

**A.No.81 of 2021
in
C.S.No.276 of 2013**

P. RAJAMANICKAM.,J.

This application has been filed by the defendant under Order XIV Rule 10 (11) of O.S.Rules r/w. Order VI Rule 17 of CPC seeking leave of the court to amend the plaint as mentioned in the schedule of the said application.

2. In the affidavit filed in support of the said application, the applicant/defendant has stated that the above suit has been filed by the respondent for partition of the suit properties into two equal shares and allot one such share to her. Further, it is stated that the name of the defendant is 'Dr.Patabi Raj Seetharaman', but in the short cause title and also in the long cause title, his name has been wrongly mentioned as 'Mr.Pattabi Raj Seetharaman' and that the spelling mistake has to be corrected. It is also stated that in the plaint, some of the properties were omitted to mention and the said properties have to be included and they should be subjected to the partition and hence, the defendant has filed the present application to amend the plaint.

3. The learned counsel for the respondent/plaintiff has made an endorsement that he is not filing any counter and he will argue with regard to the maintainability of this application. Accordingly, he has been permitted to argue.

4. Heard Mr.Anirudh Krishnan, the learned counsel for the applicant/defendant and Mr.Avinash Wadhwani for Mr.V. Raghavachari, the learned counsel for the respondent/plaintiff.

5. The learned counsel for the applicant/defendant has submitted that the applicant is a Surgeon and his name is actually spelt as 'Dr.Patabi Raj Seetharaman' but his name has been wrongly mentioned in the short cause title and also in the long cause title of the plaint as 'Mr.Pattabi Raj Seetharaman' and hence the same has to be corrected. He further submitted that the father of both the parties namely Late Shri Pattabiraman got shares in the Companies and also immovable property at Madurai, but in the plaint, the said properties were not included. He further submitted that in a partition suit, both the plaintiff and defendant are considered to be on the same pedestal to seek for a decree and as such, the amendment of the plaint in the partition suit can be

allowed at the instance of the defendant. He further submitted that in order to avoid multiplicity of the proceedings, this application may be allowed.

6. In support of his contention, the learned counsel for the applicant has relied upon the following decisions:

1. *A.A. Ganga and other Vs. A.R. Usha and Others* 2010 (4) CTC 331

2. *Solavaiammal and Others Vs. Ezhumalai Gounder and Another* 2011-5-L.W. 859 (DB)

7. Per contra, the learned counsel for the respondent/plaintiff has submitted that the judgments which are relied upon by the learned counsel for the applicant/defendant were subsequently considered by another Division Bench of this Court in ***O.M.Subramanian and Others Vs. N. Palani* (OSA.No.46 of 2017 on the file of this court dated 08.08.2017)** and held that if there is a contestation with regard to whether or not a particular property is partible, then, in a partition suit, amendment cannot be ordered at the behest of the opposite party. He further submitted that in ***R.Srinivasan and Others Vs. Rajesh* (CRP.No.4697 of 2013 dated 15.02.2017)** also, a learned Single Judge of this court after referring to the decision in ***A.A. Ganga and other Vs.***

A.R. Usha and Others, (cited supra), has held that only after establishing the fact that the properties sought to be included are joint family properties, the defendant can seek amendment of the plaint. He further, relying upon the decision of the High Court of Telangana and Andhra Pradesh in **Bollineni Srihari Rao Vs. Manukondur Ramadevi and others**, **Manu/HY/0320/2018 : 2019 (1) ALD 608** contended that since the defendant is not an author of the plaint, he cannot be permitted to amend the plaint even in the partition suit. If one party is permitted to amend the pleadings of the opposite party that would lead to Chaotic and complex situations and multifarious consequences. He further submitted that the petitioner himself has admitted in his affidavit that he had visited the Madurai property just once in his life time and as such, he has to prove the very existence of the said property and without producing any material before the court, he cannot seek amendment of the plaint. Therefore, he prayed to dismiss this application.

8. In **Ramasamy Vs. P Marappan, 2005 (3) MLJ 663**, the Hon'ble Mrs. Justice R. Banumathi (as she was then) has held that under Order VI Rule 17 of CPC, a party can seek to amend “his pleadings” in plaint or written statement, but a party cannot seek to amend the pleadings of his opponent.

