



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.08.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.276 of 2022

and C.M.P.(MD).No.1250 of 2022

1.Meenambigai

2.Ganapathy Shanmugam

3.Manickavasagam

...Petitioners

Vs.

1.Malathy

Dhandapani (died)

Somasundaram (died)

2.Shanmugarani

3.Vijayalakshmi

4.Priya

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.323 of 2020 in I.A.No.151 of 2017 in O.S.No.315 of 1998 on the file of the Principal Sub Court, Palani, dated 01.09.2021.



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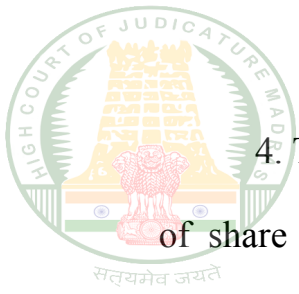
For Petitioners : Mr.M.Jerin Mathew
For R-2 & R-4 : Mr.T.Lenin Kumar

ORDER

This petition has been filed to set aside the fair and decreetal order passed in I.A.No.323 of 2020 in I.A.No.151 of 2017 in O.S.No.315 of 1998 on the file of the Principal Sub Court, Palani, dated 01.09.2021.

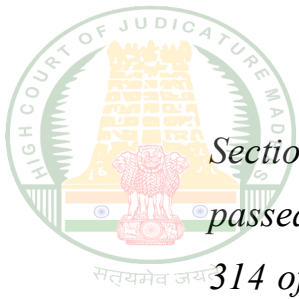
2. The first respondent herein filed a suit in O.S.No.315 of 1998 before the learned Sub Judge, Palani, seeking partition of 1/4th share in the suit property against the petitioners' father Dhandapani and one Somasundaram. The petitioners' father is the own brother of the first respondent, while Somasundaram is the brother-in-law of the petitioners' father and husband of the first respondent's sister. Initially, the partition suit was dismissed on 12.01.2007. As against which, an appeal in A.S.No.37 of 2007 was preferred and the same was dismissed on 28.08.2014. No Second Appeal was filed, and thus the preliminary decree attained finality.

3. Subsequently, the first respondent filed an interlocutory application in I.A.No.323 of 2020 under Order VI Rule 17 CPC seeking to amend the preliminary decree so as to increase her share from 1/4th to 1/2, allegedly on account of the death of certain co-sharers. The trial Court allowed the said application on 01.09.2021. Challenging that order, the present Civil Revision Petition has been filed.



4. The learned counsel for the petitioners submitted that the augmentation of share due to death of co-sharers can only be considered in final decree proceedings and not by way of amendment under Order VI Rule 17 CPC after the preliminary decree has attained finality. Order VI Rule 17 CPC permits amendment of pleadings at any stage only for determining the real controversy between the parties; in this case, the controversy stood concluded with the confirmation of the preliminary decree by the lower appellate Court. Reliance was placed on the decision of this Court in the case of **M.A. Ahmed Sadakathullah Maraicair vs. A. Mohideen Abdul Khader and Others** reported in **MANU/TN/9220/2007**, wherein it was held that changes in shares due to death of co-sharers can be pleaded only in final decree proceedings, and not by way of amendment to the preliminary decree under Order VI Rule 17 CPC. It was also pointed out that the final decree in I.A.No.151 of 2017 has already been passed on 22.10.2024 and an appeal against the same is pending before the lower appellate Court. The relevant portions in the above said judgment are extracted hereunder:

“The learned counsel appearing for the second respondent relying on the following decisions reported in Parashuram Rajaram-vs-Hirabai Rajaram Tiwari(AIR 1957 Bombay 59 ,Phoolchand -vs- Gopal Lal(AIR 1967 Supreme Court 1470),Hanumantappa Dyamappa Jadar-v-Mallavva (AIR 1996 Karnataka 183, Krihnabai-v-K.A.Krishnamurthy(2004)1 MLJ 91) and K.K.Kumar-v High Court of Gujarat through Registrar(AIR 2006 Supreme Court, 3559) contended that decree can be amended under Order 6 Rules 17 and 18 and under



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Section 151 CPC. I am of the view that unless a preliminary decree is passed in respect of 12/60th share in favour of the petitioner in IA.No. 314 of 2003/4th plaintiff, the share already declared in the preliminary decree cannot be amended. It is pertinent to note that there are five plaintiffs to the suit in O.S.No.60 of 1981. The 4th plaintiff has admitted in I.A.No.314 of 2003 itself that he is one of the heirs of the deceased 4th respondent Haji Hameed Kathija Nachiar/5th plaintiff in O.S.No.60 of 1981.If it is so, then the other plaintiffs who are the other sons of 4th respondent Haji Hameed Kathija Nachiar/5th plaintiff in O.S.No.60 of 1981 are also entitled to an equal share of 12/60th each in the plaint schedule property. I am of the view that unless the petitioner/4th plaintiff's share is declared as 12/60 by way of passing of a preliminary decree, the decree already passed in O.S.No.60 of 1981 cannot be amended under Order 6 Rule 17 CPC. This settled proposition of law has been reiterated in Phoolchand -vs- Gopal Lal(AIR 1967 Supreme Court 1470),referred to above as follows:

