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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 25.09.2023**

**PRONOUNCED ON : 20.10.2023**

**CORAM:**

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**Application No.2253 of 2022**
**in O.A.No.1680 of 2021**
**in C.S.No.459 of 2019**

1.T.A.Sasikala
2.A.Ananthalakshmi
3.A.Anand ... Applicants / Petitioners / Plaintiffs 1, 3 & 4

***versus***

1.The Chief Manager,
Indian Bank,
Corporate Office,
P.B.No.5555, No.254-260,
Avvai Shanmugam Salai,
Royapettah,
Chennai - 600 014.

2.The Branch Manager,
Indian Bank,
Chetpet Branch,
Chennai.



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3.The Indian Overseas Bank,
Rep. by its General Manager,
Zonal Officer,
IOB Central Office Building,
3rd Floor, No.763, Anna Salai,
Chennai - 600 002.

4.The Branch Manager,
Indian Overseas Bank,
Kilpauk Branch,
Chennai - 600 010.

5.UCO Bank,
Rep. by its General Manager,
Zonal Office,
No.328, Thambuchetty Street,
Chennai - 600 001.

6.The Branch Manager,
UCO Bank, Chetpet Branch,
779, Poonamalee High Road,
Chennai.

7.ICICI Bank,
Neyveli Branch,
Rep. by its General Manager,
5/5 Main Bazaar Street,
Neyveli Township,
Neyveli - 3.

8.The Life Insurance Corporation of India,
Rep. by its Branch Manager,
Dr.Ambedkar Road,
Neyveli - 607 803.



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9.M/s.NLC TN Power Limited,
(A subsidiary company of NLC India Limited)
A Government of India Enterprises,
AJV between NLC India Limited and
TANGEDCO
Harbour Estate,
Tuticorin - 628 004.

10.The General Manager (HR),
M/s.NLC TN Power Limited,
(A subsidiary company of NLC India Limited)
A Government of India Enterprises,
AJV between NLC India Limited and
TANGEDCO
Harbour Estate,
Tuticorin - 628 004.

11.The Regional Labour Commissioner (Central),
Near Lotus Tank,
New No.5, Old No.1A (II$^{nd}$ Floor),
Lady Doak College Road,
Chinnachokkikulam,
Madurai - 625 002.

12.T.A.Malligabai
13.T.A.Padmagandhi
14.T.A.Premakumari ... Respondents / Respondents / Respondents

15.T.A.Lalitha ... 15$^{th}$ Respondent / 2$^{nd}$ petitioner / 2$^{nd}$ Plaintiff



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**PRAYER** : Application filed under Order XIV Rule 12 of the Madras High Court Original Side Rules, praying to set aside the order of the learned Master in Application No.1680 of 2021 dated 22.04.2022.

| | | |
|---|---|---|
| For Applicants | : | Mr.N.Suresh |
| For Respondent No.1 | : | M/s.B.Leena |
| For Respondent No.2 | : | M/s.Hemalatha |
| For Respondent No.4 | : | Mr.V.Kadhirvelu |
| For Respondent No.5 | : | Mr.V.Pavankumar |
| For Respondent No.6 | : | Mr.R.Selvakumar |
| For Respondent No.7 | : | Mr.S.Vasudevan |
| For Respondent No.8 | : | Mr.S.P.Patel |
| For Respondent No.9 & 10 | : | Mr.M.Nithianandan |
| For Respondent No.12 & 14 | : | Mr.R.Harikrishnan |
| For Respondent No.13 | : | Mr.R.Saravanan |

***O R D E R***

This application has been filed by the applicants challenging the order of the learned Master in Application No.1680 of 2021 dated 22.04.2022.

**2.** The plaintiffs have filed the suit for the following reliefs:-

*"(a) to declare that the plaintiffs and the defendants 12 to 14 are entitled to share the benefits payable on the death of T.A.Balaji lying with defendants 1 to 11;*



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*(b) to declare that the plaintiffs 1 and 2 are entitled to 1/6 share each, plaintiffs 3 and 4 together entitled to 1/6$^{th}$ share and the defendants 12, 13 and 14 each entitled to 1/6$^{th}$ share in the amount payable on the death of T.A.Balaji and lying with defendants 1 to 11;*

*(c) to grant an order of permanent injunction restraining the defendants 1 to 11 from disbursing the amount lying with them and payable on the death of T.A.Balaji, excluding the plaintiffs;*

*(d) to direct the defendants to pay the cost of this suit."*

**3.** During the pendency of the suit proceedings, the plaintiffs had filed an application in A.No.1680 of 2021 to amend the plaint.

