

IN THE XVII ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: Tmt.R.THOTHIRAMARY, M.A., L.L.M.,
XVII Additional Judge

Saturday, the 1st day of February 2025

I.A.No.7/2024
in
O.S.No.4197/2019

1. J.Murali,
S/o.Late Mr.Jayavel.
2. J.Deivanai,
W/o.Late Mr.Jayavel.

...Petitioners/Plaintiffs

- Vs -

1. Megala,
D/o.Late Mr.Jayavel.
2. Geetha,
D/o.Late Mr.Jayavel.
3. Amutha, (Deceased)
D/o.Late Mr.Jayavel.
4. Mohandoss.
5. Arthik,
S/o.Mohandoss.
6. Snehapriya,
D/o.Mohandoss.

...Respondents/Defendants

This petition coming on 23.01.2025 for final hearing before this Court in the presence of M/s.J.Surya Prakash and P.Arunachalam, Counsels for the Petitioners/Plaintiffs and M/s.Richardson Wilson, G.Dhinesh, G.Adithyaraj and Navin Suresh, Counsels for the Respondents/Defendants, heard both side and upon perusing the records and having stood over for my consideration till this day, and this Court delivered the following:

ORDER

This petition is filed under Order VI Rule 17 r/w Sections 141 and 151 of CPC by the Petitioners/Plaintiffs to permit the petitioners to amend the plaint in O.S.No.4197/2019 as mentioned in the details of amendment.

2. Brief averments made in the petition by the Petitioner are as follows:-

The petitioner is the 1st plaintiff in the suit. The 2nd petitioner/plaintiff has filed the suit against the defendants for preliminary decree of partition of the property more fully described in the schedule by metes and bound ad allot 7/10 shares in item No.1 of the scheduled mentioned property to the plaintiffs and allot 2/ 5th shares in item No 2 to 5 of the schedule mentioned property to the plaintiffs and their respective shares and for consequential permanent action restraining the defendants, their men, agents, servants, or anybody claiming under or through them form any manner for disturbing the plaintiffs peaceful enjoyment of the scheduled mentioned properties, without due process of law and for cost. The above case our erstwhile counsel had mentioned the schedule of suit properties, as item Nos 1 to 5 in the plaint, in which the Item No. 1 and Item No. 2 had been arrived with error and mistake, without properly verifying the sale deed dated 21.11.1986, bearing document No.1823/1986 and Rectification Deed dated 17.12.1986, bearing document No.1866/1986, executed by Mr.G.Rajamanicam and others in favour of the petitioners father Late Jayavel and mother Deivanai Ammal. The petitioners erstwhile counsel without properly verifying the above deeds had errored the extent of schedule

of the suit properties in Item No. 1 and Item No.2 in the plaint. Originally the Petitioners father Jayavel and mother Deivanai Ammal had jointly purchased a site with two huts measuring to an extent of 1 Ground and 495 Sq.ft., or 2895 Sq.ft., comprised in Paimash Nos. 800, 801, 802, Old Patta No.355, T.S.No.171, T.S.No.5718 and at present T.S.No.8881, Block No.129 situated at Hospital Road, Subbu Pillai Thottam, T.Nagar, Chennai-600 017, from Mr.G.Rajamanicam and others for valid sale consideration of Rs.50,000/- by way of sale deed dated 21.11.1986, bearing document No.1823/1986. Thereafter, the said Mr.G.Rajamanicam and others had executed a Rectification Deed dated 17.12.1986, bearing document No.1866/1986 in favor of the petitioners father Late Jayavel and mother Deivanai Ammal stating that certain mistakes and errors have accidentally occurred in the principal Sale Deed dated 21.11.1986, bearing document No.1823/1986 and rectified the schedule of the property and incorporated an extent of 770 Sq.ft., comprised in T.S.No.8896/part in the "B" Schedule at page No.27 in the 2nd line after the words 1 Ground and 495 Sq ft., of the Principal sale deed dated 21.11.1986. This Hon'ble Court deserves specific notice of the operative portion of the Rectification Deed dated 17.12.1986, bearing document No.1866/1986. Therefore, it is evident from the above recitals that as per the sale deed dated 21.11.1986, bearing document No.1823/1986 and rectification deed dated 17.12.1986, bearing document No.1866/1986, the petitioners father Late Jayavel and mother Deivanai Ammal had jointly acquired a land measuring to an extent of 1

