

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

Present : **Thiru. M. VASANTHA KUMAR, M. L.,**
Additional District Judge, Aruppukottai.

Friday, the 10th day of July, 2026

I.A. No. 01/2026 in A.S. No. 22/2021

A. Gurusamy ... Petitioner/Appellant/Plaintiff

//Vs//

1. A. Muthalu.
2. A. Subbiah @ Subburaj.
3. Sourirajan.
4. Beulah Devi.
5. Pitchaiammal
6. Rajaperumal.
7. Rukkumani

... Respondents/
Appeal Respondents/
Defendants 1 to 7.

This petition came up before me on 30.06.2026 for final hearing in the presence of Thiru. G. Mariappan, Learned counsel for the Petitioner and Thiru. V. Gopikrishnan, Learned counsel for the 1st respondent and respondents 2 to 7 are remained exparte and upon considering all material records in this case and hearing the arguments of both sides and having stood over till this day for consideration and this court deliver the following

ORDER

This is an application filed under Order 6 Rule 17, 18 and Section 151 of C.P.C. by the appellant in the appeal to amend the plaint in O.S. No. 12/2014 on the file of Subordinate Court, Aruppukottai.

2. The Brief averments of the petition and affidavit is as follows

The petitioner is the plaintiff in the original suit in O.S. No. 12/2014. The original suit was filed for the relief of partition of 1/5 shares of the plaintiff and it was dismissed by the Subordinate Court Aruppukottai on 07.04.2021. Against the above dismissal order, the appeal in A.S. No. 22/2021 has been filed by the plaintiff. The trial court has dismissed the suit on the basis of following reasons.

1. Already oral partition was effected and on that basis some of the properties were sold and the suit has been filed by suppressing the real facts.
2. Some of the properties were not included in the suit and the suit is bad for partial partition.
3. The WILL was not proved as contemplated under Law.

The details of the WILL is now disclosed as follows. (1) The WILL executed by Sathurappa Naickar in favour of the children of Alagarsamy Naickar namely Gurusamy, Muthalu Naickar and Subbiah dated 13.07.1981. (2) The WILL executed by Sathurappa Naickar in favour of the children of Alagarsamy Naickar namely Muthalu Naickar and Subbiah dated 12.08.1987. Hence this petition has been filed to establish the true facts. During the trial before the trial court, both the plaintiff and the defendants were duty bound to disclose the details of properties sought to be partitioned. But, the defendants also did not disclose the properties, which were omitted in the plaint. Hence, the plaintiff has not come forward to take action during the trial in the trial court. Now, since the relief sought for the plaintiff has been denied for the aforementioned reasons, this petition has been filed seeking to amend the plaint to include the petition mentioned properties as suit properties. If this petition is allowed no prejudice will be caused to anybody, but if the petition is not allowed, the petitioner will suffer great loss and hardships. Hence prays to allow the petition.

3. The Brief averments of the counter filed by 1st respondent are as follows

3.1 It is true that the original suit was filed for the relief of partition of 1/5 shares of the plaintiff and it was dismissed by the Subordinate Court Aruppukottai on 07.04.2021 and against the above dismissal order, this appeal has been filed. It is false to state that Sathurappa Naickar executed a WILL in favour of the children of Alagarsamy Naickar namely Gurusamy, Muthalu Naickar and Subbiah on 13.07.1981 and said Sathurappa Naickar also executed a WILL in favour of the children of Alagarsamy Naickar namely Muthalu Naickar and Subbiah on 12.08.1987. The averments that during the trial before the trial court, the defendants did not disclose the omitted properties and hence, the plaintiff has not come forward to take action during the trial in the trial court are all denied as false. Now, this petition has been filed only with an intention to prolong the case proceedings. The petitioner is attempting to rectify the facts, which led to the dismissal of the original suit, in the appeal proceedings.

3.2 In the written statement filed by the appeal respondents/defendants in the original suit, they had stated that all the ancestral joint family properties are not included in the plaint and the case is affected by Partial Partition and some important properties have been deliberately suppressed. Hence, it is clear that the petition mentioned properties have been wantonly not included in the plaint. Moreover, the trial court also framed an issue with regard to partial partition and the trial court has dismissed the suit stating that all the properties were not included in the suit and hence the case was not made out for complete partition. Further in the cross examination also the petitioner himself directly agreed the questions asked regarding those properties and gave Admission in Cross examination. Hence it is clear that the petition mentioned properties were not newly known to the petitioner. But the petitioner has not included the

properties in the original suit and he has not come forward to add the properties even in the present appeal at the time of filing. Further, the petitioner has not come forward to include all the properties even in this petition. It is necessary to state all the properties in the same manner in a partition case. But, the petitioner has not mentioned some of the properties wantonly.

3.3 Before filing of the suit, the petitioner had sold out some of the properties and he himself admitted the same in the cross-examination, But no attempt has been made to include the properties, which were sold to third parties, in the present suit. Similarly, no steps have been taken to include the persons, who purchased the properties, as necessary parties in the present suit. Moreover, in the sale documents created by the petitioner, it is mentioned that he is selling his share in the partitioned property, which means that he had clear knowledge of his rights and share and the same was also agreed by the petitioner in his cross-examination. Hence, it is clear that the petitioner is trying to amend the Omissions. Even after filing the Appeal, the petitioner did not immediately file any Amendment Petition. Even in the Grounds of Appeal, rectification was not sought for by admitting the Partial Partition. After many years, during the course of argument, this petition has been filed, which clearly shows delay tactic and abuse of process. According to Order VI Rule 17 C.P.C. proviso, the party, who seeking amendment after commencement of the trial, must prove Due diligence. The petitioner did not prove Due diligence at any stage. Furthermore, if this petition is allowed, the nature of the case will completely change. If new properties are added, fresh Pleadings, Additional issues, further evidence will be required. It will lead to go back to trial stage, which is against the law and will cause serious prejudice to the defendants. Further, Order VI Rule 18 of C.P.C. is completely wrong to this case. Rule 18

of C.P.C. stated about the procedure after allowing the amendment. Hence prays to dismiss the petition.

