

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE  
VIRUDHUNAGAR**

Present : Thiru. **T.V.Hemanandakumar, B.A.,L.L.M.**,  
Additional District Judge, Virudhunagar

Friday, the 01<sup>st</sup> day of March, 2024

**IA No.6/2024 in OS.No.51/2021**

Muthumari

... Petitioner/Plaintiff

//Vs//

- 1) Ramanujam Ammal (Died)
- 2) Uma
- 3) Ananthi
- 4) Sivamuthu
- 5) Manoharan
- 6) The Sub-Registrar, Sivakasi
- 7) The Tahsildar, Sivakasi

... Respondents/Defendants

This petition came up on 19.02.2024 for final hearing before me in the presence of Thiru.R.Muthuraman, Learned advocate for the petitioner, 1<sup>st</sup> respondent being dead, Thiru.M.Muthukrishnan, Learned advocate for the respondents 2 to 4, Thiru.S.V.Nagarajan, Learned advocate for the 5<sup>th</sup> respondent, the respondents 6 & 7 remained exparte and upon considering all material records in this case and hearing on both sides and having stood over till this day for consideration and this court doth deliver the following

**ORDER**

Petition filed by the petitioner/plaintiff to amend the pleadings.

2. The averments in the affidavit and petition are as follows:

It is alleged in the affidavit that the petitioner/plaintiff filed the suit for partition of her 1/4 share in the scheduled properties, for injunction not to encumber the properties and to declare the some of the sale deeds as null and void. The case is posted for trial and at that time, when the petitioner went through the plaint, she came to know that some of the properties were already sold and some of the properties owned by her mother was not included in the suit. So, to avoid further complications

and partition of complete properties, the amendments are necessary.

3. The respondents 2 to 4 filed counter contending that all the averments in the petition are false. The suit was filed by the plaintiff against 1<sup>st</sup> respondent who is her mother. Since, all the properties are self-acquired properties of 1<sup>st</sup> defendant, the plaintiff has no right to file suit for partition. In the meantime, a compromise was arrived between parties and compromise memo was signed in the presence of their advocates. That compromise memo was accepted by the court on 11.12.2015. By that memo, the plaintiff and defendants 1 to 4 admitted that the properties owned by the 1<sup>st</sup> defendant and sequel to the compromise, 1<sup>st</sup> defendant executed a settlement deed in favour of the plaintiff with respect to survey number 1545/1 and plaintiff 1<sup>st</sup> schedule 3<sup>rd</sup> item property in survey number 1545/2A totally 5 acre 50 cents. The plaintiff accepted the gift deed and sold the properties to the various persons. The defendants 2 and 3 executed a settlement deed in favour of 4<sup>th</sup> respondent/4<sup>th</sup> defendant with respect to their undivided share in other properties except in survey number 1545/1 and 1545/2A. The 4<sup>th</sup> respondent sold it to 5<sup>th</sup> respondent/5<sup>th</sup> defendant. Since, compromise was filed, the disputes already came to an end. The plaintiff carried out the earlier amendment only after 7 years. Only to get money from these respondents, the plaintiff filed the suit.

4. The 5<sup>th</sup> respondent filed counter contending that entire allegations in para.2 and 3 are false. Already, the plaintiff filed proof affidavit and after beginning of trial, the petitioner came forward with this petition and has to be dismissed.

5. Point for consideration is whether this petition has to be allowed?

6. Heard both sides.

7. Point:

This petition is filed under Order 6 Rule 16, 17 CPC by the petitioner to amend the pleadings. It is seen that the suit was filed by the petitioner/plaintiff for partition. The 1<sup>st</sup> respondent Ramanujam Ammal (since deceased) is the mother of plaintiff and defendants 2 to 4. The plaintiff originally filed the suit stating that all the properties are her ancestral properties and so she is entitled for share. Now, the plaintiff wants to

include some more properties in the suit stating that during the pendency of the suit, her mother 1<sup>st</sup> defendant died and the petitioner/plaintiff has omitted to include some of the properties of her mother and it is also prayed to delete some of the properties stating that 1<sup>st</sup> defendant has already executed settlement deed in her favour. On the side of respondents 2 to 4, the learned counsel argued that already this petitioner filed IA No.207/2016 to include many properties and it was allowed only as per the request of petitioner/plaintiff, present suit properties 6 to 18 were added. So, it is the argument of the learned counsel that now the petitioner cannot be permitted to delete some of the plaint schedule properties.

8. It is seen from the plaint pleadings that according to the plaintiff, all the suit properties are ancestral properties of her mother. Now, the petitioner/plaintiff wants to delete 1<sup>st</sup> schedule item number 3 survey number 1545/2A, 1<sup>st</sup> schedule item number 7 survey number 1551 and 4<sup>th</sup> schedule item number 5 survey number 1551. It is seen from the particulars of amendment that the petitioner/plaintiff is now claiming right over the properties by way of settlement deed executed by her mother. Now, it is stated that it is the absolute properties of her mother and so she executed settlement deed. So, whether the properties are absolute properties of her mother or ancestral properties? is a question to be decided at the time of trial if disputed by the parties.

9. Already, the petitioner/plaintiff filed IA No.207/2016 stating that some of the ancestral properties were left out. As per the order dated 11.08.2016 present plaint schedules 6 to 18 were added. So, now the petitioner/plaintiff cannot again come forward with the contention that some of the properties are not necessary and to be deleted. But, it is seen that plaint 1<sup>st</sup> schedule 7<sup>th</sup> item property, there is survey number 1551 with an extent of 0.68.00 hectare is again mentioned as plaint 4<sup>th</sup> schedule 5<sup>th</sup> item. So, same property is stated twice and hence, 2<sup>nd</sup> schedule 4<sup>th</sup> item can be deleted and para.5 of the particulars of amendment has to be allowed.

10. In para.7 of the particulars of amendment, the plaintiff prayed to delete the present plaint schedule 7, 8, 9 & 10. As already discussed, those properties were

included only as per the order in IA No.207/2016 filed the petitioner/plaintiff and so, now those properties cannot be deleted. In particulars of amendment, the petitioner prayed to delete the plaint schedule 18<sup>th</sup> property as particulars of amendment para.21. That cannot be also allowed. The other amendments prayed for are regarding the corrections in the area value of the property and extent and that can be allowed. The petitioner/plaintiff can be permitted to include the new four items of property as plaint schedule 19 to 22.

11. In a suit for partition, parties have to be given sufficient opportunity to include all the properties to finally settle the matter. Hence, this petition is partly allowed. The particulars of amendment in para number 5, 7 and 8 cannot be allowed and except the above paragraphs, other amendments sought for are allowed. No order as to costs.

Dictated to the steno-typist, typed by him, corrected and pronounced by me in open court, on this the 01<sup>st</sup> day of March, 2024.

Additional District Judge,  
Virudhunagar.

Witness and Exhibits on the side of the Petitioner:

Nil.

Witness and Exhibits on the side of the Respondents:

Nil.

Additional District Judge,  
Virudhunagar.

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Additional District Court  
Virudhunagar  
IA No.6/2024 in OS No.51/2021  
**ORDER**  
Dated: 01.03.2024  
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