

**IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE,
VILLUPURAM.**

**PRESENT : Thiru.N.S.Jayaprakash, B.Sc., B.L.,
Principal Subordinate Judge, Villupuram.**

Monday, the 04th day of November 2024

IA No.788/2023

in

OS No.489/2021

B. Gomathi

..... Petitioner/Plaintiff

//Vs//

Venkatesan

.... Respondent/Defendant

This petition having been taken on file on 17.10.2023 and came up for final hearing in the presence of Tr.K.R.Sundaramoorthi, learned Advocate on behalf of the Petitioner and Tr.S.Chandramouli, learned Advocate on behalf of the Respondent, upon perusing the case records, upon hearing arguments of both side and having been stood over for consideration till this date, this court delivered the following:-

ORDER

The Petitioner/Plaintiff has filed ther petition under Order 6 Rule 17 to permitting to amend the plaint.

2. The affidavit in brief is as follows:-

The Petitioner is the Plaintiff in the suit. The suit was filed for the relief of declaration of title and for consequential injunction. The

respondent/defendant filed written statement. In para 6 of the Written statement, it is stated that the suit property was purchased by Gopal Gounder S/o. Arumuga Gounder on 09.02.1917 and subsequently, the defendant has been enjoying the same. After perusing the written statement, the petitioner obtained Encumbrance Certificate for the suit property. It is mentioned in the encumbrance certificate that the defendant, son of Gopal Gounder alienated by a sale deed dated 26.12.1961 to Pavadaisami Gounder S/o. Arumuga Gounder of Salayampalayam for Rs.100/-. The said document was registered as Doc.No.3229/1961 at Valavanur SRO. The said Pavadaisami Gounder had executed a sale deed dated 04.12.1965 in favour of Vadamalai Gounder S/o. Thandavaraya Gounder for a sum of Rs.2000/-. The said document was registered as a Doc.No.2971/1965 at Valavanur SRO. The averments regarding the above transactions has to be included in the plaint. Hence the petition.

3. The Counter filed by the Respondent is as follows:

This petition filed by the petitioner/plaintiff is not maintainable either on law or on facts and liable to be dismissed. The petitioner is put to strict proof of the allegations denied by the respondent except those that are specifically admitted. The petitioner reveals that she want to amend the plaint after this respondent has raised the true facts regarding the case. This cannot be a ground for the petitioner/plaintiff to seek an amendment. Now the petitioner is narrating a new set of facts and wants to change the cause of action for the suit. The fundamental principle for an amendment of plaint is that there should not be the change of fact and there should not be any change of cause of action. But the petitioner now want to do both. She cannot do so. At the best the petitioner can bring those facts by way of Reply statement to the written statement filed by this defendant. At no stretch of imagination the petitioner can sustain the application for amendment of the

plaint but can only bring those facts by way of a reply statement. Even the prayer sought for declaration of title does not arise because she has already asked the prayer with a different words and phrase. Hence this petition is totally mis-conceived and does not have any merits. The petitioner can only withdraw the plaint and file a fresh suit with the leave of the court since she wants to change the cause of action and include the cause of action for the relief of injunction. This petition is liable to be dismissed with cost.

4. Heard both sides. Perused Records. Neither Petitioner nor Respondents have examined any witnesses and marked exhibits.

5. Point for Consideration:-

- (i). Whether the petitioner has shown sufficient cause to allow the petition in I.A.No.788/2023 in OS No.489/2021?
- (ii). Whether the petition is to be allowed or not?

6. On Point:-

The suit was filed by the petitioner/plaintiff for the relief of declaration and consequential injunction. It is stated in the plaint that one by name Muthusami Gounder of Salayampalayam had three sons by name Murugesu Gounder, Varadaraj Gounder and Subramania Gounder. One of the sons by name Murugesu Gounder purchased a property from Pavadasami Gounder and others on 15.05.1968 for a sum of Rs.4,500/-. The said property was partitioned between Murugesu Gounder and Varadaraj Gounder on 17.02.1970 by a partition deed registered as Doc.No.363/1970 at Valavanur SRO. The properties under "A" schedule was allotted to Murugesu Gounder under property under "B" schedule was allotted to Varadaraj Gounder, who died on 06.11.1977 as intestate. One by name Manonmani is the wife of Varadaraj Gounder, the plaintiff's husband by name Baskaran is the son and

one by name Valarmathi is the daughter. Manonmani died on 20.09.1986 and Valarmathi died on 06.06.2012 without marriage. The plaintiff's husband Baskaran is the only legal heir of Valarmathi. The said Baskaran possessed the suit property and Natham Patta and Adangal stands in his name. The plaintiff's husband executed a Settlement deed dated 19.07.2021 in favour of the plaintiff.

7. The petitioner/plaintiff has been seeking amendment in Para.1 that the suit property was purchased by Pavadaisami Gounder under a sale deed dated 26.12.1961 from the defendant for a sum of Rs.100/-. The said Pavadaisami Gounder Mortgaged the said property in favour of Vadamalai Gounder and others by a Mortgage deed dated 04.12.1965 for a sum of Rs.2000/- under Doc.No.2971/1965. The petitioner also sought to delete the word Muthusami Gounder and include "Sons of Muthusami Gounder".

8. The contention of the plaintiff in the plaint is that the suit properties were purchased by the sons of Muthusami Gounder by a sale deed dated 15.05.1968. But, the petitioner has been seeking an amendment stating that the suit property was purchased by Pavadaisami Gounder under Sale deed dated 26.12.1961 from the defendant. The said contention of the petitioner is contrary to the averments made in the plaint. The petitioner traces his title from the Partition deed dated 17.02.1970. But, by way of amendment, the petitioner has been intending to trace the title through a sale deed dated 26.12.1961.

9. The petitioner/plaintiff also sought for inclusion of the purchase of property under sale deed dated 26.12.1961 and Mortgage of the property on 04.12.1965. The said averments are not found in the original cause of action. It is the basic principle that cause of action cannot be amended. The

petitioner/plaintiff has been introducing new facts by way of proposed amendment and also seeking to amend the cause of action which is forbidden. The petitioner/plaintiff has an option to come forward with the said pleadings through reply statement. This was also stated by the respondent/defendant. This court concur with the stand of the respondent on this aspect. The petition is devoid of merits and liable to be dismissed.

In the result, this petition is dismissed. No costs.

Dictated to the Steno-Typist, typed on computer, corrected, print out was taken and pronounced by me in the open court, on this 04th day of November 2024.

Principal Subordinate Judge,
Villupuram.

Petitioner's side Witness and Exhibits: -
NIL.

Respondent's side Witness and Exhibits: -
NIL.

Principal Subordinate Judge,
Villupuram.