



WEB COPY

CMP NO. 21163 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-01-2025

CORAM

THE HONOURABLE MR JUSTICE R. SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

CMP NO. 21163 of 2023

IN

AS NO. 812 OF 2020

G.Vijayakala
W/o.Mr.K.Jayachdandran, No.1-A,
7th Main Road, Dandeeswaram Nagar,
Valachery Chennai - 42

Appellant(s)

Vs

J.Gnanavel(deceased)
1.G.Gnanasoundari, W/O Late J.Gnanavel,
Othikkadu Village, Ekkadu Post,
Thiruvallur Tk And District and 7 Others

Respondent(s)

For Appellant(s):

K.S.V. Prasad

For Respondent(s):

N.K.Sivakumar



ORDER

(Order of the Court was made by the Hon'ble R.Subramanian J.)

The plaintiff seeks amendment of the plaint. Details, which set out in paragraph 22 of the affidavit as follows:-

"22) The amendments are as follows:

1) In the body of the plaint, the date 28.05.1975 of Deed of Settlement, Ex.A1 in para 8(A) (i) plaint has to be substituted with 23.05.1975.

2) In SCHEDULE-A : the following are to be added to Schedule-A of the plaint (Ancestral Properties) after No.4 (without changing the order as it affects the numbers of items mentioned in the judgment of trial court):

4A) land in S.No.27/2 of the extent of Ac.0.52 cents, in Ikkadu kandigai Village.

North by : Ali Muhammad trust land,

South by : Survey no 29/2 and 30 Land,

East by : Oodai and

West by : Ali Muhammad trust land.

4B) land in S.No.225/2B1 of the extent of Ac.0.08 cents, in Othikadu Village.

North by : Eri Kalvai,

South by : Murali land,

East by : Survey No. 225/2A land and

West by : Jayammal Land.

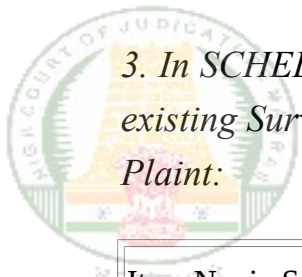
4C) land in S.No.228 of the extent of Ac.0.08 cents, in Othikadu Village.

North by : Eri Kalvai,

South by : Jayachandran Land,

East by : Jayammal Land and

West by : Nithiyanandam land.



3. In *SCCHEDULE A-1*, the following New Survey numbers need to be added New existing Survey Numbers for the lands described in the following items in *Schedule A-1*, the *Plaint*:

Item No. in Schedule A-1	Existing Survey No	Subsequently changed of sub-divided as New Survey Nos.
8	47	47/2 and 47/5
	48/2B	48/2B3
	50	50/1
	46	46/2A
9	41	41/1B
11	47	47/1 AND 47/4
12	50	50/2
13	48/2B	48/2B1
15	46/2	46/2C
17	48	2A2

4. In *SCCHEDULE- C*, of the *Plaint* (Properties in the name of the 3rd Defendant); the Survey number 45/2A of the Agricultural land of the extent of Acres 0.7 12 Cents in Item No.34 has to be changed as No. 46/2A.

5. In *SCCHEDULE- C*, of the *Plaint* (Properties in the name of the 3rd Defendant); add between No.36 and 37 another Number, 36-A: the land of the extent of 2.5 cents in Survey No



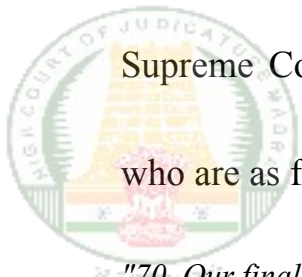
46, now 46/2D."



2. In so far as the amendment No:1, 3 & 4, the defendants have no objection because they are only correction of survey numbers and date of the document. Hence, those prayers for amending the date of the settlement deed as 23.05.1975 instead of 28.05.2025 and correction of survey numbers in respect of Item Nos.8, 9, 11 & 12, 13, 15 & 17 of Schedule A1 and correction survey number of Item Nos. 34, 36 & 37 of Schedule C, this application will stand allowed.

