

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.03.2021

Delivered on : 19.05.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.Nos.2178 & 2507 of 2020

in

C.S.No.290 of 2003

A.Nos.2178 & 2507 of 2020

1.S.Rajarathinam

2.Revathi

....Applicants

Vs.

Dr.S.Navarathinam (Died)

1.N.Rathnakumar

S.Yogarathinam (Deceased)

S.Selvarathinam (Deceased)

2.Y.Lakshmi

S.Prema (Deceased)

3.S.Saravanan

4.Thangakumari

5.Pallakudurai

6.Shanmugadurai

7.Ponnudurai

8.ArulduraiRespondents

Prayer in A.No.2178 of 2020: Judge's Summons Filed under Order XIV Rule VIII of the O.S. Rules read with Section 151 of CPC, to permit the 2nd defendant to mark the petition mentioned documents through DW1.

Prayer in A.No.2507 of 2020: Judge's Summons Filed under Order XIV Rule VIII of the O.S. Rules read with Read with Order VIII Rule 1 of CPC, to permit the defendants 2 and 5 to file additional written statement in C.S.No.290 of 2003.

For Applicants : Mr.P.Valliappan

For Respondents : Mr.T.K.Bhaskar

JUDGMENT

The 2nd and 5th defendants have filed the above applications in the suit C.S.No,290 of 2003.

2. A.No.2178 of 2020 is filed seeking permission for the 2nd defendant to mark the petition mentioned documents. The petition mentioned documents were; (a) Partnership Deed dated 15.02.1979, (b) Income Tax Returns for the years 1978 - 1979, 1979 - 1980, 2018 - 2019 and 2019 - 2020.

3. A.No.2507 of 2020 is filed seeking permission to file an additional written statement.

4. Before traversing through the contents of the two applications it is necessary to briefly narrate the pleadings of the plaintiff and the defendants in the suit C.S.No.290 of 2003, in which these two applications have been filed.

5. The suit C.S.No.290 of 2003 was originally filed by the deceased 1st plaintiff seeking partition of his 1/4th share in the suit A and C schedule properties, for appointing a Commissioner to take an inventory of the properties mentioned in schedule A and C, for an injunction restraining the defendants from interfering with the possession and enjoyment of A and C schedule properties by the plaintiffs and defendants 1 to 3 and for a receiver to take possession of schedule A and C properties and deposit the Income therefrom to the credit of the suit.

6. The 1st plaintiff in his plaint would state that he and the defendants 1 to 3 are the sons of one Shanmugasundara Nadar. The defendants 4, 5 and 6 are the wives of defendants 1, 2 and 3 respectively. The 1st plaintiff would contend that their father Shanmugasundara Nadar was carrying on business at Srilanka for over 50 years where he was doing business in Hardwares, Textiles and Provisions Stores. Out of these business the said Shanmugha Sundaram Nadar had earned considerable money which he

invested in the purchase of extensive property at Tiruchendur and at Chennai.

7. The 1st plaintiff would contend that he and defendants 1 to 3 along with their father had lived as a Joint Hindu Undivided family. The properties at Chennai were purchased from out of the joint family funds jointly in the names of the 1st plaintiff and defendants 1 to 3.

8.The 1st plaintiff would submit that first of such purchase was Door No.20/1, Ranganathan Street, T.Nagar, under a registered sale deed dated 24.02.1973. This property was later exchanged for Door No.2/19 which belonged to T.S.Ratnam Nadar. The next property that was purchased jointly in the name of 1st plaintiff and the defendants 1 to 3 was Door No.45, Ranganathan Street, under a registered sale deed dated 17.04.1982.

9.Thereafter, Door No.14, Natesa Iyer Street, T.Nagar was

purchased in the name of 1st plaintiff and defendants 1 to 3 under a registered sale deed dated 19.09.1985. The 1st plaintiff would contend that he had taken to medicine and was not directly involved in the family business. However, the defendants 1 to 3 were taking care of his interest in the business and the fact that he was involved in the business is evident from the fact that he had executed a mortgage deed for the business of Saravana Stores in favour of the Tamilnadu Merchantile Bank.