***The averments of the amendment application in brief*:-**

**4.** The plaintiffs claim 1/5$^{th}$ share for each in respect of the amounts payable on the death of T.A.Balaji. Although the amounts are lying in the hands of various defendants stands in the name of T.A.Balaji, but the source through which those amounts came to be deposited would show that they were transferred in the name of T.A.Balaji after the death of plaintiffs' grandparents.



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**4.1.** The plaintiffs' grandfather, namely T.P.Audiraj had joint account in the State Bank of India, Kanchipuram Branch in A/c.No.10943841674. On the death of T.P.Audiraj, the amounts stood in his name got transferred in the name of T.A.Balaji. In the Indian Bank also, the plaintiffs' grandparents had joint account in A/c.No.3007498042 and after the death of T.P.Audiraj, the name of T.A.Balaji was included in either or survivor account and the amounts were deposited in his account.

**4.2.** T.P.Audiraj died on 16.11.2010. On his death, the Fixed Deposits that stood in his name in the Indian Bank were transferred in the name of T.A.Balaji. So various bank accounts in which T.A.Balaji's grandparents held accounts got transferred to T.A.Balaji, after their demise. Hence, T.A.Balaji cannot be considered as a single owner of the entire amount lying in his account. On the death of the applicants' grandparents, all the applicants are entitled to their share in the properties. In order to include all these facts, the plaint has to be amended. The amendment will not change the nature of the suit but will help to adjudicate the matter between the parties amicably.



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**Counter of the 12th respondent in brief:-**

**5.** The case of the plaintiffs is that the suit properties belonged to T.A.Balaji, who was a bachelor. The plaintiffs had filed the suit claiming themselves as the class II legal heirs of the deceased T.A.Balaji. That itself would show that the suit properties are the absolute properties of late T.A.Balaji. The plaintiffs have taken a different stand by altering the very basis of the suit by way of amendment.

**5.1.** Plaintiffs raised a new plea that the suit properties do not directly belong to T.A.Balaji but they were acquired by him from his grandparents. The allegations are made just to show that there is a strong claim but in fact they are all false. The plaintiffs cannot maintain a claim over the suit properties as class II legal heirs. The plaintiffs 3 and 4 try to introduce the new character for the suit property. It is a clear case of abuse of process of law and hence, it is prayed to dismiss the application.



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**6.** The learned Master had chosen to dismiss the amendment application by observing that the alleged amendment would completely changes the nature and character of the suit as well as the suit properties.

**7.** The learned counsel for the applicants submitted that the amendment does not change the character of the suit because the suit remains to be a suit for partition only. The amendment is very simple that it will not change the cause of action. The question on taking mutually inconsistent stand will not arise, as the amendment just advances the cause of action. Merely because there was a mistake in not taking such a plea at earlier stage of filing the suit that will not estop the fourth plaintiff to take a plea in order to project that they are entitled to have a share in the suit properties.

**8.** It is further submitted that the learned Master ought to have seen that there is no mutually destructive plea and that it will not alter the nature and character of the suit. In support of his contentions, the learned counsel for the applicants relied on the decision of the Hon’ble Supreme



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Court in ***Mohinder Kumar Mehra Vs. Roop Rani Mehra*** reported in ***CDJ 2017 SC 1391***. In the said case, it is held as under:-

> *"**18**. In the facts of the present case, final determination as to whether the claim could be held to be barred by time could have been decided only after considering the evidence led by the parties. Whether plaintiff had any share in the property, which was sold in the year 2000 and what was the nature of his share and whether he can claim recovery of his share within twelve years were all the questions on which final adjudication could have been made after considering the evidence and at the stage of considering the amendment in the facts of the present case, it was too early to come to a conclusion that limitation was only three years and not twelve years as claimed by the plaintiff. The High Court on the one hand refrained from expressing any opinion and on the other hand has expressed his agreement with the view taken by the Additional District Judge rejecting the application as barred by time."*

**9.** The learned counsel for the respondents 12 and 14 submitted that the plaintiffs 3 and 4, who are the children of the deceased sister of the deceased T.A.Balaji, are not the legal heirs to inherit the self-acquired properties of T.A.Balaji. They intended to amend the plaint by falsely



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stating that the suit properties originally belonged to the grandparents of T.A.Balaji. The amendment has been filed only with an ulterior motive of escaping from the impact of the order dated 06.08.2020 made in O.A.No.723 of 2019 in C.S.No.459 of 2019, which was confirmed by the judgment made in O.S.A.No.266 of 2020 dated 04.01.2022. The plaintiffs had filed the suit by stating that they are class II legal heirs of T.A.Balaji. The plaintiffs 1 and 2 and the defendants 12 to 14 are sister's of the deceased Balaji. As per Section 9 of the Hindu Succession Act, among the heirs specified in the schedule, those in class I shall take simultaneously to the exclusion of all other heirs. Similarly, those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry and so on.