Subsequently, in ***A.A.Ganga and another VS. A.R. Usha and Others*** (cited supra), Hon'ble Mr.Justice R.S.Ramanathan has took a contra view. Hence, in ***Solavaiammal and Others Vs. Ezhumalai Gounder and Another*** (cited supra), a question was referred to a decision of the Division Bench of this court as to whether under Order VI Rule 17 of CPC, amendment of the plaint in a partition suit can be allowed at the instance of the defendants? The Hon'ble Division Bench has held that in a suit for partition, application for amendment at the instance of either party to the suit is maintainable under Order VI Rule 17 of CPC. But in paragraph No.19 of the said decision, the Hon'ble Division Bench has observed as follows:-

“19. However, in an application for amendment, the Court has to prima facie satisfy itself as to whether the properties are available for partition or not, as a detailed adjudication on the claim is improper. If there is a dispute over the inclusion of properties by the plaintiff contending that those properties are not available for partition, the Court is certainly entitled to reject the application for amendment on that ground. In such event, the only course open to the defendant is to file a suit for partition by including those properties. As we have been called upon to answer the question as to whether the application under Order VI, Rule 17 of the Civil Procedure Code seeking for amendment of the schedule to the plaint in a partition suit at the instance of the

defendant is maintainable or not, we answer the said issue by holding that while considering such an application, it is for the Court to decide on the facts of each case. The reference is answered accordingly.”

9. From the aforesaid decision, it is clear that while considering the application filed by the defendant for amending the plaint, the court has to prima facie satisfy itself as to whether the properties are available for partition or not, as a detailed adjudication on the claim is improper. In this case, the defendant has not filed any affidavit stating that the Madurai property is available for partition. On the contrary, the power agent of the defendant has filed supporting affidavit. In the said affidavit, the power agent has stated that he visited the said property just once in his lifetime and he did not know even the description of the property. Further, he has not produced any material with regard to the availability of the said property for partition. He not even whispered that the said property is in whose possession. Therefore, in view of the aforesaid Division Bench decision, this application is not maintainable.

10. In ***O.M.Subramanian and Others Vs. N. Palani*** (cited supra), another Hon'ble Division Bench by referring to paragraph No.19 of the decision in ***Solavaiammal and Others Vs. Ezhumalai Gounder and Another***

(cited supra) has held that if there is a contention with regard to whether or not a particular property is partible, then, even in partition suit, amendment cannot be ordered at the behest of the opposite party.

11. In ***R.Srinivasan and Others Vs. Rajesh*** (cited supra), a learned Single Judge of this court has held that it is always open to the defendant to establish in the trial that the properties to be included in the plaint are joint family properties and the suit is bad for partial partition, and without exercising such option, he cannot seek for amendment of the plaint.

12. In ***Bollineni Srihari Rao Vs. Manukondur Ramadevi and others***, (cited supra), the High Court of Telangana and Andhra Pradesh has held in paragraph No.12.3 and 12.4 as follows:-

“12.3. It is indisputable that the plaintiff is entitled to design his/her pleadings and make averments in the plaint according to his/her stand and in support of the reliefs claimed in the plaint and that, therefore, at the instance of a defendant, the plaint and/or the schedule of the plaint cannot be permitted to be amended as a defendant is not the author of the plaint and the plaint schedule. It is pertinent to note that second plaintiff, who is the mother of the parties, has not sought amendment of the plaint to include the subject two items of property (items 18 & 19) to the

schedule of the plaint. Though in a suit for partition, every party is a plaintiff, on that score one party cannot be permitted to amend the pleadings of the opposite party as such a course would lead to chaotic & complex situations and multifarious consequences. Take a case where one of the defendants in a suit for partition intends to claim that one of the items included in the schedule of the plaint is his separate property and that the said item of property is not liable for partition; in such a case, he cannot seek for deletion of the averments in the plaint related to the said item of property and also the deletion of the said item of property from the schedule of plaint. He can only file a written statement with necessary averments in support of his claim & defence and pray for the dismissal of the suit insofar as the disputed item of property. Take another case where in a suit for partition, one defendant who wants an item of property to be deleted from the schedule of the plaint seeks amendment of the plaint whereas another defendant wants the said item to be retained in the schedule of the plaint; in such a case there will be a stalemate/impasse as the Court cannot pre-judge the issue with regard to the said item of property; the said issue cannot be resolved, except after the conclusion of trial. Therefore, in all such and other like cases, the only course open to the contesting defendant is to design the pleadings in his/her written statement to suit his/her claim or defence, but such a defendant cannot seek amendment of the plaint and/or the plaint schedule. Such defendant also can, if necessary, seek amendment of his/her written statement. Any such application for amendment of written statement, if necessary and if filed, will, for sure, be decided on its merit.