10.The 1st plaintiff would submit that till 1997 all of them living jointly and it was only in 1997 that the 1st plaintiff had shifted his residence to Ekkatu Thangal. He would submit that even when the brothers were living jointly at Rathna Street they never shared a common Kitchen. Each of the brother's portion was treated as a separate unit. The 2nd defendant was taking care of the lands at Tiruchendur. It is also the case of the plaintiff that the spouses of defendants 1 to 3, namely, defendants 4 to 6 were inducted as partners only as name lenders, since the 1st plaintiff

who was a medical practitioner was prohibited from carrying on business.

11.The 1st plaintiff would further submit that the A Schedule property consist of properties which were jointly purchased by him and the defendants 1 to 3 held for their benefit. The 1st plaintiff would submit that he does not have details of all the properties situate at Tiruchendur and he had reserved his right to include the same as and when he get the details of the said properties. In the year 1999, Shanmugasundara Nadar had died and discussions were held for partition of property. The plaintiff would submit that he was entitled to the shares in the businesses being run in the name and style of Saravana Stores, Saravana Metals, Shanmuga Textiles and Shanmuga Stores.

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12.All of a sudden the 1st plaintiff had received a copy of the notice dated 12.12.2002 issued on behalf of defendants 1 and 2 along with a reply dated 14.12.2002 issued by T.S.Rathnam Nadar.

Therefore, the plaintiff vide his letter dated 25.12.2002 had called upon the defendants 1 to 3 to furnish the accounts in respect of the joint family properties and business. However, there was no response from the defendants. According to the 1st plaintiff the defendants are colluding to exclude the 1st plaintiff from the properties and the businesses. Therefore, the 1st plaintiff was constrained to file the suit in question.

13.The defendants 1 and 2 had jointly filed their written statement inter alia contending that the money for the purchase of the properties and the business did not come from any joint family nucleus. The 1st defendant had come down to Chennai in the year 1970 to make his fortune. He had opened a shop in the name of his father and called it Shanmuga Stores at Ranganathan Street. At that point of time the 1st plaintiff was studying in their native place and had not evinced any interest in business. The 3rd defendant was 17 years old and he and the 2nd defendant had come over to Chennai and started helping the 1st defendant. The father never

participated in the business started by the first defendant.

14.In fact, the consideration for the purchase of Door No.20/01 in the year 1973 was made only by the 1st defendant. However, since he was the eldest member of the family and keeping the interest of his brothers at heart he had included them as purchasers. However none of the others had contributed for the purchase. They would further contend that in the year 1979, the 1st defendant along with defendants 2 and 3 jointly started the business Saravana Stores. From out of the Income from this venture they had expanded into other businesses and had also inducted defendants 4 to 6 as partners. The 1st plaintiff was not included in any of these ventures as he had neither contributed money nor put in any physical exertion in the business.

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15.The defendants 1 and 2 would further submit that on 18.09.2002, the defendants had entered in the family arrangement which was necessitated on account of the children of defendants 1

to 3 having grown up and their entry into the businesses. The 1st plaintiff is very much aware about this family arrangement. In fact the 3rd defendant had filed C.S.No.943 of 2002, which is pending on the file of this Court for giving effect to the family arrangement. That apart, defendants 1 and 2 had also filed C.S.No.36 of 2003 as per the family arrangement. This suit was compromised and the compromise decree was passed on 28.02.2003. The 1st plaintiff has no right to these properties and this is clearly evident from the fact that pending the suit the 1st plaintiff had executed a release deed in respect of items 3, 4 and 11 of the A Schedule Property.