**10.** It is further submitted by the learned counsel for the respondents 12 and 14 that the surviving sisters of T.A.Balaji will exclude the plaintiffs 3 and 4 / the applicants, who are the children of the deceased sister of T.A.Balaji, and only in the view, the applicants have taken a different stand by way of an amendment that the properties are self-acquired



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properties. In support of the above contention, the learned counsel for the respondents 12 and 14 relied on the decision of the Hon'ble Supreme Court held in ***Pranab Kumar Deb Vs. Union of India*** reported in ***2013 SCC Online Megh 154***.

**11.** The learned counsel for the respondents 12 and 14 further submitted that the amendment can be allowed only, if they are necessary for determining the real question in controversy. The plaintiffs had filed a suit claiming a share in the properties of late T.A.Balaji, who is the brother of the plaintiffs 1 and 2 and maternal uncle of the plaintiffs 3 and 4. T.A.Balaji had 6 sisters including the mother of the plaintiffs 3 and 4. The defendants 12 to 14 have taken up a stand that the plaintiffs 3 and 4, who are the sister's daughters of the deceased T.A.Balaji will not be eligible to get any share in the properties as they stand in entry 4 of class II. Since the plaintiffs 1 and 2 and the defendants 12 to 14 are sisters of the deceased T.A.Balaji, they stand in second entry of class II, which would exclude the plaintiffs 3 and 4, who comes under entry 4 of class II.



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**12.** For the sake of convenience, Section 9 of the Hindu Succession Act, 1956 has reiterated as under:-

*"**9. Order of succession among heirs in the Schedule.** – Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry and so on in succession."*

**13.** The applicants / plaintiffs had filed the Original Application in O.A.No.723 of 2019 for the relief of temporary injunction against the defendants 1 to 11 from disbursing the amounts lying with them in the name of the deceased T.A.Balaji and an order has been passed by this Court on 06.08.2020. In the said order, it is held as under:-

*"**11**. A reading of the above Sections along with the Schedule to the Act would show that the applicants 1 and 2 and respondents 12 to 14 fall within the second entry of the class II, whereas, the applicants 3 and 4 fall within entry 4 of the class II. Therefore, on a reading of Section 9 it is clearly evident that applicants 3 and 4 do not succeed to the estate of the late T.A.Balaji. Therefore, the applicants 1 and 2 and respondents 12 to 14 are alone entitled to the share in the*



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*estate of late T.A.Balaji in the hands of the respondents 1 to 11 each being entitled to a 1/5 th share. In view of the above legal position the order of status quo is vacated.”*

**14.** The order was challenged by the applicants by way of filing an appeal in O.S.A.No.266 of 2020 and the same was dismissed by this Court on 04.01.2022. Hence, the learned Master has observed that the applicants had come up with a new plea, just in order to escape from the clutches of the earlier orders made in O.A.No.723 of 2019 and O.S.A.No.266 of 2020 with regard to the entitlement of the plaintiffs 3 and 4.

**15.** Had the mother of the plaintiffs 3 and 4 was alive, she would have got a share in the estates of T.A.Balaji in her capacity as class II legal heir along with the other 5 sisters. Since the mother of the plaintiffs 3 and 4 died, they fall under entry 4 of class II.

**16.** The learned counsel for the respondents 12 and 14 submitted that the position on this point has already been dealt by the High Court of



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Meghalaya in ***Pranab Kumar Deb Vs. Union of India*** reported in ***2013 SCC Online Megh 154***. In the said case, it is held as under:-

> *"**11**. The issue before us is in respect of intestate rights of heirs mentioned in class II. The petitioners who are sons of the pre-deceased brother of the deceased have pleaded that they have been arbitrarily discriminated against the living brother of the deceased. In other words, petitioners are challenging the entry IV of class II of Schedule read with second part of Section 9 of the Hindu Succession Act, 1956. Second part of Section 9 provides that "those in first entry in class II shall be preferred to those in II entry; those in II entry shall be preferred to those in the III entry; and so on in succession". The petitioners in the present case fall under entry IV of class II as they are sons of the pre-deceased brother of the deceased, while father of respondent No. 4 inherited the property under entry II of class II being living brother of the deceased. According to Mullah, a Hindu governed by Dayabhaga law is sapinda (i) of those to whom he is bound to offer a pinda while he is alive, (ii) of those who on his death are bound to offer a pinda to him, and (iii) of those who are bound to offer a pinda to the ancestors to whom he is bound to offer a pinda, those ancestors being his three immediate paternal ancestors and his three immediate maternal ancestors."*