ground 495 Sq.ft., and 770 Sq fl, ie, 3665 Sq.ft., and they were in peaceful possession of the said 3665 sq.ft., without any hindrance. The petitioners erstwhile counsel had errored the extent of suit schedule properties in Item No.1 and Item No.2 in schedule of the plaint and stated that Item No.2 was solely purchased by the petitioners father late Jayavel, forgetting that is a property purchased by late Jayavel and mother Deivanai Ammal jointly. In pursuant to above error and make committed in the schedule of the plaint, our erstwhile counsel had also committed errors in the pleadings and prayer of the plaint. Due to which, mark value of the property may differ from its original value and value mentioned in the plaint. Therefore, the petitioners undertake to pay additional court fee if any art from that, there is a typological error in Door Number and Survey Number Item No.3 of schedule suit property in plaint. All the above said makes and errors were only identified by our newly appointed counsel after perusing the entire title documents. Therefore, the petitioners are now only come to know at all the mistakes and errors committed in the plaint by our erstwhile counsel. If the said mistakes were not corrected by way of amendment petition, be difficult to pass a preliminary decree of partition stage of plaintiff side evidence, even the defendants had also failed to note down the errors and mistakes in extent the schedule of the suit properties. The schedule of the suit properties in the details of amended are appropriate and correct as per the title documents of the property. Therefore, it is just and necessary to permit the petitioners to carry out the amendment as per the details of the amendments in the plaint in

interest of justice. By allowing this amendment petition no prejudice will be caused to the respondents but on the other hand if this present application is not allowed, great prejudice will be caused to the petitioners and the petitioners will be put to irreparable loss and hardship and the same cannot be compensated by any means. The proposed amendment would not change the nature and cause of action of the suit. Hence this petition.

3. The brief averments made in the counter filed by the

Respondents are as follows:-

The plaintiff has filed the suit for partition for the following reliefs. "a. For Preliminary decree of partition of the property more fully described in the schedule by metes and bounds and allot 7/10 shares in item no 1 of the schedule mentioned property to the plaintiffs and allot 2/5th shares in item no 2 to 5 of the schedule mentioned property (mentioned in the plaint) to the plaintiff and their respective shares. b. For consequential permanent injunction restraining the defendants, their men, agents, servants or anybody claiming under or through them from any manner for disturbing the plaintiffs peaceful enjoyment of the schedule mentioned properties. Without due process of law. c. Awarding costs of the suit by the defendants to the above plaintiffs. The respondent have duly filed written statement on 08.03.2019 in C.S.No.52/2019 which is now renumbered as O.S.No.4197/2019 before the court after the case was transferred from the Hon'ble Madras High Court to this court. The averments made by the plaintiff in the petition are denied in total as

false and untrue. The stage of the present case is that, the trial has commenced in the present suit and the evidence of Pw1 is over. The plaintiffs at this juncture had filed the present application to amend the plaint which cannot be countenanced in law for the reason that the trial has commenced and the evidence on the side of the plaintiff was completed on 24.01.2024. The plaintiff had the knowledge about the facts which he intends to now bring on record by amendment at the time of filing of the suit and no explanation has been given as to why it was not pleaded at an earlier point in time. The present suit was filed by the plaintiff on 01.12.2018. Thereafter, the plaintiff had already amended the plaint in the year 2022 to substitute the 3rd defendant with her legal heirs in I.A.No.3/2021 dated 12.08.2021. After this amendment, the trial commenced and the plaintiff has also completed letting in evidence on his side. After the trial has commenced and he has completed recording evidence on his side, the plaintiff has filed the I.A. seeking to amend the plaint for a second time. The plaintiff cannot plead ignorance of these facts as the above mentioned facts are well within the knowledge of the plaintiff at the time of filing of the plaint itself. After the trial has commenced and after the plaintiff had adduced evidence, the plaintiff cannot now come and plead ignorance to file the present application as these are material facts one should know before filing a partition suit. The amendments the plaintiffs are intending to carryout will have a material bearing and will alter the nature of the suit. The proposed amendment in the plaint attempts to introduce new plea which will have a material bearing on the claim itself. One of the major changes intended by the

