Floor, Poonamalle, Chennai-600 056."

3. Add the following Para No.20 (A) after the Para No.20 as follows:

"20 (A). The plaintiff begs to submit that the defendant-6 namely C.Venkatesan died intestate on 04.05.2023 during when the pendency of the suit, leaving behind him, his one son and two daughters, namely the defendants - 13, 14 and 15 as his only legal heirs to succeed his estate. As they are the only legal heirs of the deceased defendant-6, they have become entitled to his 1/5 share collectively in properties mentioned in Item No.10, 11 and 12.

4. In the schedule mentioned properties in Item No.11, after the description of Plot No.2 add the following words

"Together with the building constructed in the plot".

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

2.1 The petitioner is the plaintiff in the main suit filed for the partition, mesne profits and permanent injunction and the same is pending for steps for amendment While so, the 6<sup>th</sup> defendant, C.Venkatesan died during pendency of the above suit. Hence, his legal representatives have been ordered to be added as Defendants 13, 14 and 15 in the above suit in I.A. No.2/2023 on 22.04.2024. Hence, it has become necessary for the petitioner to amend the plaint by including the Legal Representatives of the deceased 6<sup>th</sup> defendant as the defendants No.13, 14 and 15 in the above suit for further proceedings.

2.2 Further in the schedule of properties in Item No.11, the petitioner has omitted to mention the words "together with the building constructed in the plot" due to inadvertence. The property mentioned in Item No.11 includes the building constructed in the plot. Hence, the above words is to be mentioned in Item No.1 of the schedule mentioned properties. No prejudice would be caused to the respondents/defendant. It is therefore prayed to pass orders permitting the petitioner to amend the plaint with details furnished in the petition.

**3. Brief averments of the counter filed by the 2<sup>nd</sup> Respondent adopted by the Respondents 1 and 3 are as follows:-**

3.1 The petition is not sustainable either in law or on facts nor it is bonafide or made in good faith. The petitioner has not given any explanation, why has she filed this petition at this juncture at this belated stage and why could not she file it in the prescribed time limit as set out. This petition comes on the light a petition to implead the legal heirs of the deceased 6<sup>th</sup> defendant, which as admitted as I.A. No.2/2023 and had got allowed on 22.04.2024. The petitioner had prayed to amend the plaint at 4 places. This does not have any objection to the 1<sup>st</sup> and 2<sup>nd</sup> amendment, but with regard to the 3<sup>rd</sup> amendment, the same cannot be allowed, the reason being until and unless the legal heirs are brought on record in the amended plaint, the amendment cannot be brought on record as such it is premature. Henceforth,

on that account, this petition itself is defective and premature. Hence on this score this petition shall have to be either rejected suo-moto or dismissed.

3.2 With regard to the 4<sup>th</sup> amendment, in adding of building constructed in the schedule of properties in Item No.11, the same cannot be permitted, since the superstructure is on the site for more than 30 years. At this juncture the same cannot be permitted to be amended. There is no pleading with regard of why the same was not arrayed in the plaint at the time of institution of the plaint. Furthermore, there is no pleading even in the affidavit of why there is such a delay for the reasons stated above. The plea of "inadvertence" is not a ground to come with the amendment. Hence, it is prayed to dismiss the petition with exemplary costs of these respondents.

\* The Respondents 8 to 12 reported 'No Counter'.

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

#### **5. Discussion:**

This application has been filed by the petitioner/plaintiff to amend the plaint as detailed in the petition. The contesting respondents 1 to 3 have filed their detailed counter objecting for amendment. The respondents 8 to 12 have endorsed 'No Counter'. The respondents 1 to 3 are mainly objecting for the proposed amendment to add the building in the plot and also objecting to add the parties who are not made as parties in the suit.

6. The point for consideration in this petition is,

***Whether this petition is to be allowed and the amendment is to be made as prayed?***

**7. Point:-**

7.1 The suit has been filed by the plaintiff seeking partition with respect to 12 items of the properties. Pending suit, the 6<sup>th</sup> defendant died and his legal representatives who are the proposed defendants 13, 14 and 15 were recognized as legal representatives of the deceased 6<sup>th</sup> defendant as per order in I.A. No.2/2023 dated 22.04.2024. For consequential amendment, this petition has been filed. The main objection of the respondents 1 to 3 is that the defendants 13, 14 and 15 have not made as parties to the suit. But as per the prayer of the petitioner in this suit after recognizing the defendants 13, 14 and 15, the plaint is sought to be amended to include them as parties to the suit. On impleading them the share of the 6<sup>th</sup> defendant devolves upon the proposed defendants also sought to be amended as per the particulars of amendment. So far as the amendment regarding the Item Nos.1 and 2 of the particulars of amendment, there is no serious objection. Since because the legal representatives of the deceased 6<sup>th</sup> defendant are recognized and they have to be made as parties to the suit. Consequentially there shall be amendment with respect to the ratio of the shares to be allotted to the legal representatives of the 6<sup>th</sup> defendant. So, the amendment in para-3 of the

particulars of amendment is also necessary for this suit.

7.2 As regards the para-4 of the particulars of amendment, the petitioner is seeking to include the building constructed in the Item No.11 of the suit property. This amendment has been seriously objected by the respondents 1 to 3 as the said building is in existence for more than 30 years and the petitioner was aware about the same even while filing the suit and there is no pleading with respect to the said building also. As far as amendment in para-4 is concerned, adding a building to an item which does not create any new cause of action and which does not change the nature of the suit. In a suit for partition, all the properties shall be added and infrastructure therein also to be explained in the schedule. As rightly pointed out by the learned counsel for the respondents that there is no pleading in the plaint with respect to the building constructed in Item No.11 of the suit properties. But if the building is not added at present, the same cannot be included in future. This amendment is sought before commencement of trial. For ends of justice and for complete adjudication the proposed amendment in para-4 is also necessary. The respondents have recourse to raise any objection in the suit by way of filing written statement agitating with respect to the proposed amendment to be made in the plaint. For permitting the amendment, the proposed defendants need not be parties to the suit and simultaneous amendment is sought in the application to amend the plaint

consequent to the death of 6<sup>th</sup> defendant and also to add a particular item. So, this court is of the view to allow the application. Accordingly, this point is answered.

***In fine, this petition is allowed. No costs.***

Dictated to the Steno-Typist, transcribed by him, corrected and pronounced by me in the Open Court, on this the 26th day of March, 2025.

**Sd/- G.Radhakrishnan,  
Additional District Judge (FTC) (FAC),  
Vellore.**

**Both side Witnesses and Exhibits:-**

- NIL -

**Sd/- G.Radhakrishnan,  
Additional District Judge (FTC) (FAC),  
Vellore.**