4. Point for Determination :

Whether this petition deserves to be allowed or not.

Heard the Counsel for Petitioners and Respondents. Records perused. No Oral and Documentary evidence adduced by both sides.

5. This is an application filed by the appellant, who has been filed the main suit in O.S. No. 12/2014 seeking the relief of partition, which has been dismissed by the trial Court. Aggrieved over the dismissal order passed in the partition suit, the present appeal has been filed, in which the present application has been filed to amend the plaint in O.S. No. 12/2014 by including certain properties.

6. The case of the petitioner is that the trial court had dismissed the suit on the ground that the suit is hit by partial partition and already oral partition has been effected and for other reasons. The present petition has been filed on the ground that even though the present petitioner stands as a plaintiff before the trial court in the partition suit, both the plaintiff and defendants are stand in same footing and a duty also cast upon the respondents/defendants to inform the court with regard to the properties, which have not been included in the partition suit. Further the petitioner contended that if the petition is allowed, no prejudice will be caused to the respondents/defendants and prays to allow the petition.

7. On the other hand the respondents/defendants contended that this application is filed only in order to fill up the lacuna and further it is contended that this application has been filed in a belated manner and only to drag on the proceedings, this petition has been filed and prays to dismiss the petition.

Further the learned counsel for the respondents/defendants has relied upon the following Supreme Court's judgments.

1. Samuel and Others – Vs – Gattu Mahesh and others dated 16.01.2012.
reported in 2012 AIR SCW 1035
2. Vidyabai & Others – Vs – Padmalatha & another
In Civil Appeal No. 7251/2008 dated 12.12.2008.

and contended that the petitioner had not shown any due diligence to allow the application and the application was filed to prolong the proceedings.

8. By considering the rival submissions and by perusing the materials available on record, this court finds that the petitioner herein is the plaintiff in the suit for partition in O.S. No. 12/2014 before trial court. The said suit was dismissed on the following grounds that

1. Already oral partition was effected and on that basis some of the properties were sold and the suit has been filed by suppressing the real facts.
2. Some of the properties were not included in the suit and the suit is bad for partial partition.
3. The WILL was not proved as contemplated under Law.

Further the main suit in O.S. No. 12/2014 was filed on 20.01.2014 and written statement of the 1st and 2nd defendants was filed on 30.06.2014. In the written statement filed by the 1st and 2nd defendants itself there is a specific recital stated that all the properties were not included in the suit. The relevant portion in the written statement filed by the defendants is extracted hereunder for better reference.

...தாவா சொத்து விவரத்திலும் முழுமையான விபரங்கள் கொடுக்கப்படாத நிலையிலும், வாதிக்கு வாக்கரலாக

பாகவிஸ்தி மூலம் கிடைக்கப் பெற்று அவைகளை வாதி
 விற்று விட்ட காரணத்தினாலும், அவைகளை வழக்கில்
 சேர்க்காத காரணத்தினாலும் வழக்கானது partial partition
 மற்றும் Non joinder of necessary parties என்ற தோஷத்திற்கு
 மேற்படி வழக்கானது உள்ளாகிறது. ...

Further on perusal of records, it is seen that the trial court also framed the following issue as one of the issue to decide the dispute between the parties.

Whether the suit is hit by partial partition?

9. It is the specific stand of the defendans that the suit is hit by Partial Partition and the same is specifically pleaded in the written statement filed by them as early as in the year 2014 itself. Further the suit was dismissed on 07.04.2021. The First appeal was preferred on 05.08.2021. However, this application has been filed in a belated manner only on 19.11.2025. Moreover, the present application has been filed only at the stage of argument in the appeal. No doubt appeal is continuation of the suit. But this court has to examine whether the petitioner has approached this court with the relief at the earliest point of time. The petitioner has not taken any steps to amend the plaint before the trial court either before the framing of issues or before the commencement of the trial. Admittedly an Issue was framed by the trial court with regard to the plea of partial partition and even after framing of an issue and before commencement of trial, the petitioner has not come out with an amendment application at the earliest point of time and belatedly filed this petition only on 19.11.2025. It is relevant to state that the appeal was filed on 05.08.2021 and the appeal is at the fag end namely at the stage of argument. Moreover, this appeal is pending for more than 5 years.

Further the present petition has been filed only to fill up the lacuna. If at all the petitioner is really interest to contest the case on merits, then he ought to have file this petition at the earliest point of time. Moreover no explanation was offered by the petitioner to file this petition in a belated manner. This court feels that the suit is filed in the year 2014 and the petitioner has filed this amendment petition in the appeal stage only in the year 2025. The present application has been filed only in order to prolong the proceedings. The Petitioner has not shown any due diligence on his part in filing this petition in a belated manner more particulary when the appeal is pending for nearly 5 years. If this petition is allowed, then there will not be any end to the litigation and it will also cause severe prejudice to the respondents/defendants. Hence for all the above reasons, this court feels that there is no merits in the petition and the petition deserves to be dismissed. Accordingly this petition is dismissed.

10. In the result, this petition is dismissed. No cost.

Dictated by me to the steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, on this the 10th day of July 2026.

Additional District Judge
Aruppukottai.

List of Witness and Exhibits on the side of the Petitioner : Nil.

List of Witness and Exhibits on the side of the Respondents : Nil.

Additional District Judge
Aruppukottai.