plaintiff to amend is that the extent and the value of the property mentioned in the suit. It is pertinent to note that, originally, when the plaint was filed, the extent mentioned in item No 1 is 951 Sq ft out of 3170 Sq.ft. Now, the plaintiff is attempting to amend the plaint as 1447.5 Sq ft out of 1 ground 495 Sq ft to be split by the legal heirs. It is pertinent to note that, even in the deposition of the plaintiff dated 24.01.2024 the plaintiff, had admittedly deposed that the extent of the item no 1 schedule mentioned property is 3170/- Sq.ft. Therefore, the plaintiff now cannot state that the erstwhile counsel had filed the plaint without verifying the documents. Therefore, the amendment sought for by the plaintiff should not be allowed. I further submit that in the amended plaint dated 25.02.2022, the plaintiff has mentioned the extent of the property in the item No.2 in the schedule of property as 763 Sq ft that is bound to be split by the legal heirs. Now, the plaintiff is trying to amend the plaint in respect of item No. 2 of the scheduled property's extent as 770 Sq ft out of which 385Sq.ft is bound to be split by the legal heirs. No valid reasons are adduced by the plaintiff for seeking this amendment after commencing trial and letting in evidence. Therefore, the amendment sought for by the plaintiff should not be allowed and is liable to be dismissed. As per the amended plaint filed on 25.02.2022, Item No.3 of the schedule of property the address and Town Survey number is mentioned as Door No 27, Block No. 129, and TS No. 57224/9". Whereas the amendment the plaintiff is trying to seek now is completely a different address namely "Door No. 71, CIT Nagar, First Main Road, T Nagar, Chennai 600 035, comprised in T S No. 5724/9 and Block No 129". It

is submitted that, the entire extent and address the plaintiff has mentioned in the present petition is totally different as that of the amended plaint. It is pertinent to note that the plaintiff ought to have perused the documents which are readily available with him and which are in possession of the plaintiff. Therefore, the plaintiff cannot plead ignorance of the same. I submit that during the pendency of the proceedings, the plaint has been already amended by the plaintiff as early as 25.02.2022 and a written statement has also been filed. The action of the plaintiff, if allowed, will put this defendant to grave prejudice and hardship. Order VI Rule 17 of the Civil Procedure Code, has clearly settled the present proposition in hand that no application for amendment can lie after the commencement of trial. There is no due diligence conducted by the plaintiff who has signed the plaint nor when there was an opportunity granted by the court during the first amendment nor before the commencement of trial. Therefore, when the plaintiff has willfully ignored the proposed amendments at the first instance, now cannot claim ignorance before the court. Determining the extent of the property in a plaint is the most principal and primary information that is required in a suit. However, after the commencement of trial and after concluding the cross examination of the plaintiff, a further petition to amend the plaint cannot be entertained. In paragraphs 6, 7, 10, 12, 15 proposed to be amended by the plaintiff, the plaintiff attempting to introduce new plea and therefore, the petition should not be entertained for the above mentioned reasons. It has been held in a catena of judgments that, the amendment to a plaint should not be allowed

after the commencement of the trial or if it changes the nature of the suit. In the case of P.Subba Naicker v Veluchamy Najcker and three Ors ((2004 (2) CTC 742), the Hon'ble Madras High Court of India has held that, "In the light of the proviso to Rule 17 of Order 6 of the Code of Civil Procedure and of the fact that the petitioner has not satisfied the Court that he is entitled to file such a petition even after the commencement of the trial, as rightly argued by the learned counsel for the respondent, the application for amendment is liable to be rejected" Similarly, in the case of, Vidyabai & Ors vs Padmalatha & Anr[2009 (2) SCC 409], the Hon'ble Supreme Court of India held that, "7 By reason of the Cwil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under "Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial." The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefore are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial." In this case, the trial has already been commenced before a really long time and the cross examination of the plaintiff is over and no more further evidence was recorded on the side of the plaintiff. In the case of M Revanna Vs Anjanamma (Dead) by L.Rs and Ors [MANU/SC/0200/2019], the Hon'ble Supreme Court of India has held that, "Having

regard to the totality of the facts and circumstances of the case, we are of the considered opinion that the application for amendment of the plaint is not only belated but also not bona fide, and if allowed, would change the nature and character of the suit. If the application for amendment is allowed, the same would lead to a travesty of justice, inasmuch as the Court would be allowing Plaintiff Nos. 1 to 5 to withdraw their admission made in the plaint that the partition had not taken place earlier. Hence, to grant permission for amendment of the plaint at this stage would cause serious prejudice to Plaintiff No. 6/Respondent No. 1 herein.” Therefore, as per the well settled law, the plaintiff herein is not entitled to seek amendment of the plaint and cause material alteration to the claim and the issues after commencement of trial and completion of evidence on the side of the plaintiff.