3. As far as the incorporation of new properties are concerned, we do not think, it is open to the plaintiff to seek amendment at this belated stage. No doubt, the Appellate Court has got power to permit amendment of the plaint, after introduction of proviso to Orders 6, Rule 17 by the amending Act.

4. Mr.K.S.V.Prasad, learned counsel appearing for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited*** wherein, at paragraph 70, the Hon'ble Supreme Court has held that amendment are to be allowed who are necessary for determining the real question in controversy provided, it does not cause injustice or prejudice to the other side. The Hon'ble



Supreme Court has set out the conditions, required for allowing amendment



igs,

who are as follows:-

"70. Our final conclusions may be summed up thus:

WEB COPY

(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 negated.

(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**.

(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

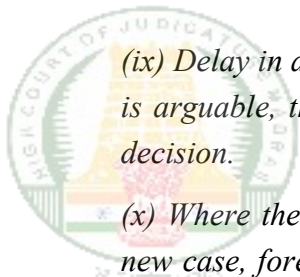
(iv) by the amendment, the other side loses a valid defence.

(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.



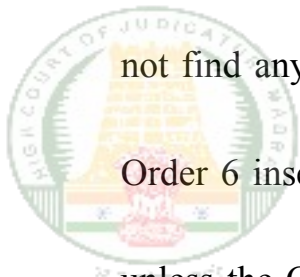
(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed for decision.

(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. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897](#))"

5. Condition Nos.4 & 11 which relates to pre-trial and post-trial amendment is required to be borne in mind by the Court, since amendments now sought for are post-trial. The Hon'ble Supreme Court has also stated that a post-trial amendment should be allowed, if it does not denude the opposite party of the advantage it has secured the result of the failure of the party, seeking amendment.

6. In the case on hand, the plaintiff seeks to incorporate a set of new properties which were not originally included in the suit. That would definitely prejudice the case of the defendant and it would take away the advantage which has accrued to the defendant. The plaintiff would also rely upon the copy of the document of the year 1922 and if we are to allow the amendment, this would definitely have the effect of re-opening the entire suit. Hence, we do



not find any justification for allowing the amendment. Moreover, the proviso 1 of

Order 6 inserted by Act 22 of 2002 bars the Court from allowing the amendment post trial

unless the Court comes to the conclusion that in spite of due diligence, the party could not

WEB COPY

have raised the matter before commencement of trial. There is no explanation for not raising this issue before the commencement of trial. Apart from absence of explanation, there is a specific admission that D.W.1, the father has admitted the partition in the year 2002 and has claimed that he does not have the copy of the document therefore, the plaintiff is guilty of negligence.

7. Hence, we find that the application for amendment cannot be allowed in its entirety.

Therefore, C.M.P.No.21163 of 2023 is partly allowed in respect of the prayers stated above only. In view of the amendment ordered, the plaint, the decree as well as the memorandum of grounds will stand amended.

(R.SUBRAMANIAN J.) (C.KUMARAPPAN J.)
27-01-2025

kkn



To

1. J.Gnanavel(deceased)

1.G.Gnanasoundari, W/O Late J.Gnanavel, Othikkadu Village, Ekkadu Post, Thiruvallur Tk And District

2. G.Vijaya Kumar

S/o Late J.Gnanavel, Othikkadu Village, Ekkadu Post, Thiruvallur Tk And District

3. L.Tamilselvi

W/o Mr.V.Lakshmipathi, No.189 Venkateshwara Nagar, Drivers Colony, Anna Nagar, Pattabhiram, Chennai-78

4. G.Prabavathy

W/o B.Nithyanandam, No. 4/17 Ma.Po.Si Street, Kakkalur Post, Tiruvallur Tk And District

5. K.Jayachandran

S/o M.Krishnan, No.6, 6th Cross Street, Dhandesswaram, Velacheri, Chennai-42

6. PANNEERSELVAN

S/o Masilamani, No.6, 6th Cross Street, Dhandesswaram, Velacheri, Ch-42

7. PARIMALA

W/o Dilli Babu, No.18 Plot 44, 3rd Cross Street, Senthil Nagar, Kolathur, Chennai-99

8. AMSA

W/o Durai, No.24 Melanoor Village, Kilanoor Post, Tiruvallur Tk And District