16.The defendants 1 and 2 would contend that the businesses were the exclusive businesses of the respective partners. In fact, their father Shanmugasundara Nadar who was alive then had not questioned any of this purchase or forming of the partnership in the name of his sons. The defendants would submit that the properties are not ancestral properties but are the properties acquired out of self earning of the 1st defendant along with other defendants. The

father had no business in Chennai and nor had he purchased property here. However, the defendants 1 and 2 would admit that the plaintiff is entitled to a share in the properties situate at Tiruchendur which is the exclusive properties of the father.

17. Pending the suit the 1st defendant and the 3rd defendant had died and their legal heirs have been brought on record as defendants 7 to 12 in the above suit.

18. When the matter was pending the cross examination of the D.W.1, the defendants 2 and 5 have come forward with these two applications. Let us consider the contents of the affidavit as well as counter in each of these application separately.

19. **A.No.2178 of 2020**: The 2nd defendant has come forward with this application stating that during his cross examination as DW1 the plaintiff's counsel had raised several queries with reference to Partnership as well as the Income Tax

Returns of the Partnership Deed and had asked the 2nd defendant, if he would be in a position to produce these documents.

20. The 2nd defendant would contend that after frantic efforts he had come across the petition mentioned documents. He would submit that the documents have to be received as questions have been raised with reference to these documents and further the 2nd defendant as D.W.1 had undertaken to produce these documents.

21. In his counter the 2nd plaintiff / 1st respondent would submit that the same is highly belated and that apart the suit is pending trial and at this juncture the defendants 2 and 5 cannot be permitted to produce these documents. He would further submit that no cause of action has been made out for allowing the said application. He would further submit that the documents can be filed only after cross examination is concluded and on an application being taken out for reopening and recalling the evidence of D.W.1 and not while the cross is under way.

22.A.No.2507 of 2020: This application has been filed by defendants 2 and 5 seeking leave to file an additional written statement. In the additional written statement, the 2nd defendant would seek to include a pleading that the suit should fail on account of non-joinder of necessary parties. They would contend that the daughter of the late Shanmugasundara Nadar, who died on 23.07.2019 had not been impleaded as a party to the suit though the plaintiff has taken a plea that the suit properties are ancestral property.

23.In the affidavit filed in support of the said petition, the 2nd defendant would contend that initially they were advised to refute the plaint allegations since their specific stand was that the suit property belonged to them exclusively and that the plaintiffs have alleged that the suit property are ancestral property. The 2nd defendant would therefore submit that they should now be permitted to file this additional written statement to bring to the

notice of this Court that there is a non-joinder of necessary parties besides other grounds.

24.The 2nd plaintiff has filed a counter once again contending that this application for filing the written statement is highly belated. They have extracted the various dates when the suit was posted after the framing of issues by this Court. These dates are hereinbelow extracted:

<i>Sl.No</i>	<i>Date</i>	<i>Event</i>
1	13.06.2014	Issues framed by this Hon'ble Court
2	03.03.2016	Additional issue framed by this Hon'ble Court
3	11.08.2016	Chief examination of P.W.1
4	19.03.2018	Cross examination by counsel for defendants 6 to 8
5	23.03.2018	Continuation of Cross examination by counsel for defendants 6 to 8
6	26.03.2018	Continuation of Cross examination by counsel for defendants 6 to 8
7	27.03.2018	Continuation of Cross examination by counsel for defendants 6 to 8
8	28.09.2018	Continuation of Cross examination by counsel for defendants 6 to 8
9	13.12.2018	Further chief examination of P.W.1
10	07.03.2018	Cross examination by counsel for

<i>Sl.No</i>	<i>Date</i>	<i>Event</i>
		defendants 2 and 5
11	19.06.2019	Continuation of Cross examination by counsel for defendants 2 and 5
12	02.07.2019	Continuation of Cross examination by counsel for defendants 2 and 5
13	13.09.2019	Chief examination of D.W.1
14	02.12.2019	Cross examination of D.W.1 by plaintiff's counsel

The second plaintiff would also contend that the original written statement itself was filed with a delay of 3683 days.

