



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-10-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

REV.APLO. No. 15 of 2025

in A.No.332 of 2025

1. Maimuna

W/o.Mr.M.Khwaja Mohiddin, No.18b,
Kaveri Salai, Gandhi Nagar,
Kodungaiyur, Chennai-118.

2.Mrs.H.Balkis

W/o.Mr.L.T.Riazuddin, No.46, Sheikh
Maistry Street, Royapuram, Ch-13.

3.Mrs.H.Zainab

W/o.J.Umarul Farook, No.U-11, 4th
Main Road, Anna Nagar, Ch-40.

4.Mr.S.Mariam

No.131/3, Panjalaiaimman Koil Street,
Arumbakkam, Chennai-106.

Appellant(s)

Vs

1. Mr.H.Sultan And 4 Others

A-block, No.100, 3rd Main Road, 3rd
Avenue, Anna Nagar East, Ch-102.



2.Mr.A.Abdul Rahim
No.124, A1 Block, Shanthi Colony,
Anna Nagar, Chennai-40.

3.Mr.H.Abdul Kareem
No.49/2, V Block, 13th Main Road,
Anna Nagar, Chennai-40.

4.Mr.H.Abdul Gafoor Alias Noor
No.35, 9th Street, Anna Nagar, Ch-40.

5.Mr.H.Abubacker Siddique
A-block, No.100, 3rd Main Road, 3rd
Avenue, Anna Nagar East, Chennai-
102.

Respondent(s)

PRAYER: Review Application is filed under Order XIV Rule 8 of O.S.Rules
r/w. with Section 114 of Civil Procedure Code, to Review the order dated
04/02/2025 passed in A.No.332 of 2025.

For Appellant(s): Mr.V.Subramanian

For Respondent(s): Mr.Kempuraj for R1

Mr.Venkatakrishnan for R5



ORDER

This Review Application has been filed to review the order dated 04.02.2025 made in A.No.332 of 2025 in C.S.No.499 of 2010, wherein in the amendment application filed by the fourth defendant, leave was granted to amend the plaint to include certain items of the property in the plaint schedule as the learned counsel for the plaintiffs have expressed no objection in allowing that application.

2. The learned counsel for the applicants / plaintiffs submitted that no objection has been given by the other defendants and not by the respondents 1 to 4 who are the plaintiffs in the suit. He further submitted that in the suit filed by the plaintiffs, the defendants cannot take the liberty of amending the plaint.

3. However, the learned counsel for the first respondent / fourth defendant submitted that since the suit being a partition suit, the defendants can also be considered as plaintiffs and they are also at liberty to amend the plaint when a particular property which is liable for partition, omitted to be included in the schedule. In support of his above contention, the learned counsel for the first defendant has relied on paragraph No.8 of the judgment of the Hon'ble Division Bench of this Court in ***Solavaiammal and others Vs. Ezhumalai Gounder and other reported in 2012 (1) CTC 159*** wherein it is held as under:

" 8. In the judgment in *Revajeetu Builders and Developers v.*

Narayanasamy and sons and others, 2010 (1) MWN (Civil) 460 (SC):



2009 (10) SCC 84, the Apex Court after analysing critically both the English and Indian cases on the point, deduced the following basic principles to be taken into consideration by the Courts while allowing or rejecting the Application for amendment:

- (i) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (ii) whether the Application for amendment is bona fide or mala fide;*
- (iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (iv) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (vi) as a general rule, the Court should decline amendments if a fresh Suit on the amended claims would be barred by the law of limitation on the date of Application.*

In fact, the Apex Court held that the Courts have very wide discretion in the matter of amendment of pleadings, but Court's powers must be exercised judiciously and with great care. While deciding Applications for amendments the Courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments."



4. On a perusal of the above judgment, it is seen that the Hon'ble Division Bench has made a detailed discussion with regard to the right of the defendants to amend the suit filed by the plaintiffs for partition basing on the general rule that the plaintiffs and the defendants can be considered to be on same pedestal on a partition suit.

5. There have been two conflicting views already given by two different Single Benches of this Court in ***Ramaswamy Vs. P.Marappan reported in 2005(3) MLJ 663*** and ***A.A.Ganga Vs. A.R.Usha reported in 2010 (4) CTC 331***. So the matter came up on reference to the Hon'ble Division Bench. In ***Ramaswamy's case (cited supra)*** it is held that a party can seek to amend his own pleadings, either plaint or written statement, but he cannot seek to amend the pleadings of his opponent. By holding that the plaintiff is a *dominant litus*, he cannot be compelled to include the other items of the properties in the plaint schedule in a suit for partition. The Court has further observed in the said case that if the plaintiff knowingly omitted to include the family properties for partition, then he would have taken the risk of partial partition.

6. When the very same question came up for consideration in another judgment held in ***A.A.Ganga's case (cited supra)***, another Single Bench has held that in a suit for partition, the plaintiff and the defendant should be considered to be on the same pedestal and hence the defendant is entitled to include the property left out by the plaintiff so as to have a complete



adjudication and avoid further litigation.