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**17.** No doubt, the plaintiffs 3 and 4 are discriminated in the matter of succession against the living sisters of the deceased T.A.Balaji. It is further submitted by the learned counsel for the respondents 12 to 14 that the entitlements which has been already settled in an interim order will also operate as *res judicata* and hence, the applicants cannot take the very same stand once again. In support of his contention, the learned counsel for the respondents 12 to 14 relied on the decision of the Hon'ble Supreme Court in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited*** reported in ***2022 SCC Online SC 1128*** wherein it is held as under:-

> *"**70**. Our final conclusions may be summed up thus:*
> *(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.*
>
> *(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*



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*(iii) The prayer for amendment is to be allowed*

*(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*

*(ii) to avoid multiplicity of proceedings, provided*

*(a) the amendment does not result in injustice to the other side,*

*(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*

*(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*

*(iv) A prayer for amendment is generally required to be allowed unless*

*(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*

*(ii) the amendment changes the nature of the suit,*

*(iii) the prayer for amendment is malafide, or*



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*(iv) by the amendment, the other side loses a valid defence.*

*(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

*(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

*(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

*(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

*(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*



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*(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagniner Kr.Gandhi & Ors., 2022 SCC OnLine Del 1897)"*

**18.** The suit has been filed for partition in respect of the entitlements of the plaintiffs' share in the properties of T.A.Balaji. The deceased T.A.Balaji is the brother of the plaintiffs 1 and 2 and the



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defendants 12 to 14. So far as the plaintiffs 3 and 4 are concerned, T.A.Balaji is their maternal uncle. Though in Hindu families, maternal uncle is placed next to the father, it is pathetic that the predeceased sister's children are excluded in the matter of inheritance for a mere reason that their mother predeceased their maternal uncle.

**19.** Since the maternal uncle is next to the father, he will be very affectionate to his sister's children even when his sister was alive. It is needless to state that his care and concern for the sister's children would be naturally more in the absence of his sister. But the law is otherwise and it deprives the pre-deceased sister's children from inheriting the intestate properties of their maternal uncle. In this background of facts and law, the plaintiffs have filed an application stating that the major portion of the money lying in the accounts of T.A.Balaji, which is the subject matter of the suit, were the assets given to him by his grandparents.

**20.** It is right on the part of the defendants 12 to 14 to presume that the plaintiff has taken a different plea with regard to the character of the suit



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properties just to mitigate the negative effect of law and the impact of the earlier interim order. But T.A.Balaji being the only son for in his parents families, it could have been quite possible that his parents or grandparents gift him their assets. Just because the plaintiffs had omitted to plead earlier that the money lying in the account of the deceased is inclusive of the assets given to him by his parents or grandparents, the plaintiffs cannot be precluded from taking up such a plea now.

**21.** Again this is a matter of fact, which has to be tested at the time of trial. The inclusion of the said pleadings does not alter the nature of the suit, though it throws an extra burden upon the shoulders of the plaintiffs to prove the newly pleaded facts. If the plaintiffs could successfully prove that the money lying in the bank accounts of the deceased T.A.Balaji, is also inclusive of the assets given to him by his parents or grandparents, the plaintiffs 3 and 4 can also get a share.

**22.** The plaintiffs might not have thought to work seriously about the sources of the deposits in the name of the deceased T.A.Balaji. After the



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order passed in O.A.No.763 of 2019, they could have been prompted to give a serious thought about the character of the property and come out with certain facts. Hence the delay alone cannot be the reason to reject or suspect the intention of the amendment application. At this stage I believe without attributing *malafide* on the part of the plaintiffs, the amendment sought to be made in the plaint ought to have been allowed.

In view of the above stated reasons, the application in A.No.2253 of 2022 is allowed and the order passed by the learned Master in Application No.1680 of 2021 dated 22.04.2022 is set aside.

**20.10.2023**

Speaking order
Index : Yes
Neutral Citation : Yes

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**R.N.MANJULA, J.**

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**Pre-Delivery Order made in
Application No.2253 of 2022
in O.A.No.1680 of 2021
in C.S.No.459 of 2019**

**20.10.2023**



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