4. Point for consideration:

Whether the petition is to be allowed or not?

5. Heard both side. Petition, counter and available records were perused.

The petitioner is the 1st plaintiff in the suit. The petitioners have filed this petition under Order VI Rule 17 of CPC. The petitioners have alleged that, they have filed the suit for preliminary decree for partition and consequential relief of permanent injunction. The petitioner further alleged that, their erstwhile counsel had mentioned the suit properties, as item Nos 1 to 5 in the plaint, in which the Item No. 1 and 2 had had arrived with error and mistake, without properly verifying the sale deed dated 21.11.1986, and rectification deed dated 17.12.1986. Originally the plaintiff's father

Late Jayavel and mother Deivanai Ammal had jointly purchased the a site with two huts measuring to an extent of 1 Ground and 495 Sq.ft., or 2895 Sq.ft., under the sale deed. Thereafter, the Mr.G.Rajamanicam and others had executed a rectification Deed dated 17.12.1986, and thereby rectified the schedule of property. The petitioners are undertake to pay additional court fee if any in allowing this petition. Apart from that, there is a typological error in Door Number and Survey Number Item No.3 of schedule of the property. The above said mistake and errors were only identified by the petitioner's newly appointed counsel after perusing the entire title documents. The proposed amendment would not change the nature and cause of action of the suit. Hence, the petition has to be allowed. Otherwise the petitioners will be put to irreparable loss and hardship.

6. On the other hand the respondents have contended that, the trial has been commenced and the evidence of the side of the plaintiff on 24.01.2024, no explanation has been given as to why is not pleaded at an earlier point of time. The plaintiff had already amended the plaint in the year 2022 to substitute 3rd defendant with her legal heirs and after that the trial has been commenced. The amendment application are not new and the petitioners cannot plead ignorance of the facts. The petitioners are trying to bring the material bearing and will alter the suit. No valid reasons adduce in the plaint for commencement of the trial. The petitioners are attempted to introduce new plea which should not be entertained. Hence this petition has to be dismissed with the cost of the respondents.

7. On perusal of the available records it is seen that, the petitioner / plaintiff have filed the suit for preliminary decree of partition of the property in the schedule by metes and bounds and allot 7/10 shares in item No.1 of the schedule mentioned property and allot 2/5 shares in item No.2 to 5 of the schedule mentioned property to the plaintiffs and their respective shares and for permanent injunction restraining the defendants, their men, agents, servants or anybody claiming under or through him from any manner for disturbing the plaintiffs' peaceful enjoyment of the schedule mentioned properties without due process of law and for cost and Pw1 was examined and the suit was posted for further plaintiff side witness and under such circumstances the petitioners have come forward with this petition. The petitioners seeking amendment pertaining to the extent in suit item No.1 and 2 by virtue of the sale deed dated 21.11.1986 and rectification deed dated 17.12.1986 and amendment of Survey No and Door No in Item No.3. The reason alleged by the petitioners / plaintiff is that their erstwhile counsel had committed an error and mistake while preparing the plaint and he failed to peruse the documents properly. Further they have stated that, their present counsel had only noticed such mistakes and errors and the petitioners were came to know about the said defects only through their present counsel. The petitioners have already marked the alleged documents during the examination of Pw1. On perusal of the said deeds it is clear that, the measurements are found place in the said documents. Admittedly Pw1 was cross examined in full. However on perusal of available records it is seen that, there is only change in the

measurements that too as per the document. Hence this court concludes that, the proposed amendment is not changing the cause of action or nature of the suit and since the suit is for the relief of partition the parties would get their proportionate shares as per the documents only. Furthermore this court concludes that, the petitioner has not bringing the new set of case by way of these proposed amendment. The previous amendment was only a consequential amendment and hence this court concludes that, the respondents / defendants shall not be affected in allowing this application. Furthermore this court concludes that, if the amendment petition is not allowed the parties would suffer while getting their share in final decree application. Hence for the interest of justice this court is inclined to allow the petition.

In the result, this petition is allowed. No cost.

Dictated to the Stenographer, transcribed by her in the computer, corrected and pronounced by me in court on this 1st day of February 2025.

XVII Additional Judge.
XVII Additional & Sessions Court

Petitioner side witness and documents : Nil

Respondents side witness and documents : Nil

XVII Additional Judge.
XVII Additional & Sessions Court.

Draft/ Fair Order
I.A.No.7/2024
in
O.S.No.4197/2019
Dated : 01.02.2025
XVII Additional Court