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7. The paragraph No.8 in ***Solavaiammal's case (cited supra)*** as referred by the learned counsel for the respondent / fourth defendant is only during the course of the discussion made by the Hon'ble Division Bench for settling the position of law and the discussion made in paragraph No.8 is not a verdict given in the judgment. Reference was answered and position of law was settled only under paragraph No. 19 of ***Solavaiammal's case (cited supra)***, by holding that on a petition for amendment filed by the opposite party namely the defendant, for including more properties in the suit filed by the plaintiff, in the event of objection raised by the plaintiff saying that those properties are not open for partition, then the only recourse open to the defendant is to file a separate suit for partition by including the above said properties and the defendant cannot compel the plaintiff to amend the plaint. So, in the absence of any consent given by the plaintiff that the property sought to be included in the suit for partition filed by the plaintiff is also the family property, the plaintiff cannot be compelled at the instance of the defendant to amend his plaint to include the properties proposed by the defendant. For the sake of clarity, Paragraph No.19 of ***Solavaiammal's case (cited supra)*** is extracted hereunder:

" 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



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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 6, 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."

8. In a yet another judgment of the Hon'ble Division Bench of this Court held in ***G.Sampath Vs. Dr.S.Selvi reported in 2024 SCC OnLine Mad 534*** it is held that the plaintiff who is the author of the pleadings has only got the right to alter, modify, add or delete anything in the plaint with the permission of the Court and such right is not available for the defendant. The relevant part of the above judgment is extracted hereunder:

" ... 15. Admittedly, in the present case, the appellant has not mentioned anything in his written statement originally filed, about the non-inclusion of the property, which was sought to be included as suit 'E' schedule property by filing the application under Order VI Rule 17 of CPC. The said application was dismissed by the learned Judge. We are



of the view that the plaintiff is the architect of the plaint and he/she builds it word by word to establish his/her case; and based on the same, the plaintiff has to succeed or fail. Therefore, it is the plaintiff, who is the author of the pleadings made in the plaint, to alter/modify, add or delete anything in the plaint with the permission of the court; and the defendant has no right to make alteration/modification of the pleadings raised in the plaint by the plaintiff. Even assuming that the plaintiff has omitted to include or exclude anything, the defendant can at the best point it out, by filing written statement or at the time of trial. As such, the appellant herein, who originally failed to mention in his written statement about non-inclusion of the said property, cannot be permitted to include the same as suit 'E' schedule property by filing separate application seeking amendment of the plaint filed by the respondent. Accordingly, the learned Judge was justified in dismissing the amendment application filed by the appellant. We do not find any reason to interfere with the order of the learned Judge."

9. The learned counsel for applicants / plaintiffs has cited the judgment of the Hon'ble Division Bench of this Court in ***O.M.Subramanian and others Vs. N.Palani in O.S.A.No.46 of 2017 dated 08.08.2017*** and contended that the defendant is at liberty to include a property in the plaint schedule by way of filing an amendment petition.



10. In the above order the Hon'ble Division Bench has also read the position of law held by the earlier Division Bench held in ***Solavaiammal's case (cited supra)*** and recorded its complete agreement that paragraph No.19 of ***Solavaiammal's case (cited supra)***. Even in the subsequent Division Bench judgment in ***O.M.Subramanian's case (cited supra)*** referred by the learned counsel for the respondent / fourth defendant a distinction has been made as to the entitlement of the defendant in a suit for partition to bring an amendment to include a property when there is objection on the part of the plaintiff. It is categorically held in the above judgment that if there is a contestation with regard to whether or not a particular property is partible, then, even in a suit for partition, amendment cannot be ordered at the behest of the opposite party. For a better clarity the relevant paragraphs of ***O.M.Subramanian's case (cited supra)*** is extracted hereunder:

“ 7. Having heard the learned counsel for the parties and perused record as also the judgment of the Division Bench, we are of the view that, if, there is a contestation with regard to whether or not a particular property is partible, then, even in a partition suit, amendment cannot be ordered at the behest of the opposite party. The rationale of the Division Bench in coming to the conclusion, which it did, stems from the logic that in a partition suit, there is strictly no plaintiff or defendant.

7.1 The rationale, however, does not apply, as has been indicated in paragraph 19 of the very same judgment, where, there is contestation with regard to inclusion of the property in a partition suit.”



11. Even when the judgment of the Hon'ble Division Bench held in ***O.M.Subramanian's case (cited supra)*** no different stand has been taken and it is in conformity with the earlier judgment of this Court held in ***Solavaiammal's case (cited supra)***.

12. There cannot be any quarrel on the point that the plaintiff is a *dominant litus* and he is the master of his own pleadings and hence the defendant cannot compel the plaintiff to modify the pleadings made by him in his plaint. Even in the suit for partition, where the locus of the defendant is slightly different that he can be treated as standing on the same pedestal also, it is clarified that such amendments can be brought at the instance of the defendants for including any properties in the suit schedule that too when the plaintiff also concedes the same. In the order dated 04.02.2025, it appears that the Court has mistakenly recorded no objection on behalf the respondents / plaintiffs instead of recording no objection in respect of the other respondents who are the co-defendants. As the order allowing the application filed by the fourth defendant is due to sheer error of understanding of the recording of no objection as against the party who actually stated no objection and the position of law also makes it clear that the defendant cannot compel the plaintiff to amend the plaint to include or delete any property in the suit for partition without the plaintiff's consent, I feel the order dated 04.02.2025 has got the scope for review.



13. In view of the above stated reasons, the Review Application is allowed and the order dated 04.02.2025 made in A.No.332 of 2025 in C.S.No.499 of 2010 is hereby set aside and consequently the application filed in A.No.332/2025 is dismissed. No costs.

25-10-2025

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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R.N.MANJULA J.

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