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A.No.1326 of 2021
in C.S.No.160 of 2015

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Reserved on : 23.11.2021
Pronounced on : 22.12.2021

N.SESHASAYEE, J.,

The plaintiff has filed the present application to make certain amendments and also to include certain item of property to be inserted in 'B' schedule of the plaint.

2. The suit is laid for partition. Introducing the back ground facts, the learned counsel for the applicant/plaintiff submitted:

- Certain Sriramulu Chetty, Anamtham Chetty and Vummudi Anjenayalu Chetty were brothers. Sometime in 1959, they entered into a partition under a registered document, whereunder some properties were allotted to the share of Anamtham Chetty.
- Subsequently on 01.04.1964, the said Anamtham Chetty and his son, the 1st defendant herein, entered into a registered partition in which the property now sought to be introduced by way of amendment to the plaint was allotted to the share of Anamtham Chetty.



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- The plaintiff is the grandson of Anamtham Chetty through his daughter Hamsa. Anamtham Chetty had died in 1982 and the plaintiff's mother died in 1984. Other than the plaintiff's mother and the first defendant, Anamtham Chetty had two other daughters.
- The suit is essentially laid as concerning the property allotted to the share of Anamtham Chetty in the partition dated 01.04.1964. Plaintiff claims that the property that was allotted to the share of Anamtham Chetty in the partition would be his personal property in terms of the ratio in *The Additional Commissioner of Income Tax, Madras Vs. P.L. Karupan Chettiar* [AIR 1978 Mad 1(FB)] and *The Commissioner of Wealth Tax Vs. Chander Sen* [(1986) 3 SCC 567], that his mother is Class I heir as per the First Schedule to Hindu Succession Act, that he is entitled to a share by the combined operation of Secs. 8 and 15 of the Hindu Succession Act, 1956. In other words, inasmuch as the plaintiff's mother is a class-1 heir of Anamtham Chetty, such share that the plaintiff's mother had in them would devolve on the plaintiff.
- The plaintiff claims that one of the items of the property allotted to



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the said Anamtham Chetty in 1964, was omitted to include in the plaint and it is now sought to be included Vide the present application.

3. Mr.K.V.Babu, the learned counsel for the defendants 1 to 4 submitted that the strategy of the plaint hides the fact that the applicant is keen to open a pandoro box as per Section 6 of the Hindu Succession Act as amended Vide Central Act 39 of 2005 . He further submitted that such property allotted to Anamtham Chetty in the partition deed dated 01.04.1964 itself would constitute the joint family property and hence Section 6 had to apply. Inasmuch as the plaintiff's mother had died prior to the Act coming into force of Act 39 of 2005, and hence he would not be entitled to a share, in view of the ratio of this Court in ***R.Muthulakshmi Vs. Valliammal*** [2021-3 L.W.955]. The learned counsel also relied on ***K.Pattammal Vs. P.K.Kalyani*** [2002 (1) HLR 322 : MANU/TN/1671/2001].

4.1 The plaintiff's case is straight-forward that a certain Anamtham Chetty had a son and three daughters, of who the plaintiff's mother was one. His



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only son is the first defendant in the suit. It is also his case in the plaint that Anamtham Chetty and the first defendant had entered into a partition in 1964, and certain items of properties were allotted to Anamtham Chetty, of which, the property now sought to be introduced is 'B' schedule property is one. According to the applicant when Anamtham Chetty died succession opens under Section 8 of the Hindu Succession Act read with the First schedule to it, and the plaintiff's mother Hamsa was entitled to $\frac{1}{4}$ share. It is his further case that he was a minor when Anamtham Chetty died, and on he attaining majority he enquired the details of the properties of Anamtham Chetty with the first defendant, but the first defendant did not share any information. The plaintiff further proceeds to state that he collected the information to enable him to file the suit.

4.2 The plaintiff now seeks introduction of 'B' schedule property with a claim of $\frac{1}{4}$ th share therein. Turning to the amendment now sought, the plaintiff seeks deletion of paragraph No.11 of the plaint. If paragraph No.11 as now exists is perused, it gives certain vague information. Now the plaintiff seeks to replace that with paragraph Nos.11(A) to 11(D), all of



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which detail specific information, and how the plaintiff is entitled to 1/4th share in the property. They do not alter the character of the suit but provide clarity and completeness to the allegations in the plaint.

5. Turning to the defendants' objection, they all seems to have been spun around the application of Act.39 of 2005, but, this Court does not find anything in the amendment now sought. At any rate, amending the pleadings is not equivalent to passing a decree. Therefore, the law that may apply and the share to which the plaintiff may be entitled to and the character of the property in relation to which partition is sought have to be decided post the trial of the suit. Like a professional chess player, the counsel for the defendants seems to anticipate certain moves from the plaintiff and seems to react, but this Court spots no need for the defendants to become panicky now. For the present, to contemplate any eventuality on which the counsel for the defendants is apprehensive seems to be an over reaction.



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6. In conclusion, this application is allowed. The plaintiff is required to carry out the amendment within two weeks from today after excluding the Christmas Holidays.

22.12.2021

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Pre-delivery order in
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