25.While so, the present application is filed when the plaintiff's evidence has been concluded and the defendants evidence was underway. The application is totally bereft of any reasons for the delay and for filing the said application.

26.Mr.P.Valliappan, learned counsel appearing on behalf of defendants 2 and 5, at the outset would submit that no prejudice is likely to be caused to the plaintiffs if these applications are ordered. He would submit that the suit is one for partition and

therefore all the persons who are entitled to the share in their father's property have to made parties to the suit. He would submit that the sister of the 1st plaintiff and defendants 1 to 3 is also entitled to share in the suit properties. This defense has not been raised in the original written statement since the main plea of defendants 1 and 2 is that there is no ancestral nucleus for the purchase of the suit schedule properties and that it is the exclusive properties of defendants 1 to 3.

27.Be that as it may, he would submit that in the event of the Court coming to the conclusion that the properties belong to the father Shanmugasundara Nadar then the sister would also be entitled to a share in the property. Therefore, there is necessity to include this as a defense in the form of additional written statement. He would submit that no prejudice whatsoever is going to be caused to the plaintiffs if defendants 2 and 5 are permitted to file an additional written statement.

28.As regards A.No.2178 of 2020 the learned counsel would submit that the documents that are sought to be produced are only documents which the learned counsel for the plaintiffs has asked the plaintiff to produce during the cross examination. Further, the production of these documents does not alter the defense in the original written statement. The defendants have clearly pleaded that the partnership firm had been formed in the year 1979 and that they have since been assessed to Income Tax. The pleadings that have been taken as early as in the year 2013 is sought to be proved through these documents and therefore once again no prejudice whatsoever would be caused to the plaintiffs. In support of the arguments, he had relied on the following Judgements:

(i) ***AIR 1953 Assam 193*** - Chandra Mohan Saha and another Vs. Union of India and another.

(ii) ***Volume 85 Law Weekly 941 (DB)*** - T.Panchapakesan and others vs. Peria Thambi Naicker and others.

(iii) ***Volume 100 Law Weekly 436 (DB)*** - A.Ramachandra Pillai Vs. Valliammal (died)

(iv) **1999-1-Law Weekly 171** - Sabasthi Nadar Vs. Savurimuthu Nadar and another.

(v) **2001-1-Law Weekly 865** - Kaliasammal Vs. Karuppan and two others.

(vi) **2009 (3) CTC 760** - Balamani and another Vs. S.Balasundaram

(vii) **2010 (4) CTC 640** - Venkataramana and others Vs. N.Munuswamy Naidu and others.

(viii) **2020 (1) MWN (Civil) 708 (Mad)** - M.Ramasamy Vs. M.R.Vijayan.

(ix) **2020 (2) MWN (Civil) 82** - Zaibunissa Begum and others Vs. Haseena Begum

(x) **2013 (1) MWN (Civil) 549** - Sathiavani Vs. Krishnaradjou (deceased) and others.

(xi) **2020 (5) CTC 302** - Vineeta Sharma Vs. Rakesh and others

(xii) **2017 (3) CTC 89** - Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal

(xiii) **2019 (3) MWN (Civil) 431** - Jagdish Prasad Patel (Dead) and another Vs. Shivnath and others.

(xiv) **AIR 2009 SC (Supp) 2029** - Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and others.

(xv) **2010 (5) CTC 198** - S.Sathish and another Vs. Dr.Sumathi and others.

(xvi) **2014 (3) MWN (Civil) 285** - Muthuramu and another Vs. A.Muthulakshmi and another.

(xvii) **2016 (4) CTC 750** - Devendran and others Vs. P.V.Palani

(xviii) **2018 (6) CTC 273** - Valli and another Vs. Kandasamy

(xix) **2020 4 CurCC(SC) 217** - Sugandhi (dead) Vs. P.Rajkumar.

