



A.No.1537 of 2025 and A.No.5932 of 2024
in C.S.No.405 of 2008

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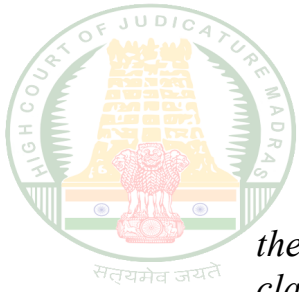
C.V.KARTHIKEYAN, J.

This matter is posted today before this Court under the caption 'For Being Mentioned' at the instance of the learned counsel appearing for the plaintiffs.

2. The learned counsel appearing for the plaintiffs submitted that there is some typographical error in Paragraph No.4 of the order dated 15.07.2025 in A.No.1537 of 2025 and A.No.5932 of 2024 in C.S.No.405 of 2008. Hence, he prayed for suitable directions.

3. Considering the submission made by the learned counsel for the plaintiffs, these applications are clarified and Paragraph No.4 of the order dated 15.07.2025 in A.No.1537 of 2025 and A.No.5932 of 2024 in C.S.No.405 of 2008 reads as follows:-

“ 4. Interestingly, the entire property is not sought to be included in the schedule to the plaint but only the first floor of the property whose address has been given as Plot No.24, Door No.1/54-13A, First Floor, First Cross Street, Sripuram Colony, St.Thomas Mount, Chennai - 600 016. It is not known why the ground floor and other portions of the property have been left out. The only reason why the first floor alone has been included is because the applicants are in possession of the first floor alone. Be that as it may, in O.S.No.24 of 2016, the plaintiffs



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therein who are the defendants 9 and 13 herein had incidentally claimed title over the entire property by way of a settlement deed executed in favour of 13th defendant by the 1st defendant, E.Achudda Reddy, who is also the son of 9th defendant and elder brother of 13th defendant had executed a settlement deed in favour of the first defendant, E.Achudda Reddy / father of the 13th defendant. A.J.Gopal had acquired the properties through settlement from one Gopalakrishnan who is a maternal uncle of him who had in turn purchased the said property from one Muthukumarasamy who is an independent person and not a party to the suit. It is thus seen that a line of title had been stated by the 13th defendant in the counter filed in these applications.”

4. Registry is directed to correct the order dated 15.07.2025 in A.No.1537

of 2025 and A.No.5932 of 2024 in C.S.No.405 of 2008, as above and issue order copy afresh.

28.07.2025

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The defendants 15,16, 17 and 18 in the suit have filed these two applications seeking leave to sue with respect to the property bearing Plot No.24, Door No.1/54-13A, First Floor, First Cross Street, Sripuram Colony, St.Thomas Mount, Chennai - 600 016 as an additional property to be included in the schedule of properties in the plaint and permit the applicants to amend the suit schedule by including that particular property in the schedule of properties to the plaint.

2. Even before proceeding further, it must be mentioned that the applicants / defendants 15 to 18 have not filed their written statement and therefore, they have also not paid any Court Fees claiming partition and separate possession. The suit in C.S.No.405 of 2008 had been filed by the plaintiffs seeking partition and separate possession of 1/5th share in the suit schedule properties. In the schedule to the plaint, the plaintiffs have included under schedule 'A', four items of immovable properties and included one item of immovable property under schedule 'B' and under schedule 'C', 'D' and 'E' also one item of immovable properties. There has been no effective progress in the trial of the suit. By the time the suit had progressed from the year 2008, there had been the reporting of death of several of the parties necessitating impleading of defendants as legal heirs of the deceased defendants. The present applicants / D15 - D18 are said to be the legal heirs on one A.Jayaraman who



had also not been impleaded when the suit was initially filed, but subsequently, was impleaded as 12th defendant. Owing to his unfortunate death pending the suit, the present applicants had been impleaded as further defendants.

3. It must also be relevant to point out that with respect to the property which is now sought to be included, there is yet another *lis* pending, in which, the applicants herein are the defendants. That is the suit in O.S.No.24 of 2016 now pending before the Principal District Court, Chengalpattu. It is contended that the parties have completed the pleadings and issues have been framed and the trial is in progress. That suit had been filed by the 9th and 13th defendants herein, K.Mahalakshmi and A.Loganathan, who are mother and son, seeking recovery of possession of the portion in which the present applicants are in occupation of the property which is now sought to be included in the schedule of the plaint. It is also informed that the 9th defendant died pending the suit.

