

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,  
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTTUR.

PRESENT:-THIRU.A.KANTHAKUMAR., M.L.,

PRINCIPAL DISTRICT JUDGE,

VIRUDHUNAGAR DISTRICT, AT SRIVILLIPUTTUR.

MONDAY, THIS THE 26<sup>th</sup> DAY OF APRIL '2021

I.A.2/2020 IN O.S.72/2015

M.Muthuramalingam

...Petitioner/Plaintiff.

/Vs./

1)K.Muniyandi (Died)

2)M.Muneeshwari,

3)M.Murugan,

4)P.Annapoorani,

5)P.Umadevi,

6)P.Pandiyaraj,

7)P.Ramkumar,

8)S.Muthulakshmi,

9)S.Nithya,

10)S.Nimala,

11)Jothiprakash,

12)Mariappan,

13)Natarajan.

...Respondents/Defendants.

This petition came before me for final hearing on 26.04.2021 in the presence of Tr.S.Duraisaravanan, Advocate for the petitioner, 1<sup>st</sup> respondent is died, respondents No.2, 3, 11 and 13 are called absent and set ex-parte, Tr.B.Pandian, Advocate for the respondents No.4 to 7, Tr.P.Kaliappan, Advocate for the respondents No.8 to 10 and Tr.S.Manikannan, Advocate for the respondents No.12, upon hearing both sides and perusing the records and having stood over for consideration till this day, this Court made the following,

### **ORDER**

The petitioners have filed this petition under Order 6, Rule 17 & 151 of C.P.C., to amend the plaint.

#### **2) Brief averments of the affidavit filed by the petitioner in support of the petition is as follows:-**

The petitioner is the plaintiff in the main suit. The petitioner has filed the original suit for partition and for other reliefs. The suit was posted for cross examination of P.W.1. At this stage, the petitioner 's father (i.e) 1<sup>st</sup> defendant herein was died and so his legal heirs of this petitioner, 2<sup>nd</sup> and 3<sup>rd</sup> defendants are parties to the suit. 1<sup>st</sup> defendant does not execute any deed in respect of 1<sup>st</sup> defendant 's 1/12 shares and hence the 1<sup>st</sup> defendant 's shares to be available to the plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> defendants as 1/9 shares and hence this petition has been filed to amend the prayer column in main suit as the 1<sup>st</sup>

defendant 's share 1/9 has to be allotted to the plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

3) 1<sup>st</sup> respondent is died. Respondents No.2, 3, 11 and 13 are called absent and set ex-parte.

4) No counter endorsement made on the side of 12<sup>th</sup> respondent.

5) Counter filed on the side of 4<sup>th</sup> to 7<sup>th</sup> respondents and the same was adopted by the respondents No.8 to 10.

**6) Brief averments of the counter filed by the 4<sup>th</sup> to 7<sup>th</sup> respondents and the same was adopted by the respondents No.8 to 10 is as follows:-**

The petition is not maintainable either by law or in facts. It is not admitted as stated in the affidavit para 2 that 1<sup>st</sup> defendant does not execute any deed in respect of 1<sup>st</sup> defendant 's 1/12 shares and hence the 1<sup>st</sup> defendant 's shares to be available to the plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> defendants as 1/9 shares and hence this petition has been filed to amend the prayer column in main suit as the 1<sup>st</sup> defendant 's share 1/9 has to be allotted to the plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> defendants. Petition averments are against the allegation mentioned in the main suit. The proportionate shares are stated in the petition is not legally sustainable and for that reason do not amend the plaint. So, this petition may be dismissed.

7) Heard both sides.

8) The point for consideration in this petition is:-

Whether this I.A. has to be allowed? or not?

**Point:-**

9) The suit for partition. The 1<sup>st</sup> defendant and proposed parties petition was allowed. The plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> defendants was legal heirs recorded and amended the plaint on 17.10.2019. This amendment petition was filed and the above said suit was posted for cross examination of plaintiff on the side of 1<sup>st</sup> defendant was died and proposed party amended and 2<sup>nd</sup> & 3<sup>rd</sup> defendants are parties to the suit. The above said suit among originally 1/12 for shares in the suit. The 1<sup>st</sup> defendant does not execute any deed in respect of his shares allotted to the 2<sup>nd</sup> and 3<sup>rd</sup> defendant 1/9 this amend of plaint.

10) The respondents No.2,3,11 and 13 are called absent and set exparte. R12 is no counter endorsement was made. R4 to R7 has filed formal counter pleading of objection of the share 1/9 or 1/12 shares allotted to the 1<sup>st</sup> defendant and plaintiff after completed the trial only. Share in this stage, could not decide the 1/9 share are only succeeding among members become parties to the suit for partition each member of the shares allotted to award.

To avoid multiple proceedings between formal parties, the about said parties decided dispute dissolve this settlement is amended the petition and hence the amendment petition is allowed and this point is answered accordingly.

11) In the result, this petition is allowed. No costs.

Dictated to the Steno-Typist, typed by him directly, corrected by me and pronounced by me on this the 26<sup>th</sup> day of April ' 2021.

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VIRUDHUNAGAR DISTRICT,  
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