(xx) **AIR 1953 Assam 193** - Chandra Mohan Saha and another Vs. Union of India and another.

29. Per contra, Mr.T.K.Bhaskar, learned counsel appearing on behalf of the plaintiffs would submit that the defendants cannot

in the midst of cross examination take out an application for receiving an additional documents. The same can be done only after the evidence of D.W.1 is complete and an application is thereafter moved to recall and re-examine D.W.1. The learned counsel would further submit that both the applications are highly belated. In so far as A.No.2507 of 2020 is concerned no reasons whatsoever has been given by the defendants 2 and 5 for the delay, particularly when the plaintiff's case is that the properties are ancestral properties. Therefore, the defendants could have well raised this plea in the original written statement. However, for reasons best known to them they have not chosen to take out this defense and that apart the sister of defendants who was very much aware about the above suit for partition had not taken any steps to implead herself. He would argue that the only attempt on the part of the defendants 2 and 5 was to protract the proceedings. He would therefore submit that both the applications deserved to be dismissed. In respect of this argument he had relied on the following Judgements:

(i) **199 (2013) DLT 221** - Scindia Potteries and Services P. Ltd., Vs. J.K.Jain and others.

(ii) **ILR (2014) 2 Delhi 1106** - Ramesh Kumar and others Vs. Sangeeta Khanna.

(iii) **Manu/Tn/2402/2005** - M.N.Sambhavi and others Vs. A.Rajagopal and others.

(iv) **2016 (6) CTC 763** - Thangammal and others Vs. Saraswathi.

Discussion:

31.The 2nd and 5th defendants have filed A.No.2178 of 2020 to mark certain documents which have been described in the petition attached there to. The 1st and 2nd defendant had filed a written statement in which they have contended as follows:

"5. In the year 1979, the first defendant along with the defendants 2 and 3 started the Partnership business in the name of "Saravana Stores" which had become an instant hit and is widely acclaimed for its

fair price and availability of all commodities in plenty.

Slowly and steadily, the 1st defendant along with defendants 2 to 6 started new businesses in partnership and by the sheer expertise and good management of the defendants 1 to 3 they were able to expand them with ease and acquire wealth and additional businesses. By God's will any new venture commenced by the 1st defendant along with defendants 2 to 6 had been successful and had earned them name and fame."

32. Therefore, even in their original written statement the 1st and 2nd defendants have taken out a defense that the partnership has been formed in the year 1979. The plaintiffs while cross examining the witness i.e., D.W.1 had put questions as to whether the business Saravana Stores was started as a proprietary concern or as partnership firm, to which an answer was given that it was started as a partnership firm with the deceased 1st and 3rd

defendants and the 2nd defendant being the partners. The witness was asked to produce a copy of the Partnership Deed which he has undertaken to produce.

33.That apart, a question was put as to the year from which he had been assessed to the Income Tax and whether the Income Tax Returns for the period would be produced, which the witness had also undertaken to so produce. The present application is only sequel to this undertaking that has been given by the 2nd defendant as D.W.1 in his cross examination. In case the documents are not produced the plaintiff would insist that an adverse inference been drawn for the non production of the said documents. Therefore, the defendants 2 and 5 should be given an opportunity to produce the same.

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34.Further, the plaintiff by producing these documents is not pleading a new case but only attempting to support the pleading taken by them in their written statement. In the Judgement

reported in **2019 (3) MWN Civil 431**, produced by the appellant the Hon'ble Supreme Court was also considering the issue as to whether additional evidence could be received by the Appellate Court in the appeal stage. The Hon'ble Supreme Court had clearly observed that only in the absence of pleading an application to receive additional evidence cannot be allowed. However, in the instant case, the suit is still pending trial and the additional documents which are sought to be filed only confirms the pleading already taken by the defendants. The defendants were not seeking to introduce a new case. In fact in the above referred case the learned Judges had accepted additional evidence filed as these documents had been referred to in the proceedings before the various authorities and did not amount to introducing a new case.