4. Interestingly, the entire property is not sought to be included in the schedule to the plaint but only the first floor of the property whose address has been given as Plot No.24, Door No.1/54-13A, First Floor, First Cross Street, Sripuram Colony, St.Thomas Mount, Chennai - 600 016. It is not known why the ground floor and other portions of the property have been left out. The only reason why the first floor alone has been included is because the applicants are in possession of the first floor alone. Be that as it may, in O.S.No.24 of 2016, the plaintiffs therein who are the defendants 9 and 13 herein had incidentally claimed title over the entire property by way of a settlement deed executed in favour of 13th defendant by the 11th defendant, A.J.Gopal, who is also the son of 9th defendant and elder brother of 13th defendant. He had executed a



settlement deed in favour of the first defendant, E.Achudda Reddy / father of the 13th defendant. A.J.Gopal had acquired the properties through settlement from one Gopalakrishnan who is a maternal uncle of him who had in turn purchased the said property from one Muthukumarasamy who is an independent person and not a party to the suit. It is thus seen that a line of title had been stated by the 13th defendant in the counter filed in these applications.

5. Tracing the title as aforementioned, the suit in O.S.No.24 of 2016 had been filed seeking recovery of possession from the present applicants who had been permitted to occupy the first floor of the said premises. The trial in that particular suit is under way and therefore, that suit is in seisin of the Principal District Court, Chengalpattu. There is no application filed to withdraw that particular suit to be filed before this Court. Even otherwise, the plaintiffs had not thought it fit or necessary to include this particular property also as one which could be partitioned among the parties to the suit.

6. More worryingly, the applicants herein have not even filed the written statement to this particular suit. The Tamil Nadu Court Fees and Suit Valuation Act provides for the defendants in a partition suit who also seeks partition and separate possession to pay one half court fees as paid by the plaintiffs. Section 37(1) and 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act govern that particular principle. In the absence of any written statement filed, it would be an impossibility for this Court to examine the contentions of the defendants. They have not chosen to contest the suit on merits and they have not raised any issues in the suit filed by the plaintiffs. On the other hand, they have filed the present applications seeking to include one more property and not the entire



property, but the first floor of the said property alone. It shows the *malafide* of the applicants herein. They wanted to include only the portion in which they have occupied and subject it to partition. If that particular first floor is subjected to partition, then, the applicants can never claim exclusive right to be in occupation of the entire first floor and this particular stand taken by them would directly affect their prospects in O.S.No.24 of 2016, as they continue to occupy the entire first floor and question the right of the plaintiffs therein who claim recovery of possession.

7. The learned counsel for the applicants placed reliance on the judgment of a Division Bench of this Court reported in **2012 (1) CTC 159 equivalent to 2011 5 LW859, in the case of Solavaiammal and Ors Vs. Ezhumalai Goundar and Ors**, wherein, the Division Bench has examined the application under Order VI Rule 17 of CPC and observed whether that could be allowed at the instance of the defendants. It had been observed that in a suit for partition, the plaintiff cannot claim exclusive dominant litus and as a general rule, the defendants also can seek to include such properties which could be the subject matter of partition and also file an application under Order VI Rule 17. The crucial aspect is that if the defendants had also filed their written statement, there must be some *bonafide* in their claim. Here, there is absolute lack of *bonafide*, since the first floor where the applicants are residing alone has been sought to be included as further property to schedule of the properties already included in the plaint. This application has been filed only to frustrate the further proceedings in O.S.No.24 of 2016, wherein, the trial has commenced.

8. The pendency of the said suit places an obligation on this Court to



respect the jurisdiction of that particular Court to give a finding on the issues raised therein. The ratio in the decision relied by the learned counsel is not applicable to the facts of this case. I am not inclined to allow these applications. Hence, both these applications are dismissed.

9. I am confident that the learned Principal District Judge, Chengalpattu, would examine the issues relating to that particular suit in the light of the pleadings and the evidences adduced in that suit.

15.07.2025

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