Therefore, the contention that in a suit for partition every defendant is also a plaintiff and hence, any defendant can seek the amendment of the plaint and/or the plaint schedule is a misconceived and untenable contention.

12.4 Even the High Court of the Madras in the above said decision, which was also referred in the impugned order of the trial Court, did not lay down a principle that a plaint can be permitted to be amended at the instance of the defendant. The question referred for a decision of the Division Bench of the Madras High Court was - 'Whether the amendment of plaint in a partition suit can be allowed at the instance of the defendants?' In the operative portion of the judgment, the Madras High Court held as follows: - 'As we have been called upon to answer the question as to whether the application under Order VI, Rule 17 of the Civil Procedure Code seeking for amendment of the schedule to the plaint in a partition suit at the instance of the defendant is maintainable or not, we answer the said issue by holding that while considering such an application, it is for the Court to decide on the facts of each case. The reference is answered accordingly.' This decision, in the considered view of this Court, has no persuasive value either."

But the aforesaid decision will not have binding precedent for this court.

13. As already pointed out even by applying the principles laid down by the Division Bench of this court in *Solavaiammal and Others Vs. Ezhumalai Gounder and Another* (cited supra), this application is not maintainable.

14. In the result, this application is dismissed. No costs. In so far as the prayer for amendment of short cause title and long cause title of the defendant is concerned, the plaintiff has to take steps to amend the plaint. The applicant / defendant will be at liberty to file an application to file a counter claim including the properties which now the applicant sought to include in the plaint. The application, if any, will be moved by the defendant within a period of two weeks from the date of receipt of copy of this order.

15. The learned counsel for the respondent/plaintiff has submitted that if any such application is filed, he will not oppose the said application., however, an opportunity may be given to him to file a reply statement for the proposed counter claim. The aforesaid submissions are recorded.

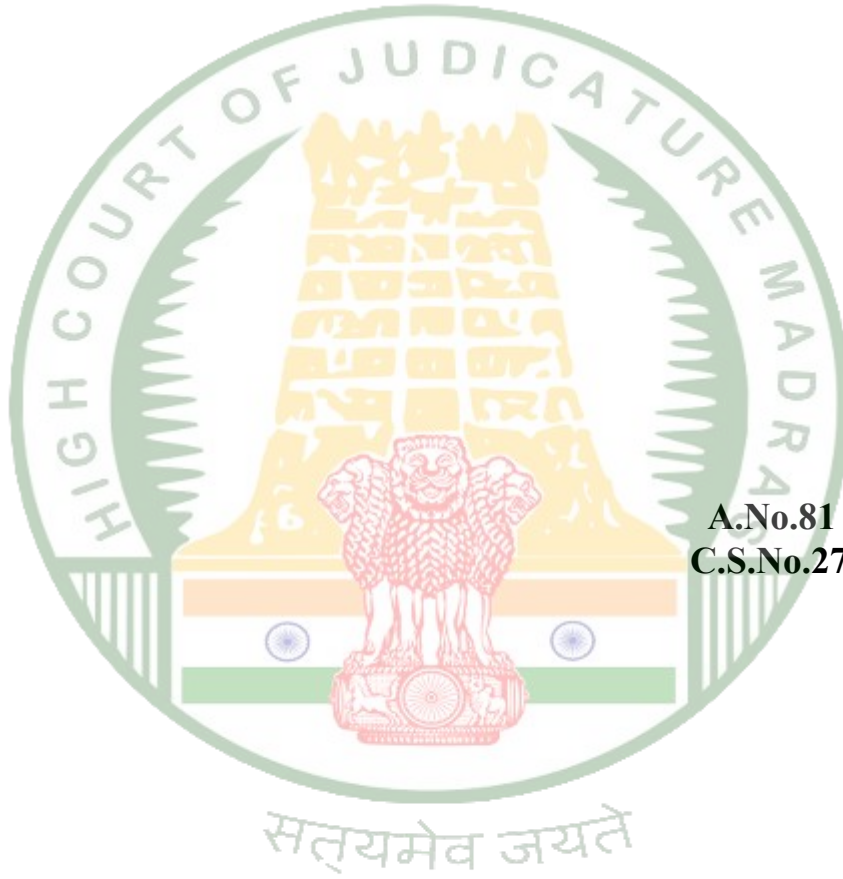
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