35. In the instant case a similar situation arises since the 1st and 2nd defendant in their written statement had in clear terms stated that the partnership had been formed as early as in the year 1979 between the defendants 1 to 3 and the document that is

sought to be produced is only that Partnership Deed. Further the counsel for the plaintiffs / respondents have questioned this application only on the ground of delay. However, the document is being filed as the same had been requested by the counsel for the plaintiffs during his cross examination. There is no delay on the side of the defendants. In the Judgement reported in **2017 (3) CTC 89 - Chakreshwari Construction Pvt. Ltd Vs. Manohar Lal**, the Hon'ble Supreme Court has held as follows:

"17. It is true that there was some delay on the part of the appellant in filing the applications but, in our opinion, the appellant had explained the delay. One cannot dispute that in appropriate cases, the parties are permitted to amend their pleadings at any stage not only during the pendency of the trial but also at the first and second appellate stage with the leave of the Court provided the amendment proposed is bona fide, relevant and necessary for deciding the rights of the parties involved in the lis.

18. Similarly, the law also permits the parties to file additional evidence at any stage of the trial [Order 7 Rule 14 (3)] including at the first or/and second appellate Stage (Order 41 Rule 27) with the leave of the Court provided a case is made out to seek such indulgence."

36. Therefore, in the light of the above Judgement and taking note of the fact that no new case is sought to be introduced through these documents the said application is allowed and the 2nd defendant is permitted to mark the said documents. It is needless to state that the marking of the documents would be subject to proof and relevancy.

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37. As regards A.No.2507 of 2020, this application has been filed seeking leave to file an additional written statement. The case that is sought to be put forward in the additional written statement

is that the suit is bad for non-joinder of necessary parties since the plaintiffs have taken a plea that the property are ancestral in nature. In view of the above stand taken by the plaintiffs it is imperative that their sister be brought on record. However, the defense taken by the applicants as defendants 2 and 5 is that the property is not an ancestral property but are properties which have been purchased by the 1st defendant in the names of plaintiffs and defendants 1, 2 and 3 and are the properties of the respective parties.

38.By filing this additional written statement the applicants / defendants 2 and 5 are seeking to introduce an entirely new defense. It is to be noted that the sister of the plaintiffs and defendants 1 to 3 has not sought to implead herself in the suit though the same is pending since the year 2003 and the said Selvanayagi had died only on 23.07.2019. The defendants who were aware about the case pleaded by the plaintiffs as early as in the year 2003 have not thought it fit to raise this defense in their original written statement. The suit is now in the stage of cross

examination of D.W.1, if at this stage leave is granted to receive the written statement then the plaintiffs would be compelled to take out an application to implead the said Selvanayagi's legal representatives, thereafter the newly impleaded parties would have to file their written statement additional issues need to be framed. All of this would take considerable time and the proceedings would be further protracted.

39. Considering the fact that the case of the defendants is that the property is not the property of joint family it appears to be only an attempt to protract the proceedings. Another fact that has to be taken note is that no reasons whatsoever has been given by the defendants for taking out the said application. The judgement relied upon by the defendants 2 and 5 are the cases where adequate reasons have been given for filing an additional written statement. The affidavit in the instant case is totally silent in this regard. The filing of an additional written statement is not a matter of right but should be granted only upon sufficient reasons being given for.

40. Admittedly, the original written statement has been filed after a delay of over 3683 days and the present application is filed when the defendant's witness is in the box being cross examined. I do not find any reason for allowing the said application.

41. Consequently, the application in A.No.2178 of 2020 is allowed and ordered as prayed for and the application in A.No.2507 of 2020 is dismissed. No costs.

19.05.2021

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P.T. ASHA. J,

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Pre-delivery Order in
A.Nos.2178 & 2507 of 2020 in
C.S.No.290 of 2003

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