"So far as partition suits are concerned, if an event transpires after the preliminary decree which necessitates a change in shares, the Court can and should do so; and if there is a dispute in that behalf, the order of the Court deciding that dispute and making variation in shares specified in the preliminary decree already passed is a decree in itself which would be liable to appeal. However, this can only be done so long as the final decree has not been passed"

Admittedly, in this case also final decree is yet to be passed. The remedy open to the second respondent is to file a petition for passing another preliminary decree declaring his share along with other plaintiffs' share and then to proceed with the final decree proceedings.



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3. The learned counsel appearing for the second respondent relying on a decision reported in *Parashuram Rajaram-vs-Hirabai Rajaram Tiwari*(AIR 1957 Bombay 59 (V44 C 25 Feb),referred to above, would contend that a preliminary decree in a suit for partition can be amended. The ratio decidendi in the said suit is that after passing a preliminary decree for partition, the plaintiff applied to the Court on the ground of his father's death, his share was augmented and the share which was 1/8th was increased to 1/7th. The said application was rejected and in an appeal it was held that the plaintiff would not be required to pay upon the footing of his augmented share. No question of paying ad valorem court-fees arose. It was only when a decree was passed in his favour increasing his share from 1/8th to 1/7th the plaintiff would be called upon to pay the amount of stamp duty upon the difference between his increased share which was 1/7th and the 1/8th share which was awarded to him by the preliminary decree.

4. The learned counsel for the second respondent at this juncture relying on a decision reported in *Nanja Naicken-v- Rangammal*(AIR 1972 Madras 384) and contended that a preliminary decree can be amended by way of a petition under Order 6 Rule 17 CPC. But the circumstances under which the application filed under Order 6 Rule 17 CPC in that case was that while drafting the preliminary decree, the share of the 6th defendant was omitted to be mentioned in the preliminary decree which was ordered to be rectified by way of a petition under Order 6 Rule 17 of CPC. So the facts in *Nanja Naicken-v- Rangammal*(AIR 1972 Madras 384) is not applicable to the present facts of the case.



5. *In fine, the revision petition is allowed and the order passed in I.A.No.314 of 2003 in I.A.No.87 of 2002 in O.S.No.60 of 1981 is hereby set aside. The remedy open to the second respondent/4th plaintiff is to file necessary application, before the said Court wherein the final decree application in I.A.No.87 of 2002 is pending to declare his share and the shares of the other plaintiffs for passing another preliminary decree before passing final decree. No costs. Consequently, connected C.M.P.No.18729 of 2004 is closed.*”

5. Though the name of respondent Nos.1 and 3 have been printed in the cause list, none appeared on behalf of them.

6. Heard the learned counsel appearing for respondent Nos.2 and 4.

7. This Court in M.A. Ahmed Sadakathullah Maraicaire (supra) held that unless a fresh preliminary decree is passed declaring the augmented share, the existing preliminary decree cannot be amended under Order VI Rule 17 CPC. The settled proposition reiterated in Phoolchand vs. Gopal Lal (supra) is that:

"In partition suits, if an event transpires after the preliminary decree which necessitates a change in shares, the Court can and should do so; however, such variation can only be made so long as the final decree has not been passed. The order making such variation itself amounts to a decree and is appealable."



8. In Nanja Naicken vs. Rangammal (AIR 1972 Mad 384), amendment was permitted where an omission occurred in the preliminary decree while recording shares already adjudicated. That case is distinguishable from the present one, where augmentation is claimed based on events subsequent to the preliminary decree.

9. Applying the above principles, once the preliminary decree has attained finality and the stage has progressed towards passing the final decree, any claim for augmented share due to death of a co-sharer should be made by moving for passing of another preliminary decree in the pending final decree proceedings, not by amending the earlier preliminary decree under Order VI Rule 17 CPC.

10. In the present case, the trial Court erred in allowing I.A.No.323 of 2020. The proper course for the first respondent is to seek appropriate relief before the trial Court in the pending proceedings by filing an application for passing an additional preliminary decree, taking into account the subsequent deaths.

11. In view of the above discussion, the order dated 01.09.2021 passed in I.A.No.323 of 2020 in I.A.No.151 of 2017 in O.S.No.315 of 1998 by the Principal Sub Court, Palani, is set aside. Liberty is granted to the first



respondent to work out her remedy before the trial Court by filing an appropriate application in the final decree proceedings for declaration of augmented share consequent upon the death of co-sharers.

12. Accordingly, the Civil Revision Petition stands allowed. No costs.

Consequently, the connected miscellaneous petition is closed.

05.08.2025

Internet: Yes/No

Index: Yes/No

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To

1. The Principal Sub Court, Palani.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

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